

Community Development Block Grant (CDBG) Contractors Implementation Manual



OKLAHOMA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT

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CDBG MANUAL REVISIONS EFFECTIVE JULY 1, 2007

REQUIREMENT NO. 401

Page 401-4

III.C. Added a letter of explanation as part of the documentation.

Page 401-11

Changed applicable environmental form names and attachment numbers

Page 402-3

III.C.2. Added “including those on State contract”

IV.B. Removed “(Formal Advertising)”

REQUIREMENT NO. 403

Page 403-1 –

I.A. Added “sole source aquifers, clear zones, and environmental justice”

I.C. added “24 CFR 58”

Page 403-2

I.F. Added CFR 58.32.

II. Changed regulation cite to “CFR 58.23 and 58.35(b)”

Grantees are now required to make a determination of finding and request the cognizant/regulatory agency to concur with their findings. This has been added where applicable.

II.A.&B Clarified that grantees must still comply with CFR 58.6 (includes floodplain and Clear zones)

Page 403-3

II.C.2.c. Added “by site visit, if necessary”

II.C.2.e. Clarified when Acceptable Separation Distance (ASD) must be determined.

Page 403-5

2.I. Added explanation of Phase I Environmental Site Assessment

2.n. Added “n. Environmental Justice”...

Page 403-6

4.a. Added “and CFR 58.6”

Page 403-7

D.1. Added “in CFR 58.5 and 58.6” and example of activity requiring environmental assessment

Page 403-8

2.b. Added “to the agencies on Attachment 18 at the time of publication or posting”

Page 403-9

E.1. Added “c. Has been over twelve (12) months since any action has been taken”

Page 403-11

Changed Sample Letter for the grantee to make the determination of finding and request concurrence from the agencies.

Page 403-25

REPLACED STATUTORY CHECKLIST WITH HUD CHECKLIST

Page 403-28

“CHECKLISTS”

EXPLAINS PROCEDURES TO COMPLETE BOTH CHECKLISTS
(6 PAGES)

Page 403-35

REPLACED ENVIRONMENTAL ASSESSMENT CHECKLIST WITH HUD
CHECKLIST

Page 403-45

Added “Flood Insurance Protection”

Page 403-55

ADDED NOTICE FOR PROPERTIES IN CLEAR ZONES

Page 403-27

ADDED COMPLIANCE DOCUMENTATION CHECKLIST FOR 24 CFR 58.6

Page 403-46

REPLACED CERTIFICATION OF EXEMPTION WITH HUD FORM

Page 403-47

REPLACED FINDING OF CATEG EXCL/SUBJ TO 58.5 WITH HUD FORM

Page 403-48

REPLACED NOTICE OF INTENT WITH HUD’S CURRENT FORMAT

Page 403-51

REPLACED COMBINED NOTICE WITH HUD’S CURRENT FORMAT

REPLACED ENV. CERT. FORM WITH HUD’S CURRENT FORMAT

PAGE 403-53

ADDED “Local News Media” and Appropriate Tribal Governments”

Page 403-56
REPLACED 24 CFR 58 WITH CURRENT REGULATIONS

Page 403-84
ADDED TITLE 24 CFR.55 – FLOODPLAIN MANAGEMENT

REQUIREMENT NO. 404

Page 404-5
5.b. Clarified documentation of equipment usage

Page 404-10
V.B.2. Added agreed upon procedures option in lieu of audit for town's with population under 2500

REQUIREMENT NO. 406

Page 406-4
V.A.1. Added web site for the "Making Davis Bacon Work" guide

Page 406-7
B.3.a. Added new requirements for wage rate interviews

REQUIREMENT NO. 410

Page 410-6
CDBF Final Expenditure Report – Added No. 26-30 to report actual match funds spent

CDBG Final Expenditure Report – Economic Development – added No. 16-20 to report actual match funds spent

Page 410-8
Added new racial categories

Page 410-12
Final Expenditure Report – Added explanation of new requirements for reporting actual leverage expenditures

**OKLAHOMA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM**

**CONTRACTORS IMPLEMENTATION MANUAL
Effective July 2007**

TABLE OF CONTENTS

	<u>Page No.</u>
REQUIREMENT 401: PROGRAM MANAGEMENT	
I. Contractual Requirements.....	401-1
II. Removing Contract Conditions.....	401-1
III. Project and Budget Modifications and Changes of Scope.....	401-3
IV. Administering the Program.....	401-6
V. Records.....	401-7
VI. Citizen Participation.....	401-8
VII. Attachments.....	401-10
1. Request for Release of Funds and Requirements - Community Development (Form 401-A).....	401-11
Certification of Leverage.....	401-12
Notice of Removal of Contract Conditions (Sample).....	401-13
2. Request for Release of Funds and Requirements - Economic Development (Form 1601-B).....	401-14
Placement Plan (Form 1601-D).....	401-17
Notice of Adverse Change.....	401-20
CDBG-EDIF Notice of Removal of Contract Conditions (Form 1601-E).....	401-21
3. Residential Anti-Displacement and Relocation Assistance Plan.....	401-22
4. Anti-Displacement Plan for CDBG Housing Projects.....	401-23
5. Program Records.....	401-26
REQUIREMENT 402: PROCUREMENT	
I. Introduction.....	402-1
II. Pre-Contract Costs.....	402-1
III. Regulatory/Statutory Requirements.....	402-2
IV. Methods of Procurement.....	402-3
V. Attachments.....	402-18
1. Procurement Methods and Procedures Chart.....	402-19
2. Administrative Responsibilities.....	402-20
3. Request for Proposals for Administrative Services for the Community Development Block Grant.....	402-23
4. Statement of Price.....	402-29
5. 24 CFR 85.36 Procurement.....	402-31
6. Wage Rate Request Form.....	402-42
7. Minority/Women Owned Business Information.....	402-43

REQUIREMENT 403: ENVIRONMENTAL REVIEW

I. Overview of the process..... 403-1

II. Procedures..... 403-2

III. Attachments..... 403-9

1. Sample Request for Agency Comment Letter..... 403-11

2. Environmental Review Cross-Reference Chart..... 403-12

3. Fish and Wildlife Blanket Clearance Letter..... 403-15

4. Corps of Engineers Information Sheet..... 403-21

5. Oklahoma Scenic Rivers Blanket Clearance..... 403-22

6. List of Tribal Governments..... 403-23

7. Statutory Checklist and Instructions..... 403-25

8. Environmental Assessment Checklist and Instructions.... 403-35

9. Executive Order 11988, Eight-Step Decision-Making
Process (Floodplains)..... 403-42

10. Certification of Exemption..... 403-46

11. Finding of Categorical Exclusion..... 403-47

12. Notice of Intent to Request Release of Funds..... 403-48

13. Environmental Certification Form..... 403-49

14. Finding of No Significant Impact (Sample)..... 403-50

15. Notice to Public of Finding of No Significant Impact and
Notice of Intent to Request Release of Funds..... 403-51

16. Distribution List..... 403-53

17. Certification of Continued Environmental Compliance.... 403-54

18. Notice to Prospective Buyers of Properties Located in
Runway Clear Zones and Clear Zones/Accident Potential
Zones..... 403-55

19. Title 24, Part 58, Environmental Review Procedures.... 403-56

20. Title 24, Part 55, Floodplain Management..... 403-84

REQUIREMENT 404: FINANCIAL MANAGEMENT

I. Introduction..... 404-1

II. Accounting System Requirements..... 404-1

III. Drawing Down Funds..... 404-9

IV. CDBG Monthly Expenditure Report 404-9

V. Audit Requirements..... 404-10

VI. Summary..... 404-10

VII. Attachments..... 404-11

1. Sample CDBG Ledger..... 404-12

2. Electronic Funds Transfer Authorization..... 404-13

3. Bank Account Change..... 404-15

4. Maximum CDBG Travel Claims..... 404-17

5. Request for Payment of Contract Funds..... 404-18

6. Monthly Expenditure Report - Community Development.... 404-20

7. Economic Development - Monthly Expenditure Report..... 404-22

8. CDBG Time Sheet..... 404-24

9. FEMA Schedule of Equipment Rates..... 404-25

10. Request for CDBG Budget Modification - Community
Development..... 404-39

11. Request for CDBG Budget Modification - Economic
Development..... 404-40

REQUIREMENT 405: CONTRACTS

I. Introduction..... 405-1

II. General Requirements..... 405-1

III. Specific Contract Requirements..... 405-2

IV. Bonding..... 405-4

V. Notice of Contract Award..... 405-4

VI. Subrecipient Interlocal Agreements..... 405-4

VII. Attachments..... 405-6

 1. Required Provisions in Non-Construction Contracts..... 405-7

 Required Provisions in Construction Contracts..... 405-8

 Required Contract Provisions..... 405-9

 2. Federal Equal Opportunity and Non-Discrimination Provisions (Non-Construction Contracts)..... 405-11

 3. Clean Air and Water Provisions..... 405-14

 4. Federal Labor Standards Provisions (Construction Contracts)) P. 1-4..... 405-15

 Federal Equal Opportunity and Non-Discrimination Provisions P. 5-10..... 405-19

 5. Attorney's Certificate of Approval of Contract and Bonds (Sample)..... 405-25

 6. Sample Construction Contract Documents for CDBG-Funded Projects..... 405-26

 7. Sample Contract for Administrative Services..... 405-107

 8. Interlocal Cooperation Agreement..... 405-114

Requirement 406: LABOR STANDARDS & CONSTRUCTION MANAGEMENT

I. Introduction..... 406-1

II. The Pre-Construction Conference..... 406-1

III. Change Orders..... 406-2

IV. Construction Supervision, Inspections and Contract Payments..... 406-3

V. Labor Standards Administration..... 406-3

VI. Summary..... 406-9

VII. Attachments..... 406-10

 1. Pre-Construction Checklist..... 406-11

 2. Notice to Proceed..... 406-18

 3. Payroll (WH-347)..... 406-19

 4. Fringe Benefit Determination..... 406-21

 5. Record of Employee Interview - English/Spanish..... 406-22

 6. Final Wage Compliance Report..... 406-24

 7. Construction Management Files..... 406-26

REQUIREMENT 407: PROPERTY ACQUISITION & RELOCATION

I. Property Acquisition..... 407-1

II. Relocation..... 407-8

III. Replacement of Low- to Moderate-Income Housing Units..... 407-9

IV. Residential Anti-Displacement and Relocation Assistance Plan..... 407-10

V. Summary..... 407-11

REQUIREMENT 407: PROPERTY ACQUISITION & RELOCATION (CONTINUED)

VI. Attachments..... 407-12

1. Property Acquisition Process, Voluntary Transaction.... 407-13

2. Property Acquisition Process, Non-Voluntary Transaction..... 407-14

3. Sample Voluntary Notice to Specific Owners..... 407-15

4. Sample Voluntary Notice to Several Owners..... 407-16

5. Sample Notice to Tenants Not Displaced..... 407-17

6. Sample Notice to Tenants Who May Be Displaced..... 407-18

7. Sample Letter Notification of Date of Appraisal and Invitation to Accompany..... 407-19

8. Sample Notification of Fair Market Value..... 407-20

9. Sample of Notice of Decision Not to Acquire a Property..... 407-21

10. Property Acquisition, Individual Parcel File Requirements..... 407-22

11. Sample Notice of Interest in Acquiring Property, Non-Voluntary Acquisition..... 407-23

12. Sample Waiver of Required Appraisal..... 407-24

13. Sample Agreement to Waive Rights to Full Compensation.. 407-25

14. Sample Statement of the Basis for Determining Just Compensation..... 407-26

15. Sample Statement of Settlement Costs..... 407-27

16. Relocation, Individual Household File Requirements..... 407-28

17. Sample Residential Anti-Displacement and Relocation Assistance Plan..... 407-29

18. Relocation Assistance to Persons Displaced from their Homes Section 104(d)..... 407-30

19. Federal Register 49 CFR Part 24-Uniform Relocation and Real Property Acquisition for Federally-Assisted Programs; Final Rule 407-57

REQUIREMENT 408: CIVIL RIGHTS, EQUAL OPPORTUNITY, FAIR HOUSING SECTIONS 3 & 504

I. Contractual Requirements..... 408-1

II. Attachments..... 408-16

1. Compendium of Federal Civil Rights Laws..... 408-17

2. 504 Accessibility Self-Evaluation..... 408-20

3. 504 Transition Plan for Disabled Accessibility..... 408-21

4. Municipality/County Staff Composition Form..... 408-22

5. Suggested Fair Housing Activities..... 408-23

6. Sample Fair Housing Ordinance..... 408-24

7. Sample Fair Housing Resolution 408-29

8. Section 3 Clause..... 408-30

REQUIREMENT 409: REPORTING AND MONITORING

I. Reports..... 409-1

II. Evaluating Contractor Performance (Monitoring)..... 409-3

III. Attachments..... 409-5

1. Applicant/Recipient Disclosure/Update Report..... 409-6

2.	Jobs Creation and Beneficiaries Quarterly Report.....	409-10
3.	Job Tracking Log.....	409-11
4.	Income Certification.....	409-12
5.	Job Creation Requirements.....	409-13

REQUIREMENT 410: CLOSEOUT

I.	Introduction.....	410-1
II.	Procedures.....	410-1
III.	Required Documentation.....	410-2
IV.	Post-Closeout Responsibilities.....	410-4
V.	Attachments.....	410-4
1.	Closeout Documents.....	410-5

OKLAHOMA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

REQUIREMENT NO. 401
PROGRAM MANAGEMENT

Effective July 2007

I. CONTRACTUAL REQUIREMENTS

- A. Community Development Block Grant (CDBG) Grant Recipients shall not obligate or expend funds for any activity specifically conditioned in the contract until such condition is removed by the Oklahoma Department of Commerce, Office of Community Development (ODOC). The announcement of CDBG contract award does not authorize the Grant Recipient to incur costs.
- B. Obligating or expending funds for a conditioned activity that has not yet been cleared by ODOC is an ineligible use of contract funds and the CDBG contract will be de-obligated. **FUNDS CANNOT BE USED TO REIMBURSE THE GRANT RECIPIENT FOR COSTS INCURRED PRIOR TO THE BEGINNING DATE OF THE CONTRACT.** (See Requirement #402-1 Section II for the only exception to this rule.)

II. REMOVING CONTRACT CONDITIONS

- A. Every contract has two basic sets of conditions, i.e., standard and special. Some of the standard conditions are applicable throughout the life of the project. Examples of these include but are clearly not limited to:
1. Procurement standards and procedures;
 2. Affirmative action;
 3. Financial management practices and procedures;
 4. Contract management; and
 5. Reporting.
- B. Some standard conditions must be satisfied or cleared before the bulk of the project and drawdown of the bulk of the funding can be undertaken. The Grant Recipient is required to take the actions necessary to satisfy these conditions and, after the actions are completed, to submit a Request for Release of Funds and Requirements form. There are two versions of this form. One is for community development projects [**Form 401-A, Attachment 1**] and the other is for economic development projects [**Form 1601-B, Attachment 2**]. The following table portrays the actions required.

	<u>Action</u>	<u>CD</u>	<u>ED</u>
1.	Environmental Review	•	•
2.	Leverage Commitment	•	•
3.	Placement Plans		•
4.	Insurance and Bonding	•	•
5.	Anti-Displacement Plan	•	•
6.	Other Special Conditions	•	•

C. As can be seen, clearing contract conditions entails five steps for community development projects and six steps for economic development projects. Each step is summarized as follows:

1. Environmental Review:
 - a. Every activity is subject to one of four levels of environmental review:
 - (1) Exempt;
 - (2) Categorically excluded;
 - (3) Assessment; and
 - (4) Impact Statement.
 - b. Each activity must be cleared separately, using specific procedures and forms designed for that purpose. The Grant Recipient may draw down funds to carry out various project activities after appropriate reviews have been conducted and cleared and a Notice of Removal of Contract Conditions is received from ODOC. **[See Requirement 403 for further detailed guidance.]**
2. Leverage Commitment: CDBG Grant Recipients must submit a Certification of Leverage **[Attachment 1]** certifying that leverage funds have been secured and are available and identifying the source and amount in accordance with the approved application. For local funds, submit a resolution describing from what account funds will be obtained.
3. Placement Plan: This requirement is relevant to economic development projects only. The purpose of this plan is to provide a baseline against which to measure Grant Recipient and business performance in creating the jobs that justified the grant award. **[See Attachment 2]**
4. Insurance and Bonding: The Grant Recipient shall submit evidence of:

- a. General liability insurance covering the funded activities; and
 - b. Bonding of all officials who are responsible for financial transactions relating to this contract.
5. Anti-Displacement Plan:
- a. If no displacement will occur, most CDBG Grant Recipients must prepare a plan which essentially states that no displacement is anticipated but that required procedures will be followed if any is encountered during the course of the project. The plan must be adopted at a regular council meeting. **[Attachment 3]**
 - b. If displacement is anticipated, the requirements for preparing the plan and providing assistance are more detailed, e.g., housing rehabilitation projects. If this should be the case, contact ODOC for further guidance. **[Attachment 4]**
6. Special Conditions:
- a. Any special conditions are identified in Part II of the contract between ODOC and the Grant Recipient.
 - b. **Note:** Grant Recipients may not obligate or expend funds for any activity which is conditioned in the contract until the condition is removed (cleared) by ODOC. The announcement of a CDBG contract award does not authorize the Grant Recipient to incur costs. Obligating or expending funds prior to contract award and environmental clearance is an ineligible use of contract funds. With one exception, funds cannot be used to reimburse the Grant Recipient for costs or obligations incurred prior to either the beginning date of the contract or the date of environmental clearance. The sole exception is that the cost of preliminary engineering conducted prior to contract award may be reimbursed up to \$5,500 if these services were procured consistent with program requirements.

III. PROJECT AND BUDGET MODIFICATIONS

- A. Changes to the scope, budget or completion date of the project are accomplished by a modification.
- B. A modification is a change from the original project description as a result of:
 - 1. New or additional activities; and/or
 - 2. Changes in the proposed scope of services or beneficiaries; and/or
 - 3. Changes in the project location or target area; and/or

4. Changes in an economic development project's loan terms; and/or
 5. Extensions of the contract ending date; and/or
 6. Changes in the amount of any budget line item (or total budget).
- C. When revision of a budget line item is necessary, the Grant Recipient must submit a Request for Budget Modification (either CDBG Community Development [CD] or CDBG Economic Development [ED], depending on the project type) with a letter of explanation and appropriate attachments. **[See Requirement 404, Attachments 10 and 11.]**
- D. For All Projects: Requests for a program modification (Change of Scope) must provide the following documentation:
1. Narrative explanation of reasons, including:
 - a. A detailed description of the new or significantly altered activities, existing activities being altered or eliminated (if any) and why these changes are being proposed. Submit a revised Project Description, along with a technical/engineering justification; and
 - b. A detailed description of any changes in the number, percentages or scope of services that are to be provided to low- and moderate-income persons and/or other project beneficiaries. This may require revisions to existing or new beneficiary documentation (income surveys, census data, etc., as appropriate).
 2. If the proposed modification involves additional, reduced and/or substantially altered activities from the original contract:
 - a. Documentation confirming either the public notice and conduct of a public hearing or posting consistent with the Grant Recipient's Citizen Participation Plan is required;
 - b. The Grant Recipient's legislative body must adopt a resolution supporting the modifications and submit;
 - (1) Either a Certification of Continued Environmental Compliance or, if appropriate, documentation of a different level of environmental review; **[See Requirement 403]**
 - (2) Documentation of permits or regulatory approvals from appropriate agencies, if applicable;

- (3) Determination of whether an Updated Disclosure Report must be submitted. If the modification causes any changes from the Initial Disclosure Report, the Updated Report must be submitted with the modification request. [See Requirement 409, Attachment 1.]

E. For ED Projects:

1. If the modification affects loan terms, the Grant Recipient must provide:
 - a. Historical balance sheets and income statements;
 - b. Interim statements;
 - c. Aging of accounts receivable and accounts payable;
 - d. Break-even analysis;
 - e. Debt schedule;
 - f. Pro forma balance sheets, income statements and cash flow analysis;
 - g. Personal financial statements; and
 - h. Requested changes in loan terms, loan agreements, collateral assignments, promissory notes, etc., where applicable.
2. If the modification alters the proposed level of benefit, the Grant Recipient must submit a revised Job Placement Plan.

F. ODOC will evaluate the proposed modification against the following criteria:

1. Eligibility: Will the proposed changes still be eligible for CDBG funding?
2. Ratability: Would the proposed changes have caused a lower scoring on the original application? Would this lower score have meant that the application would not have been competitive and, subsequently, not have been authorized to enter into a contract agreement? If the answer to this question is "yes", **the modification will not be approved.**
3. Note: No increases above the maximum established by ODOC in either the administrative or engineering line items will be approved.

G. The project modification may trigger the need for a budget modification. If the existing budget is modified, whether a CD or an ED project, a Request for Budget Modification form must be submitted with a detailed letter of justification.

The form and letter are required even if the revised budget is not a result of any project modifications. **[See Requirement 404, Attachments 10 and 11]**

IV. ADMINISTERING THE PROGRAM

- A. It is often emphasized that the chief elected official shoulders the ultimate responsibility for contract performance. Grant Recipients have two options in managing the daily activities of a CDBG-funded project:
 - 1. Assign the responsibility to someone on the Grant Recipient's staff; or
 - 2. Utilize the services of a certified CDBG Administrator (whether for-profit or non-profit).
- B. Consultants assisting the Grant Recipient (whether paid with CDBG funds or not) must be certified by ODOC as a CDBG administrator. Beyond this minimum expectation and given the complexities of most projects, utilization of an experienced, certified CDBG administrator to assist with some or all of your project activities is often good advice.
- C. The decision to employ a certified CDBG administrator is influenced by the following factors:
 - 1. The size of the municipality and, more importantly, the number of municipal employees who can devote some significant time to routine contract administrative requirements; and
 - 2. The complexity of the project.
- D. ODOC will not recommend any individual or firm for providing these services. ODOC will, however, provide the following:
 - 1. A list of all firms or individuals currently certified to administer CDBG grants;
 - 2. A referral to other similar communities with similar projects who have used certified CDBG Administrators. **[See Requirement 402 for procurement procedures]**
- E. Keep in mind that if you elect to retain the services of an administrator, you must understand the CDBG process and its requirements well enough to evaluate your administrator's work and progress.

V. RECORDS

- A. If there is an iron law of Federal grant administration, it is "document, document and document some more". The reason for this is actually fairly simple. First, these are public funds and they demand a high level of accountability. Second, the only way to confirm what you have done is to have it in writing. **[See Attachment 5 for a listing of required records]**

B. You will find numerous references in this Manual to records, which must be maintained. These references are usually found in the file requirements located in the attachments to each chapter.

1. Organization and Content:

a. Grant Recipients are required to maintain records sufficient to document compliance with all CDBG program requirements. All original files must be maintained in one central location of the Grant Recipient. Administrators may only retain copies of files.

b. While ODOC does not specifically mandate the exact structure of a Grant Recipient's filing system, Grant Recipients are encouraged to utilize the organization provided.

2. Record Retention: All records pertaining to activities funded under a single contract agreement must be retained for three years after ODOC formally closes out that contract. The three-year rule is not applicable if:

a. Any litigation, claim or audit is started before the expiration of the three-year period. In this instance, the records will be retained until all actions involving the records have been resolved; or

b. The records pertain to non-expendable property acquired with CDBG funds. Such records must be retained for five years after the final disposition of such property; or

c. ODOC transfers records to its custody or to HUD's when ODOC determines that the records possess long-term retention value.

3. Access to Records: Except for confidential records, all documents required to be maintained by, or reasonably considered as pertinent to, the contract agreement must be available for viewing and/or examination by:

a. Any citizen, pursuant to the requirements of State law and local ordinance; and

b. Representatives of ODOC, HUD, the Inspector General, the Attorney General, the General Accounting Office, the Comptroller General of the United States or the State Auditor's office.

4. Confidential Records:

- a. Grant Recipients may receive confidential information. In some cases, an individual's right to privacy protection will necessitate that confidential records be maintained. In other circumstances, the individual's job security and safety require that information be kept confidential. The latter is particularly true where worker-provided information results in a finding that labor standards are being violated. Confidential records include but are not limited to: Staff personnel files, labor and civil rights complaints and the incomes of project beneficiaries.
- b. Access to confidential records is strictly limited. They are to be kept in a locked file cabinet separate from other records accessible only to the CD Administrator. If a Grant Recipient delegates responsibility to an administrator or subrecipient for tasks which may yield confidential records, very specific controls must be established in the contract to assure that the Grant Recipient understands the responsibility for maintaining confidential records. The Grant Recipient is responsible for protecting these records. Any violations of confidentiality requirements, including a determination by State monitors that proper records management procedures are not being employed, could result in a serious finding of deficiency and adversely affect the Grant Recipient's right to apply for funds.

VI. CITIZEN PARTICIPATION

- A. The Grant Recipient is required to conduct at least one public hearing during the application phase of the project. The purpose of this public hearing is to advise citizens of the proposed project.
- B. The requirements for all other public hearings are essentially the same as for the hearing conducted prior to the original submission of an application for funding. These requirements include:
 1. Reasonable advance notice, as stated in the Citizens Participation Plan, prior to conducting the meeting, not including the date of notice or posting of the day of the hearing;
 2. Publication of a notice specifying the purpose, date, time and location of the hearing in a newspaper of general circulation in the municipality or posting of a legal notice in at least three public places within the municipality;

3. Holding the hearing at a location that is convenient to the low- and moderate-income persons who are affected by the project;
 4. Conducting the meeting in a manner that accommodates the disabled and meets the needs of non-English speaking residents who might be expected to participate;
 5. Providing citizens with the address, phone number and times for submitting complaints and grievances; and
 6. Providing written answers to written complaints and grievances within 15 working days, where applicable.
- C. The Grant Recipient must take thorough minutes of the hearing. The project files must contain:
1. Minutes of the hearing;
 2. An attendance roster;
 3. Written complaints, if any;
 4. Responses to those complaints;
 5. A copy of the legal notice with a notation of where and when the three notices were posted; and
 6. Proof of publication from the newspapers.
- D. When Other Funds Are Involved: The State has made a conscious decision to reward co-funding by giving increased points in the rating of applications as a means of stretching limited CDBG dollars further, allowing the State to fund additional projects. Such funding may come from a variety of other sources, including other State agencies, local funds, foundations, private sources and Federal agencies.
- E. There are two major issues to keep in mind;
1. The Grant Recipient should make certain that the level of other funding does not drop below the amount stipulated in the contract agreement with ODOC. This is especially important if the Grant Recipient was awarded points in its application for leveraging other funds. ODOC must be informed if leverage funds decrease below the stipulated amount in the application. Failure to achieve the promised level of match could affect the basis on which the CDBG contract was awarded.
 2. In some specific instances, ODOC will require that the rate of expenditure of other funds be consistent with the rate of CDBG expenditure. In other words, CDBG funds must be spent at the same rate as other funds. Be certain to review the contract agreement to determine if this requirement is applicable to your project.

F. When other Federal funds are involved in a project follow the more stringent of two disparate Federal agency requirements and contact ODOC for guidance and assistance when conflicting requirements create project implementation problems. Both the State and the Grant Recipient are held accountable by HUD for administering these funds in a manner consistent with HUD regulations, even if another Federal agency takes a more lenient approach to a given compliance area.

VII. Attachments:

1. Request for Release of Funds and Requirements - Community Development (Form 401-A)
Certification of Leverage
Notice of Removal of Contract Conditions (Form 401-C(2))
2. Request for Release of Funds and Requirements-Economic Development (Form 1601-B)
Placement Plan (Form 1601-D)
Notice of Adverse Change
CDBG-EDIF Notice of Removal of Contract Conditions (Form 1601-E)
3. Residential Anti-Displacement and Relocation Assistance Plan
4. Anti-Displacement Plan for CDBG Housing Projects
5. Program Records

**REQUEST FOR RELEASE OF FUNDS
OFFICE OF COMMUNITY DEVELOPMENT**

Grantee Name:		Grantee Phone #:	Contract Number
Address:		Date of Request	
Consultant Name:	Consultant Address:		Consultant Phone # :
Brief Project Description			
Include the appropriate letter for each item submitted in the adjoining box			Items Submitted
REQUIREMENT 403			Verified By ODOC
I.	Categorically Excluded/Exempt From ROF Publication		
	A. Certification of Categorical Exclusion/Exemption. (Attachment 10)		
	B. Historical Clearance		
	C. Archeological Clearance		
II.	Categorically Excluded Activity		
	A. Certification of Categorical Exclusion (Attachment 11)		
	B. Notice of Intent (Proof of Publication or Posting) (Attachment 12)		
	C. Environmental Certification (Attachment 13)		
	D. Historical Clearance		
	E. Archeological Clearance		
III.	Assessment Activity		
	A. Finding of No Significant Impact (Attachment 14)		
	B. Concurrent Notice (Proof of Publication or Posting) (Attachment 15)		
	C. Environmental Certification (Attachment 13)		
	D. Historical Clearance		
	E. Archeological Clearance		
REQUIREMENT 401			
IV.	Leverage / Matching Funds		
	A. Funds have been committed toward the completion of project.		
	B. Attachment 1 & Supporting Documentation		
V.	Insurance & Bonding		
	A. Evidence of General Liability Insurance		
	B. Evidence of City/County Bonding		
VI.	Anti-Displacement Plan Requirement 401		
	A. Attachment 3 or 4		
VII.	Additional Requirements for ROF		
	A. Special Conditions as specified in Section II of the CDBG contract:		
	B. Audit accepted by ODOC if applicable		
	C. DEQ Permit (Phased Contracts Only)		
	D. Other: _____ (Identify if applicable)		
VIII.	NAME and TITLE of Authorized Official		

	Type or Print must be legible		
	_____		_____
	Signature of Authorized Official		Date

CDBG CERTIFICATION OF LEVERAGE

ODOC proposes to provide Federal funds in the amount of \$_____ to the _____ for carrying out a Community Development Block Grant project. Said grant represents ____ % of the total project cost. The _____ certifies the amount of \$ _____ will be provided as a ____ % leverage in the following manner:

Source	Amount
_____	\$ _____
_____	\$ _____
_____	\$ _____

Documentation must accompany this form confirming that leverage funds have been secured and are available for use with the approval of the CDBG project.

Examples of Documentation:

Local Funds: Resolution describing from what account funds will be obtained.

RDA, OWRB, EPA, EDA or Other Funding Source: A copy of the approved application stating the availability of funds that will be used for the approved CDBG Project.

Force Account: Title of employees working for the project, their existing rates of pay and the number of hours credited toward the CDBG project.

Grant Recipient

Typed Name and Title

Signature

Date

ATTEST

Typed Name and Title

Signature

Date

SAMPLE (for ODOC use only)

NOTICE OF REMOVAL OF CONTRACT CONDITIONS

(Release of Funds, ROF)

Oklahoma Department of Commerce
Community Development Block Grant

Grant Recipient:	Release Date:
Name & Title Chief Executive Officer:	Address:

The State of Oklahoma, Oklahoma Department of Commerce received your Notice of Removal of Contract Conditions on _____ for your CDBG contract # _____ signed by the Oklahoma Department of Commerce on _____.

All contract conditions have been removed and you are permitted to proceed with your project. Our records indicate your project consist of :

(Identify type of project , water, wastewater, community revitalization.

Name/Title of Authorizing Officer:

Project Mgr. Signature
Community Infrastructure Team
Office of Community Development

Date: _____

c: Administrator

Attachment 1

Attachment 2

**REQUEST FOR RELEASE OF FUNDS AND REQUIREMENTS
ECONOMIC DEVELOPMENT**

The following agenda outlines the documentation necessary before funds may be released on a CDBG-EDIF project. Where “ODOC Form Required” is indicated, no substitution will be allowed. Following each description, the party responsible for providing the item of documentation is indicated in [brackets].

Grant Recipient Name: _____ Borrower: _____
 Company: _____ Lender: _____
 Contract Number: _____

TYPE OF PROJECT:

Infrastructure Grant Infrastructure Grant/Loan

	REQUIREMENT	Items Included	Date Received by ODOC	Date Approved by ODOC
A.	Authority-to-Act Disclosures			
1.	Certificate of Good Standing from the State of Oklahoma. If the <i>Company</i> is incorporated in another state, the Certificate from the state of incorporation and the Certificate from the State of Oklahoma will be required. [Company]	1.	1.	1.
2.	Acceptance of the CDBG-EDIF award and minutes of the meeting of acceptance from the local unit of government. This is a copy of the action taken by the local unit of government to accept the CDBG-EDIF award, along with the minutes of the meeting showing the vote of acceptance of the CDBG-EDIF grant/loan by the local unit of government. [Grant Recipient]	2. Acceptance & Minutes	2. Acceptance & Minutes	2. Acceptance & Minutes
3.	Contract between ODOC and the grant recipient. This is the master document that outlines the terms and conditions of the CDBG-EDIF award. This document, prepared by ODOC, incorporates all administrative responsibilities of the grant recipient. Upon receipt of the blank contract, the grant recipient should review the document for consistency, seek approval and resolution by the governing body to execute the contract and return the executed document to ODOC. [Grant Recipient]	3.	3.	3.
B.	PROGRAM REQUIREMENT DISCLOSURES DO NOT AWARD CONSTRUCTION CONTRACTS PRIOR TO RELEASE OF FUNDS			
5.	Evidence of General Liability Insurance and Bonding. Grant Recipient must submit evidence of liability insurance and bonding for individuals responsible for direct contact with State and Federal funds prior to release of funds. [Grant Recipient]	5.	5.	5.
6.	Anti-Displacement Plan. Grant Recipient must adopt and submit an Anti-Displacement Plan (see Attachment 3). [Grant Recipient]	6.	6.	6.
7.	Federal Procurement Procedures Certification. Grant Recipient shall submit a certification that it will comply with all State and Federal procurement requirements for professional service contracts for administration services, architectural/engineering and public construction contracts, if applicable. If these costs were expended <i>prior</i> to compliance with Federal procurement procedures, CDBG-EDIF funds may not be used to reimburse those costs. [Grant Recipient]	7.	7.	7.

	REQUIREMENT	Items Included	Date Received by ODOC	Date Approved by ODOC
8.	Certification Environmental Review. Grant Recipient completes an environmental review for each contract activity [Town/City/Company] Environmental Certification: A. Categorically Excluded/Exempt from ROF Publication Activity (CDBG Sample 403-3), Historical and Archeological Clearance B. Categorically Excluded Activity (Form403-6), CDBG Sample 403-5, Form 403-B, Historical and Archeological Clearance C. Assessment Activity (Form403-C), CDBG Sample 403-8, Historical and Archeological Clearance, Form 403-B	8. A. _____ B. _____ C. _____	8. A. _____ B. _____ C. _____	8. A. _____ B. _____ C. _____
9.	Placement Plan (Form 1601-D)	9.	9.	9.
10.	Adverse Change Certificate (ODOC Form Required). The Company is to provide written certification that there have been no unresolved litigation(s) or unremedied adverse change(s) in the financial, operational or other conditions of the Company since the date of the application. [Grant Recipient]	10.	10.	10.
11.	Verification of the other sources of funds (leverage). Evidence that the other sources of funds claimed as leverage are completed and in place must be provided. This may require any or all of the following: (1) Copies of promissory notes and loan histories; (2) Copies of security agreements; (3) Copies of loan agreements; (4) Copies of guaranty agreements; (5) Copies of loan histories; (6) Copies of bank statements; (7) Copies of canceled checks; or (8) Other documentation that the circumstances may require. Sources for the project are: 1. _____ \$ _____ 2. _____ \$ _____ 3. _____ \$ _____ 4. _____ \$ _____	11.	11.	11.
12.	Special Conditions. Grant Recipient shall submit to ODOC evidence of satisfying any special conditions that are specified in the Terms and Conditions of the Award Letter.[Grant Recipient]	12.	12.	12.
13.	ODOC will contact the appropriate Grant Recipient and Company personnel to schedule a Contract Implementation Meeting prior to release of funds. [ODOC]	13.	13.	13.

C.	THE FOLLOWING ITEMS ARE REQUIRED FOR THE LOAN PORTION OF THE CDBG-EDIF AWARD	Items Included	Date Received by ODOC	Date Approved by ODOC
14.	Borrower’s Borrowing Resolutions. The borrower should provide a photocopy of the resolution(s) of approval to borrow from the Board of Directors, with the appropriate signature(s) and attested to by the appropriate individual and a photocopy of the minutes of the meeting showing the vote of approval. [Borrower]	14.	14.	14.
15.	Borrower’s CDBG-EDIF Promissory Note payable to the Lender (ODOC Form Required). [Borrower]	15.	15.	15.
16.	CDBG-EDIF Loan Agreement (ODOC Form Required). [Lender]	16.	16.	16.
17.	CDBG-EDIF Administrative Agreement between the Grant Recipient and the Lender. This document usually details loan administration responsibilities and CDBG-EDIF programmatic requirements, such as job reporting. [Grant Recipient]	17.	17.	17.
18.	Opinion of Counsel of Lender of Loan. The Lender’s attorney is to provide an opinion as to the Lender’s authority to execute the agreements; conformance with all laws, agreements and provisions to which the Lender is subject; and enforceability of the loan documents. [Lender]	18.	18.	18.
19.	Opinion of Counsel of Borrower regarding the loan. The Borrower’s attorney is to provide an opinion as to the Borrower’s authority to execute the agreements; conformance with all laws, agreements and provisions to which the Borrower is subject; and enforceability of the loan documents. [Borrower]	19.	19.	19.
If the project involves the purchase of Real Estate, the following will be required in addition to the above:				
20.	A copy of the standard Settlement Statement and closing documents bearing the signatures of the Buyer(s) and Seller(s). These must be of sufficient detail to identify the nature and amount of the transaction. [Borrower]	20.	20.	20.
21.	A copy of the Warranty Deed conveying title and bearing the recording stamps of the County in which it was recorded. [Borrower]	21.	21.	21.
22.	A copy of the Environmental Audit Report certifying that no hazardous contaminants exist or remain on the property (Phase 1). If contamination is revealed by the Phase 1 audit, a Phase II audit will be required, identifying the extent of the contamination and estimated cost of clean-up. [Borrower]	22.	22.	22.
23.	If clean-up is required, an EPA Certification will be required, indicating that the clean-up has been completed and is EPA-approved. [Borrower]	23.	23.	23.
24.	Proof of compliance with 49 CFR 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs. [Grant Recipient]	24.	24.	24.

Name & Title of Authorized Official

Signature of Authorized Official

Date

PLACEMENT PLAN

From Original Plan _____ or Modified Plan _____

Date of Approval _____

Grant Recipient: _____

Business Name: _____

Type of Business: _____

Contract No. _____

Phone No.: _____

Contract Period: From: _____ to _____

Performance Period: _____ to _____

I. JOB TITLE	Full-Time Equivalency	Job Description							
Total Full-Time Equivalencies									
Number of Full-Time Equivalencies Planned for Low- and Moderate-Income Persons									
Percent of Full-Time Equivalencies Planned for Low- and Moderate-Income Persons									
		Enter Quarter Ending Date for Entire Performance Period							
II. _____ JOBS TO BE CREATED									
1. Total Positions to be Created									
2. Number to be Filled									
3. Number to be Filled by Low- and Moderate-Income Persons									
4. Percentage to be Filled by Low- and Moderate-Income Persons (Line 3 divided by Line 2)									
III. COST BENEFIT									
1. Total CDBG Budget	_____	4. Planned Cost Per Filled Position (III.1./III.2.)	_____						
2. Total Positions to be Filled (II.2.)	_____	5. Planned Cost Per Filled LMI Position (III.1./III.3.)	_____						
3. Total Positions to be Filled by Low- and Moderate-Income Persons (II.3.)	_____								

* An Income Certification Form must be maintained on file for each low- and moderate-income person claimed. If maintained by a referral agency, it is still the Grant Recipient's responsibility to ensure such documents are maintained. It is advisable for the Grant Recipient to have a written agreement with the referral agency(ies) stating they will only refer low- and moderate-income persons and maintain documentation.

PLACEMENT PLAN

From Original Plan or From Modified Plan

- IV. What special recruitment efforts will the business establish to ensure the employment of low- and moderate-income persons, such as giving low- and moderate-income persons first consideration in filling positions or taking referrals primarily from agencies that will refer only low- and moderate-income persons. Please outline any such procedure(s).
- V. Will any of the listed jobs require qualifications, (substantial training or work experience or education beyond high school) that may preclude low- and moderate-income persons from serious consideration? If so, list the job titles.
- VI. If you listed any job titles in the previous question, will you accomplish special efforts to “make available” such jobs to low- and moderate-income persons, such as hiring unqualified persons and providing them with training?
- VII. The company hereby assures that if, prior to closeout, more than the planned number of positions are created, 51% of the total positions will be taken by or made available to low- and moderate-income persons.

Signature of Company Official

Date

INSTRUCTIONS
PLACEMENT PLAN

This completed and approved document is a part of the contract between ODOC and the Grant Recipient and serves as the operational plan for the duration of the performance period. The original or initial plan and any subsequent modifications must be approved in writing. During the performance period, the entries in Section II of the currently approved PLACEMENT PLAN are to be transferred to Section A of the JOB STATUS REPORT and used in the Planned columns for subsequent performance reporting.

Identifying Information: Enter information as stated, including the person responsible for completing this report (Contact Person) and his/her phone number.

Contract Period: Enter the period of time it will take to achieve the planned results. The beginning date should be the same as the *contract period* beginning date and the ending date should be at least until the *contract period* ending date, however, it may be after that date.

SECTION I

Job Title: Enter each job title for all positions to be claimed as retained or created jobs. If you have more than one job with one job title, only one entry is necessary.

Full-Time Equivalencies: Only Full-Time Equivalent (FTE) permanent jobs may be considered. Part-time and seasonal employment positions should be converted to percentages of a full-time equivalency utilizing 1,600 total hours per year. The following conversion formula is to be used when calculating FTE.

$$\frac{\text{Hrs per year}}{1600} = \text{Full-Time Equivalency}$$

$$\text{Example: } \frac{1,200 \text{ hrs per years}}{1,600 \text{ Total Hours Per Year}} = \text{Full-Time Equivalency}$$

Total all positions in each job title and enter on the corresponding line.

Job Description: Enter a brief general description of the primary task(s) of each job title listed.

Total Full-Time Equivalencies: Add all full-time equivalencies for all job titles and enter the sum.

Number of Full-Time Equivalencies Planned for Low- and Moderate-Income Persons: Divide the number of full-time equivalencies planned for low- and moderate-income persons (entry before last entry) and convert to percentage.

SECTION II.

Jobs to be Created:

Quarter Ending Date: Enter the quarter ending date in each of the columns for the entire performance period, which should be March 31, 200__, June 30, 200__, September 30, 200__, or December 31, 200__.

Lines 1, 2, and 3: Below each quarter ending date column, enter the planned full-time equivalencies (jobs) for each quarter for the entire performance period, i.e., if you plan to create twelve (12) jobs in a one-year period, at a rate of three (3) jobs per quarter, your entries should be 3 in each quarter column. If, within the performance period, no activity is planned for the first few quarters on any of the lines, enter zeros until activity is planned.

Line 4: Divide line 3 by line 2, convert to percentage and enter for each quarter of the performance period.

SECTION III.

Cost Benefit: Enter as directed, according to the budget amount.

SECTIONS IV, V, and VI:

Answer the question as presented. If more space is necessary, use blank sheets with the Roman numeral and corresponding answer. Be sure to use "Page ____ of ____" so ODOC will know the total number of pages per plan.

NOTICE OF ADVERSE CHANGE

Date: _____

Company Name and Address:

The undersigned does hereby certify as follows:

1. He is the President of _____, hereinafter referred to as the "Company."
2. There has been no unremedied adverse change in the financial operation or condition of the Company since the date of the application for a Community Development Block Grant - Economic Development Financing award, such as:
 - a) Litigation initiated against the Company or the commencement of any litigation the Company is aware of in the near future;
 - b) Any claim or controversy which might become the subject of litigation against the Company or which may affect any of the Company's property or ability to continue operating as it has in the past;
 - c) Any loans, contracts, taxes, assessments, governmental charges or accounts, in default, sent for collection or otherwise resulting in demand for payment;
 - d) Any suppliers or vendors having placed the Company on no-credit (Cash On Delivery) terms for products or services;
 - e) Physical damage to plant or facilities which may hinder continued operation of the Company;
 - f) Changes in key management personnel or other personnel that may hinder the operations of the Company or adversely impact sales;
 - g) Loss of key clients or class of clients, sales or critical (non-substitutable) suppliers which may adversely affect the operation of the Company;
 - h) Violation of any laws, ordinances, statutes or regulations applicable to its property, business operation, transactions or other actions which may result in levies, sanctions or any other actions adversely affecting the operation of the Company's business;
 - i) Insolvency (inability to meet required payments as they come due), bankruptcy or the contemplation of bankruptcy;
 - j) Any other development, action or situation that may not be specifically named herein but which may adversely affect the operations or profitability of the Company.

If any of the above has occurred, indicate which one or more and attach a separate sheet identifying (1) The event; (2) The expected outcome; (3) Whether the outcome will or will not materially affect the Company's condition or operation; (4) If so, are adequate reserves established which would prevent a default on any of the Company's obligations; and (5) Is the event being contested in good faith and by appropriate proceedings.

Company Signature:
For:
By: _____ Signature
Print Name: _____

CDBG-EDIF NOTICE OF REMOVAL OF CONTRACT CONDITIONS

Grant Recipient Name: _____ Borrower: _____
Chief Elected Official: _____ Lender: _____
Company: _____ Contract Number: _____

RELEASE OF FUNDS APPROVAL DATE: _____

Consultant Name & Address:

Type of Project:
 Infrastructure Grant Infrastructure Grant/Loan

Additional Comments and Requirements:

- All conditions in the contract are hereby removed.
- The following additional materials must be provided before cash funds can be released:

Please contact the Community Infrastructure Team Members listed below for technical assistance.

Name: _____
Title of Authorizing Officer: _____ Signature/Date _____
Phone No.: _____

Name: _____
Title of Authorizing Officer: _____ Signature/Date _____
Phone No.: _____

Name: _____
Title of Authorizing Officer: _____ Signature/Date _____
Phone No.: _____

Name: _____
Title of Authorizing Officer: _____ Signature/Date _____
Phone No.: _____

ODOC will expedite its review of your submission of these materials as soon as they are received.

**RESIDENTIAL ANTI-DISPLACEMENT AND
RELOCATION ASSISTANCE PLAN**

The _____ of _____ will undertake public facility improvements funded through the Community Development Block Grant Program. No demolition and conversion of low-/moderate-income dwelling units is anticipated by the City of _____ in conjunction with the activities assisted with these funds. Under Section 104(d) of the Housing and Community Development Act of 1974, as amended (the Act), if such demolition occurs, before obligating or expending funds that will directly result in such demolition or conversion, the City of _____ will make public and submit to the Oklahoma Department of Commerce the following information in writing:

1. A description of the proposed assisted activity;
2. The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as low-/moderate-income dwelling units as a direct result of the assisted activity;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. The location on a map and number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;
5. The source of funding and a time schedule for the provision of replacement dwelling units;
6. The basis for concluding that each replacement dwelling unit will remain a low-/moderate-income dwelling unit for at least 10 years from the date of initial occupancy;
7. Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units is consistent with the housing needs of low-/moderate-income households in the jurisdiction.

If displacement of low-/moderate-income households occurs in conjunction with the public facilities improvements funded with CDBG funds, the City of _____ will provide relocation assistance, as described in 570.496(b)(2) to each low-/moderate-income household displaced by the demolition of housing or by the conversion of a low-/moderate-income dwelling to another use as a direct result of assisted activities.

Adopted this ____ day of _____, _____.

(Signature of Mayor or Chairman)

ANTI-DISPLACEMENT PLAN FOR CDGB HOUSING PROJECTS

I. COMPLIANCE

Grant Recipient will comply with the Uniform Relocation Act (49 CFR 24), Final Rule (24 CFR 570).

II. DEFINITIONS

A. Displaced Person: A person (family, individual, business, non-profit organization or farm, including any corporation, partnership or association) who moves from real property as a direct result of acquisitions rehabilitation or demolition for a project assisted with CDBG funds. This provision includes:

1. A person who moves permanently from the property before the owner submits an application for program assistance, if the Grant Recipient, ODOC or HUD determines that the displacement was a direct result of the rehabilitation, demolition or acquisition for the project, e.g., the Grant Recipient determines the owner displaced tenants in order to propose a vacant building for program assistance.
2. A person who moves permanently from the property after the submission of the owner's application for program assistance or, if the application does not have site control, the date the Grant Recipient approves the site, because:
 - a. The owner requires the person to move permanently; or
 - b. The Grant Recipient/owner fails to provide timely required notices to the person; or
 - c. The person is required to move temporarily and the Grant Recipient/owner does not pay all actual, reasonable out-of-pocket expenses or because the conditions of the move are unreasonable.
3. A person who moves permanently from the project after execution of the agreement between the owner because the tenant is not provided the opportunity to lease a suitable, affordable unit in the project.

B. Persons Not Displaced:

1. A person who is evicted for cause, assuming the eviction was not undertaken to evade URA obligations.
2. A person with no legal right to occupy the property under State or local law (e.g., squatter).

3. A person who moved in after the owner submitted an application and, before commencing occupancy, was provided written notice of the planned project, its possible impact on the person (e.g., the person may be displaced, temporarily located or experience a rent increase) and the fact that the person would not qualify as a "displaced person" as a result of the project.
4. Others the Grant Recipient (with ODOC's and HUD's approval) determines are not displaced.

III. PROCEDURES

- A. Grant Recipient will ensure it has taken all reasonable steps to minimize the displacement of persons as a result of a project assisted with CDBG funds.
- B. Grant Recipient will provide:
 1. Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing, and any increase in monthly rent/utility costs.
 2. Appropriate advisory services, including reasonable advance written notice of:
 - a. The date and approximate duration of the temporary relocation;
 - b. The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;
 - c. The terms and conditions under which the tenant may lease and/or occupy a suitable, decent, safe and sanitary dwelling in the building/complex/unit upon completion of the project; and
 - d. The provisions for reimbursement for all reasonable out-of-pocket expenses incurred.
 3. Grant Recipient will provide displaced persons with relocation assistance at the levels described in, and in accordance with, the requirements of the Uniform Relocation Act and the Fair Housing Act.
 4. Grant Recipient will comply with HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

5. Lower-income persons who are displaced will be provided with relocation assistance at the levels described in, and in accordance with, the requirements of Section 104(D) of the Community Development Block Grant of 1974. The requirements are detailed in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.
- C. When CDBG funds are used to support a project (excluding general planning, administration and optional relocation costs), the Grant Recipient will comply with the one-for-one replacement of low-/moderate-income dwelling units.
1. One-for One Replacement of Low-/Moderate-Income Dwelling Units: All occupied and vacant occupiable low-/moderate-income dwelling units that are demolished or converted to use other than low-/moderate-income units. (See 24 CFR 570.496c.)
 2. Vacant Occupiable Dwelling Unit: A vacant occupiable dwelling unit is defined as:
 - a. A vacant dwelling unit that is in standard condition;
 - b. A vacant dwelling unit that is in sub-standard condition but that is suitable for rehabilitation; or
 - c. A dwelling unit in any condition that has been occupied (by a person with the legal right to occupy the property) at any time within the period beginning one year before the date of the execution of the agreement between the Grant Recipient and ODOC.

Adopted this ____ day of _____, _____.

(Signature of Mayor or Chairman)

PROGRAM RECORDS

Following is a summary of files and records that should be maintained by the Grant Recipient. Since it is a summary, it does not provide detailed guidance as to all specific documentation, which should be in any given file. See the various Requirements in this manual.

<u>FILE</u>	<u>RECORDS</u>
1. Resolution & Needs Statement	Resolution & Needs Statement Amendments and revisions, if any Correspondence
2. Application File	CDBG Application Revisions, if any Public Hearings (Clippings, minutes, affidavits, etc.) Survey tabulations, other data Correspondence
3. ODOC Contract	Offer letter from ODOC Executed contract (signed copy) Request for Removal of Contract Conditions Notice of Removal of Contract Conditions Modification Request & documenta- tion Approval/Rejection of Modification Request ED Placement Plan ED Income Certification Forms ED Job Creation Quarterly Reports ED Job Tracking Logs
4. Environmental Review	<u>Categorically Excluded Activities:</u> Finding of Categorical Exclusion/Exempt from ROF Finding of Categorical Exclusion Environmental Statutory Checklist Flood Plains and Wetlands Notices, if applicable Notice of Intent to Request Funds Distribution List Environmental Certification Affidavits of Publication <u>Environmental Assessment Activities:</u> Environmental Assessment Flood Plains and Wetlands Notice, if applicable Concurrent Notice Distribution List Environmental Certification Affidavits of Publication
5. Professional Service	Solicitations (if required)

<p>Agreements</p>	<p>Requests for Proposals (if Required) Advertisements (if required) Evaluation/Selection Standards Correspondence Contract documents Board Minutes approving contract</p>
<p>6. Property Acquisition</p>	<p>See Attachment 10, Requirement 407 for Individual Parcel File Requirements</p>
<p>7. Relocation</p>	<p>See Attachment 16, Requirement 407 for Individual Household File Requirements</p>
<p>8. Construction/Labor</p>	<p>Bid/Contract documents with engineer's seal (executed copies) DEQ Permit Solicitation to Minority-/Women-Owned Businesses Grant Recipient's Section 3 Affirmative Action Plan Advertisement for Bids (tear sheet, publisher's affidavit) Bid Tabulation/Bid Opening Minutes State Approval Letters Request for Wage Rate Determination 10-Day Call Confirmation Minutes of Pre-Construction Conference Notice of Award Notice to Proceed Change Orders (if any) Monitoring and Inspection Reports Copy of Final Inspection Certificate of Construction Completion Certified Weekly Payrolls/Statement of Compliance Payroll Deduction Authorization Employee Interviews Labor Standards Violations/Investigation Records</p>
<p>9. Equal Opportunity/ Personnel/Fair Housing/ Civil Rights</p>	<p>Appointment of Labor Standards Officer Section 3 Affirmative Action Plan Fair Housing Ordinance/Other Fair Housing Activity Fair Housing Complaints Employment Affirmative Action Plan 504 Accessibility Self-Evaluation</p>

- 504 Transition Plan
 Designation of 504 Compliance Officer (if applicable)
 Municipality/County Staff Composition Form, showing demographics and designation of CDBG staff
 Local Personnel Policies
 Employment Advertisements (showing EEO Employer tagline)
10. Financial
 Drawdown Requests (invoices, requests for payment)
 Bank Records (cancelled checks, bank statements, deposit slips, etc.)
 Monthly Expenditure Reports
 All invoices and correspondence related to the CDBG grant project
11. Internal Project Contract/Monitoring
 Budget spreadsheets
 Cost estimates
 Written designation of roles and areas of responsibility
12. Rehabilitation
 See Attachment 4
13. Citizen Participation
 Public Hearing Notices
 List of persons attending public hearings
 Citizen inquiries, complaints and Grant Recipient's correspondence responding to inquiries and complaints
 Copy of Citizen Participation Plan
14. State Monitoring/Inspection
 ODOC management letters or monitoring reports
 Response to ODOC management letters
 Other correspondence relating to monitoring visits
 Evidence clearing any monitoring problems
15. Audits
 Documentation of selection procedures for contracting with auditor
 Auditors Agreement
 Interim Audit, if any
 Final Audit
 Evidence clearing all exceptions
 Correspondence relating to any audit report
16. Closeout Reports
 Final Closeout Reports

OKLAHOMA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

REQUIREMENT NO. 402
PROCUREMENT

Effective July 2007

I. INTRODUCTION

- A. The procurement of all purchases utilizing CDBG funds will be subject to the requirements set forth at 24 CFR subpart I, §570, "**COMMUNITY DEVELOPMENT BLOCK GRANTS**", 24 CFR Part 85, Subpart A "**THE COMMON RULE**", as applicable, Title 19 of the Oklahoma Statutes, as required, the Competitive Bidding Act and local ordinances where applicable.
- B. Grant Recipients shall comply with the requirements set forth in this document in the procurement of all goods and services that utilize CDBG funds. Non-compliance with required procedures may result in disallowance of any or all costs associated with the procurement action.
- C. Grant Recipients are required to follow their own procurement procedures as established by local ordinance for the purchase of all goods and services. Public construction contracts where the total cost of the project exceeds \$50,000.00 must be bid in accordance with O.S. 61, et al., as amended.
- D. This manual incorporates all State laws governing **County** procurement procedures. **COUNTIES** are required to follow the procedures as defined in O.S. 19, et al. **Grant Recipients not having procurement procedures in place shall adhere to the procedures contained in this manual.**
- E. Grant Recipients are required to maintain documentation of **all** procurement procedures and actions on file for ODOC review, i.e., RFPs, RFQs, Board Minutes, etc.

II. PRE-CONTRACT COSTS

- A. CDBG funds shall not be used for the payment of goods or services received **prior to the start date of the contract, except** for payment of architectural or engineering services delivered prior to the beginning of the term of the contract **ONLY** when:
1. Proper procurement requirements were followed at the time the procurement occurred; and

2. Services are directly related to the proposed CDBG project and are required for preparation of the application for CDBG funding.
- B. Any request to deviate from these requirements must be submitted in writing and written approval must be received from ODOC prior to taking any procurement action.

III. REGULATORY/STATUTORY REQUIREMENTS

- A. **24 CFR 570, Subpart I, §489(g)** requires that: "The state shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. **"FULL AND OPEN"** competition is defined as: Procurement procedures that provide all suppliers of goods and services the ability to be made aware of the proposed procurement action with no restriction placed on their ability to compete. Methods of procurement shall include but not be limited to small purchase, sealed bid, formal advertising, competitive proposals, and sole source procurement.
- B. **Self-Procurement Warning:** Any certified administrator who engages in either of the following practices shall be de-certified consistent with the following procedures spelled out in the certification regulations:
1. Assisting the municipality or county in the conduct of the procurement process, ultimately resulting in the selection of that administrator to provide CDBG administrative services.
 2. Offering to prepare an application to ODOC for CDBG funding assistance with the understanding that no fee for preparing the application will be charged if that administrator is selected to administer the project.
- C. **Exemptions from Competitive Procurement Requirements:** The following are exempt from competitive procurement procedures:
1. **Administrative Services:** In order for the exemption to apply, Grant Recipients must:
 - a. Furnish ODOC the names of Certified CDBG Administrator or Apprentice employed by:
 - (1) Substate Planning Districts;
 - (2) Nonprofit Organizations;

- b. Negotiate a contract with the exempt entity for all services provided and include in that contract the requirement that the entity will follow all Federal and State program requirements; and
 - c. Choose to formally waive its procurement procedures that may otherwise be applicable.
2. Purchase of equipment or materials from other units of government, including those on state contract.
 3. The purchase of used fire equipment when the purchase is made from a reputable company dealing in used emergency equipment.
 4. For exemption from all other competitive procurement requirements, contact ODOC.

IV. METHODS OF PROCUREMENT

The methods of procurement include **Small Purchases, Sealed Bids, Construction Contracts, Request for Proposals, Sole Source**, per [24 CFR 85.36(d)]. The appropriate method for any given product or service is dependent on the estimated cost or price, whether the procurement is for a service or product and the type of contract to be utilized, whether the service or product is unique or available from only one source and whether there is any eligible, qualified competition. The following are brief descriptions of each of the six procurement methods. **[See Procurement Chart, Attachment 1]**

- A. Small Purchase: Small Purchases are those made for services, supplies or other items costing less than **\$10,000.00** in the **aggregate**. Small purchases may be made directly from local vendors. Grant Recipients are encouraged to obtain the best price possible.
- B. Sealed Bids: If the purchase is \$10,000 - \$50,000.00 (**in the aggregate**), the Contractor is required to advertise and receive sealed bids.
 1. In order for formal advertising to be feasible, appropriate conditions must be present. These include:
 - a. A complete, adequate and realistic specification or purchase description;
 - b. Two or more responsible suppliers willing and able to compete effectively for the Contractor's business; and
 - c. The procurement lends itself to a firm, fixed-price contract and selection of the successful bidder can

appropriately be made principally on the basis of price.

2. The following steps are to be followed in the sealed bid procurement process:

a. Bidder's Instructions are to be prepared, usually by the certified administrator and/or consulting architect/engineer on a construction project. Once completed, these instructions should be reviewed by legal counsel and a determination should be made that all required compliance notices have been included in the package. This information must be communicated to potential bidders at the time bids are solicited and not merely when contracts are to be signed. Proposals or bidders need to be alerted that they are bidding on a project involving Federal funding and that they will be required to comply with several laws and regulations. The Bidder's Instructions should provide cost estimating forms to facilitate both the presentation and review of financial information, including (if unit prices are required) cost formats that correspond exactly to the bid information sought;

NOTE: Davis Bacon Act applies to all construction contracts in excess of \$2,000.00. (See Policy #405, Attachment 1 for all federal provisions.) Additionally, Workers' Compensation and General Liability insurance is required for all construction contracts starting at \$2,500.00 (O.S.61, Sec. 103, B & C, Section 113 d B.4)

b. Notice of solicitation of bids shall also be published one time in a newspaper of general circulation in the county. Notices shall be mailed and published at least ten (10) days prior to the date on which the bids are opened. Proof of the mailing shall be made by the affidavit of the person mailing the request for bids and shall be made a part of the official records of the Contractor files.

c. Bids shall be solicited by mailing a notice to all persons or firms who have made a written request of the Contractor that they be notified of such bid solicitation and to all other persons or firms who might reasonably be expected to submit bids.

d. The Grant Recipient, in an open meeting, shall open the sealed bids, and if applicable compare them to the state contract price. The Contractor shall select the lowest and best bid based in accordance with the bid specification. The Contractor shall

award the contract within thirty (30) days of the meeting.

- e. Where specified in the bid documents, factors such as availability of materials, transportation cost to the job site and life-cycle costs should be considered in determining which bid is lowest.
- f. The Grant Recipient shall keep a written record of the meeting as required by law, and any time the lowest bid was not considered to be the lowest and the best bid, the reason for such conclusion shall be recorded in the official Board Minutes.
- g. When bids have been solicited as provided and no bids have been received, the Grant Recipient must submit documentation to ODOC that bids were sought (solicitations, proof of publication). Upon notification that no bids were received, ODOC will provide requirements that must be met before an award can be made.

C. Procurement of Construction Contracts:

- 1. **61 O.S. §101 et seq.** requires the use of the sealed bid procurement process for any public construction project exceeding \$50,000.00. **NOTE: THE SPLITTING OF BIDS IN ORDER TO AVOID THE COMPETITIVE BIDDING ACT IS A VIOLATION OF STATE LAW.** The purpose of the bid document is to provide prospective bidders with sufficient information to know what the exact scope of work, as well as performance requirements, will be. Normally the architect or engineer who designed the project will take the lead in assembling the bid document. Among other things which will be included are:
 - a. Topographic maps, a site plan and a site layout identifying all adjacent structures, utilities, easements, rights-of-way, sewer or drainage services that might have any underground installations within the project area, that are critical to design;
 - b. Plans and specifications, including names of manufactured items, model numbers, sizes, colors, styles and all other information necessary for the construction contractor to easily price and secure the products specified (or those "equal to");
 - c. Required wage rates, certifications, bid guaranties and affidavits;
 - d. Notification of all public utility, gas, water and electrical services;

- e. Deductive alternatives: The use of deductive alternatives is highly recommended if there is any chance that all bids will exceed available funding. The bid document must be specific in describing the method and order in which alternates will be applied in determining the low bid and such alternates in the plans and specifications.

2. Davis-Bacon Wage Rate Determinations:

- a. Construction Contractors are required to pay their laborers at the "prevailing wage rate" for any project involving CDBG funds, if the project costs more than \$2,000.00. These rates are periodically adjusted. This request must be submitted **at least 45 days prior** to the date set for formal bid opening. This is a critical step since these rates can significantly impact construction cost estimates.
- b. The Grant Recipient may obtain the wage rates from the web site: <http://www.wdol.gov> and mail, email or fax the Wage Rate Request form on Attachment 6, Page 402-41, to ODOC for approval.
- c. Certified wage rates are valid for 180 days. Contact ODOC by telephone **10 days prior to bid opening** to determine if wage decisions included in the bid document are still current. If rates have changed, this information must be included in an addendum, which will allow prospective bidders to amend their bids. The Grant Recipient must document the 10-day call for the CDBG file and may use the space provided on Wage Rate Request Form 402-41, Attachment 6.
- d. It is normally the responsibility of the certified grant administrator to furnish a current wage rate determination to the architect/engineer for inclusion in the bid document. However, the Grant Recipient is not relieved of the responsibility to ensure the wage rates are correct.
- e. If a specific job classification is not included in the wage determination, contact an ODOC Project Manager for specific instructions.

3. Other Requirements:

- a. Title VI of the Civil Rights Act of 1964;
- b. Section 3, Housing and Urban Development Act of 1968, as amended;
- c. Section 504 of the Rehabilitation Act of 1973, as amended;
- d. Age Discrimination Act of 1975;
- e. Section 109, Housing and Community Development Act of 1974, as amended;
- f. Section 402, Veterans of Viet Nam Era (if \$10,000.00 or over);
- g. Bonding and Insurance Requirements:

- (1) A bond or irrevocable letter of credit.
- (2) A bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit containing terms prescribed by the construction and Properties Division of the Department of Central Services issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to ensure the proper and prompt completion of the work in accordance with the provisions of the contract and bidding documents;
- (3) A bond in a sum equal to the contract price or an irrevocable letter of credit containing terms as prescribed by the Division issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to protect the awarding public agency against defective workmanship and materials for a period of one (1) year after acceptance of the project; and
- (4) Public liability and workers' compensation insurance during construction in reasonable amounts. A public agency may require the contractor to name the public agency and its

architects or engineers, or both, as an additional assured under the public liability insurance, which requirement, if made, shall be specifically set forth in the bidding documents.

A single irrevocable letter of credit may be used to satisfy paragraphs 1, 2 and 3 of this section, provided such single irrevocable letter of credit meets all applicable requirements of Subsection B of this section.

If the contractor needs additional time in which to obtain the bonding required, the contractor may request and the awarding agency may allow the contractor an additional sixty (60) days in which to obtain the bonds.

NOTE: Many of the regulations regarding contract provisions require specific clauses to be included. These regulations may not be referenced. A sample Construction Contract Document for CDBG-Funded Projects is included for your reference [**Requirement 405, Attachment 6**].

NOTE: 59 O.S. 46.3E requires, in part, that: a **licensed architect** be used in the planning, designing and preparation of drawings and specifications for the alteration or construction of any building to be used as an assembly hall, municipal building or county building where the reasonably estimated total cost for constructing, remodeling or repairing such building exceeds the sum of One Hundred Fifty Eight Dollars (\$158,000.00) ODOC recommends the Contractor use the Building Construction Cost Data, published by R. S. Means, be used to determine the \$158,000.00 cost factor. Each community should use the lowest square footage costs for each application as established for Oklahoma. (See Subsection 4152 of "the Architectural Barriers Act of 1968, as amended" for Handicapped Accessibility Standards.)

4. Soliciting Bids:

a. Bid Notice:

(1) The Grant Recipient is required to prepare a Bid Notice. The Bid Notice should include but not be limited to the following:

(a) The nature of the proposed project in sufficient detail that all bidders will know exactly what their obligations will be, either in the Bid Notice itself or by reference to the bidding documents.

[Requirement 405, Attachment 6, Page 1, provides suggested Notice items.]

- (b) The name and location (address) of the officer, agent or employee from whom a complete set of bidding documents can be obtained and the cost of obtaining those documents;
 - (c) The date, time and place of opening the sealed bids;
 - (d) The name of the individual and location (address) of the office where bids should be submitted;
 - (e) The publication must call bidders' attention to the requirement for prevailing wages as well as equal opportunity requirements;
 - (f) Grant Recipients must make a good faith effort to seek contracting possibilities with small businesses, women's business and minority-owned businesses.
[Requirement 402, Attachment 7].
 - (g) Any other information considered appropriate for prospective bidders or the public.
- (2) This notice is to be advertised and distributed as follows:
- (a) Provision of a notice to all known prospective bidders via first class mail at least 20 days prior to the scheduled bid opening;
 - (b) Request for Bids must be published in two (2) consecutive weekly issues of a general circulation newspaper. The first publication must be at least 20 days prior to the date set for opening bids;
 - (c) If the project is expected to exceed \$50,000.00, submit bid notice to trade or construction publications. However, providing this notice is **not** a requirement to publish the notice in these publications.

b. Pre-Bid Conferences:

- (1) A pre-bid conference may be held by the architect/engineer if there are multiple funding agencies and they desire it or if the project has been determined to be complex. The primary purpose of such a meeting is to explain to prospective bidders the requirements of the project and answer any questions of the bidders.
- (2) If a pre-bid conference is to be held, all prospective bidders and any other interested individuals must be notified at least 10 days prior to holding such a meeting.
- (3) The Grant Recipient may also desire to pre-qualify bidders as a means to ensure that only responsible proposals are submitted. Under this arrangement, the Contractor may evaluate potential bidders to determine that they have the experience, manpower, financial strength or other relevant characteristics sufficient to presume they could undertake the project if selected.

c. Bid Opening and Evaluation:

- (1) The primary purpose of the review process is to find the most qualified construction contractor to do the job at the best possible price. All bids should be logged in with the time and date of receipt, name of offeror and a procurement number. All bids received must remain sealed and in a safe place until the bid opening. Bidders shall accompany their bids with 1) a certified check, cashier's check or bid bond equal to five percent (5%) of the bid, which shall be deposited with the Grant Recipient as guaranty; or 2) an irrevocable letter of credit issued by a financial institution on behalf of the Grant Recipient in an amount equal to five percent (5%) of the bid.
- (2) The process for selecting a construction contractor will normally take the following steps:
 - (a) Bid Opening: The bids must be opened publicly at the time and place stated in the bid advertisement. The bids should be read aloud and the *apparent* low bidder determined. The apparent low bid is the least expensive proposal after

the initial tabulation, prior to taking any deductive alternates and *prior* to establish responsiveness. If none of the bids comes in at or below budget, all proposals are reviewed for alternate bids, if stipulated in original bid documents. As a result of this process, the bidder with the lowest *net* bid may not be the same bidder who had the lowest original bid.

- (b) Evaluation of Responsiveness: After the initial bid tabulation, the next step is to review proposals for responsiveness. Check each proposal to determine that all requirements of the invitation have been met. Any proposal that fails to pass this threshold test is automatically rejected regardless of price. While it is fairly easy to determine the apparent low bid, it can take some time to evaluate proposals for technical merit and responsiveness. The Contractor has 30 days from the bid opening date to award a contract or reject all bids. The Contractor is allowed to extend this period for an additional 90 days, which requires ODOC approval.

[1] Some of the deficiencies that might void a bid are:

[a] Failure to provide an adequate bid guaranty;

[b] Failure to include affirmative action certifications;

[c] Failure to provide necessary affidavits.

[2] Construction Contractors "self-certify" their compliance with debarment requirements by executing the Notice of Award. Grant Recipients are required to confirm construction contractor eligibility to avoid any chance of problems. To check on any construction contractor's eligibility, contact ODOC by phone or, if you have access to the Internet, contact <http://epls.arnet.gov> to review current debarment list.

(c) Copies of Board Minutes and copies of bid tabulation should be placed in the construction contract file.

(d) Competitiveness: The next step depends on whether there are at least two qualified bids left to consider. If there are at least two, there are two options:

[1] Select one bid. The lowest and best cost bid would normally be selected, so long as that bidder was technically qualified to undertake the project. If a bid other than the lowest is selected, the Contractor must prepare a statement of justification, which must be made available for public inspection. In either case, selection of a bid can only be made if the cost of that bid falls within the budget available for the project.

[a] Deductive alternates may be used only if the bid package was specific in defining what they were and how they would be applied.

[b] Deductive alternates must be applied to every bid, not just the lowest original bid.

[2] Reject all bids. Any or all bids may be rejected when there is a sound, documented reason. For example, this might be appropriate if the pricing of all bids, after taking deductive alternates, exceeds funding available and there is no hope of securing additional funds or rearranging the budget.

[24 CFR 85.36(d)(2)]

(e) If only one responsible bid was received, **contact ODOC prior to award.**

(f) If the lowest responsible bid exceeds the currently available funding, the Contractor has three options (in order of preference):

- [1] Select deductive alternates until cost comes under (or near) budget; and/or
- [2] Make up the funding shortfall from non-CDBG resources; and/or
- [3] Reject all bids.

ODOC will not approve a budget modification if so doing would cause the total grant amount to exceed program limitations, reduce the benefit to low-/moderate-income families below 51% or alter the circumstances under which the grant award was originally made.

- (g) Once a responsible bidder has been selected for a cost within budget, the next step is to issue a Notice of Contract Award to the successful bidder **[Requirement 405, Attachment 6, Page 40]**. The Notice must include a statement signed by the construction firm, certifying that the firm does not appear on the "list of Parties Excluded from Federal Procurement or Non-Procurement Programs". A copy of the executed Notice of Award is submitted to ODOC. The Grant Recipient shall return a certified check or cashier's check, bid bond, or irrevocable letter of credit to the successful bidder on execution of the contract and required bonds or irrevocable letters of credit and insurance. Checks of unsuccessful bidders shall be returned to them in accordance with the terms of the bid solicitation.

E. Requests for Proposals:

- 1. Requests for Proposals (RFP) shall be used for the procurement of Professional Services as defined by Oklahoma statute. Professional Services include but are not limited to architects/engineers (A/E), contract administrators, **[See exemption on Page 402-2 III.C]** legal services, inspectors (if performed by someone other than engineers), etc., regardless of cost. Procurement of independent auditors shall be in accordance with the requirements set forth in the ODOC "Audit Policies and Procedures Manual". There are special procedures for procuring A/E services. The special procedures are noted separately below. (Persons or firms are considered

Professional in accordance with but not limited to 59 O.S. as amended).

2. **Note:** Any person or firm preparing or assisting in the preparation of RFP documents or providing technical assistance shall be precluded from submitting a proposal.

a. Public Advertising Requirements: When seeking Professional Service contracts as defined in 1 above, the Contractor may choose to advertise in a newspaper with the largest general circulation within the county. When advertising for these services the RFP's or RFQ's must be publicly advertised 10 days prior to opening regardless of cost; or

b. Direct Solicitation: When seeking Professional Service contracts as defined in 1 above, The Grant Recipient may choose to directly solicit from known individuals or firms in place of public advertisement. A minimum of 3 professional service providers must be contacted to obtain proposals. (For procurement of administrative services, certified administrators must be contacted.) If the Grant Recipient chooses to directly solicit these services, they must maintain documentation of the names and dates of the firms or individuals that were contacted.

3. The RFP Procurement Process requires the following:

a. An RFP must be prepared in advance of soliciting proposals and provided to all interested parties. Note: The Sample "Request for Proposals for Administrative Services for the Community Development Block Grant" {See Attachment 3} must be used in its entirety. This Sample meets the requirements below. If an RFP other than the Sample is developed or if the Sample is altered in format or content, approval from ODOC must be obtained prior to proceeding with the planned procurement. The RFP shall include the specifications listed below:

(1) A cover letter clearly identifying the purpose of the RFP. The cover letter is used for transmitting the proposal package to interested parties.

(2) Complete information and instructions necessary for interested parties to provide a responsible proposal. The information required to be in the RFP shall include the following:

- (a) The complete scope of services to be provided [**For Administrative Services, See Attachment 2**];
 - (b) General design information regarding the project to be undertaken or specific services to be provided [**For Administrative Services, see Attachment 2**];
 - (c) A statement of price for services to be rendered;
 - (d) Anticipated start and completion dates of both the project and the services being requested;
 - (e) Statement of minimum acceptable qualifications;
 - (f) The method for reviewing and rating all proposals, including a list of all evaluation criteria to be used;
 - (g) A sample of the proposed contract containing all contract terms and conditions so interested parties have the opportunity to know beforehand the specific requirements they must meet [**For Administrative Services, see Requirement 405, Attachment 8**];
4. The procurement process shall be carried out only upon completion of the final RFP. The process will include public advertisement (as applicable), solicitation of proposals from know service providers, evaluation and selection.
- a. All proposals received in response to the RFP shall be equally evaluated in accordance with the evaluation criteria and method of evaluation identified in the RFP (see, also, 1 and 2 below). When necessary, due to the complexity of the procurement or number of responses received, a review committee with knowledge of the proposed project may be selected to perform the reviews. The evaluator(s) should be given a copy of all RFP requirements prior to the beginning of the review process so they can be provided with any additional information or clarification of the process.
 - (1) Specific requirements for evaluation of proposals:

- (a) No proposals received after the stated due date for proposals may be evaluated. Proposals received after the due date should be returned to the submitter with appropriate correspondence.
 - (b) Only the specific evaluation criteria identified in the RFP shall be applied to each proposal in order to make the final determination. Proposal should not include more information that is required in the RFP. Any additional information received should not be considered in the evaluation process.
 - (c) The evaluation process shall be properly documented and adequate files established to enable any State or Federal reviewers to clearly determine the basis for the award to the specific party.
- (2) Specific evaluation criteria to be used in rating all proposals are listed below:
- (a) Each offeror must provide a Statement of Qualifications in such format as is required to provide a clear determination of the level of qualification. Minimum standards for consideration must be established for qualifications of the offeror.
 - (b) Each offeror must provide a brief explanation of their technical competence. Minimum competency standards can be established, if desired.
 - (c) Statement of Price Requirements: All RFPs, with the exception of A/E services, shall require a firm, fixed total cost or fee for all services being requested, along with an established rate or fee for each service being delivered [**Attachment 4**]. Note that A/E service providers are not allowed to submit a price or fee until the initial evaluation process has taken place and qualified firm(s) have been determined.
 - (d) For A/E services only, the firm(s) found to be fully qualified will be requested to submit their requested price or fee and enter into negotiations. The negotiations should be centered on final-

izing the specific scope of services to be provided, the contract price and other terms and conditions of the potential contract. Negotiations should continue until the most reasonable and responsive offer is determined. Final negotiation of the contract between the Contractor and the successful offeror will take place prior to execution of the contract.

(3) For all contracts other than A/E services, the Grant Recipient must request confirmation in writing from ODOC that the selected offeror of the services is not on a Federal or State list of ineligible Grant Recipients before the contract can be executed. This request may be made in advance of the final selection of the successful offeror. The confirmation letter from ODOC must be maintained in the contract file.

(4) All unsuccessful offerors should be notified in writing that their proposals were not selected.

b. When less than two (2) responsive proposals are received, the requirements stated below "Use of Non-Competitive Proposals" shall apply.

F. Non-Competitive Proposals (Sole Source): Non-Competitive Proposals are proposals solicited from only one source. The solicitation may be required by one of the situations listed below or after solicitation through a Sealed Bid or Request for Proposal process from a number of sources results in inadequate competition. Non-Competitive Proposals require the prior written approval of ODOC and may only be utilized when:

1. The item is available from a single source;
2. The public emergency for the required purchase of goods or services will not permit the delay resulting from competitive solicitation;
3. After solicitation of a number of sources, competition is determined to be inadequate or only one response is received.

V. ATTACHMENTS

1. Procurement Methods and Procedures Chart
2. Administrative Responsibilities
3. Request for Proposals for Administrative Services for the
Community Development Block Grant
4. Statement of Price
5. 24 CFR 85.36 Procurement Standards
6. Wage Rate Request Form
7. Minority/Women Owned Business Information

PROCUREMENT METHODS AND PROCEDURES CHART
As of 6/1/05

Need for Purchase → → The Amount of Purchase ↓	Material Supplies Equipment Lease	Non-Skilled Labor No License Required	Construction General Grant Recipients	Trade Labor License Required (Electrical, Heat/Air, Plumbing, etc.)	Professional Services (Administration, B. Legal, Architectural, Engineering, etc.)	Sole Source Contracts All Types
Less than \$10,000	1	1 - A	1 - A	1 - A	4 - A - B	1
\$10,000 to \$50,000	2	2 - A	2 - A - C	2 - A	4 - A - B	2
\$50,001 or More	2	3 - A - C	3 - A - C	3 - A - C	4 - A - B	3-4-A-B-C

1 -- **Small Purchases:** Purchases can be made from local vendors; however, recipients are encouraged to seek the lowest and best price. (See 402 IV.A.)

2 -- **Sealed Bids:** Grant Recipients are required to publicly advertise one time 10 days prior to bid opening. (See 402 IV.B.)

3 -- **Competitive Bids:** 61 O.S., § 101 et seq. Applies to all Construction contracts where the total costs exceeds \$50,000. (See 402 IV.C.)

4 -- **Professional Service:** Recipients may direct solicit via phone quotes or in writing at least 3 professional service providers. See B below.

If phone quotes, you must document in writing the date, time and from whom you solicited. (See 402 IV.D.) Advertising is also allowed (402 13 2.a.)

A -- Refer to Requirement 405, Attachment 1, for required provisions in all service contracts.

B -- Certified CDBG Administrators must be used. A minimum of 3 certified administrators must be solicited as in 4 above. (See 402-IV-D.4.)

C -- For construction contracts exceeding \$50,000 an irrevocable letter of credit can be submitted in lieu of bonds. See O.S. 61 et seq. before awarding to ensure compliance with Oklahoma State law.

NOTE: No type of formal procurement is required for sole source contracts if documentation can be provided showing the goods or services are available from only one vender.. **All Sole Source Contracts require ODOC approval prior to award.**

ADMINISTRATIVE RESPONSIBILITIES

I. ADMINISTRATIVE TASKS

When a Grant Recipient enters into a contract for administrative services, the administrator shall comply with all Federal and State laws and all ODOC requirements. However, the Grant Recipient is not relieved of its contractual obligation to ensure compliance. The following list identifies who shall be responsible to ensure the following tasks are completed in a timely manner:

	<u>Contractor</u>	<u>Certified CDBG Administrator</u>
A. Public Hearings	<input type="checkbox"/>	<input type="checkbox"/>
B. Environmental Review	<input type="checkbox"/>	<input type="checkbox"/>
C. Release of Funds	<input type="checkbox"/>	<input type="checkbox"/>
D. Requests for Payment	<input type="checkbox"/>	<input type="checkbox"/>
E. Monthly Expenditure Reports	<input type="checkbox"/>	<input type="checkbox"/>
F. Project Files	<input type="checkbox"/>	<input type="checkbox"/>
G. Land Acquisitions (if Applicable)	<input type="checkbox"/>	<input type="checkbox"/>
H. Bid Documents Notice of Award, Pre- Construction Conference, Notice to Proceed	<input type="checkbox"/>	<input type="checkbox"/>
I. Weekly Payrolls	<input type="checkbox"/>	<input type="checkbox"/>
J. On-Site Interviews	<input type="checkbox"/>	<input type="checkbox"/>
K. Coordinate On-Site Visits (Construction)	<input type="checkbox"/>	<input type="checkbox"/>
L. Closeout Documents	<input type="checkbox"/>	<input type="checkbox"/>
M. Job Tracking (ED Projects)	<input type="checkbox"/>	<input type="checkbox"/>

II. DEFINITIONS: The following are definitions of the above-assigned tasks:

- A. Public Hearing: All public hearings must be held in accordance with the Grant Recipient's Citizen Participation Plan in order to comply with 24 CFR 570.486.
- B. Environmental Review: Prepare environmental review record for all activities. Responsibilities include making a recommendation to the local governing body as to a finding of the level of impact, preparation of all required public notices, preparation for Request for Release of Funds and acquiring adequate documentation. For activities not exempt from environmental assessments, an environmental assessment will be prepared. For activities exempt and/or categorically excluded from environmental assessments, prepare a written Finding of Exemption, which should identify the project or activity and under which of the categories of exemption it falls. Also include

documentation of compliance with requirements of historic preservation, flood plains and wetlands and other applicable authorities.

- C. Release of Funds: Preparation of Environmental Review, leverage/commitment (if applicable, insurance bonding, Residential Anti-Displacement Plan, Placement Plan (ED projects), and Special Conditions (as required). These documents will be presented to the local governing board for approval and signature and submitted to ODOC for processing.
- D. Requests for Payment: Request for funds must be submitted to ODOC on the approved form and prepared in conformance with the instructions provided. **Only** request funds that can be expended within the allotted time (15 days from date funds received). The following information is needed to complete this form: Engineer pay estimates, approved invoices, Non-collusion affidavits and other such documents as required by the governing board. Although the administrator can complete this form, the Grant Recipient must sign it.
- E. Monthly Expenditure Report: The Grant Recipient must report all funds received in a timely manner. A Monthly Expenditure Report must be completed and sent to ODOC by the 10th of the following month in which CDBG funds have been received. The administrator can complete this report; however, it must be signed by an authorized representative of the Grant Recipient. Failure to submit this report will result in Requests for Payment being held until all funds received have been reported.
- F. Project Files: All originals are to be maintained with the Grant Recipient to demonstrate compliance with all applicable State, local and Federal regulations. Monitor project files throughout the program to ensure they are complete and that all necessary documentation is being retained.
- G. Land Acquisition: If property was or is acquired with the express intent of using it for the activities for which CDBG funds are requested, that acquisition must have been and/or be conducted in conformance with the requirements spelled out in Requirement 407 [**HUD Handbook 1378, Chapter 5**].
- H. Bid Documents. Detailed plans developed by engineer for construction contractors.

- I. Notice of Award, Pre-Construction Conference and Notice to Proceed: Preparation of the Notice of Award with certification from the construction contractor that he is not listed on the "Debarred List". Ensure a copy is submitted to ODOC. Conduct the Pre-Construction Conference, prepare a report in conjunction with Contractor, engineer, architect and subcontractor, to explain contract requirements.
- J. Weekly Payrolls: Ensure weekly payrolls and statements of compliance are submitted and compared with Davis-Bacon Wage Rates.
- K. On-Site Interviews: Conduct on-site interviews of the construction contractor and/or subcontractor's employees for each job classification. Interview must be conducted at least once during the course of construction.
- L. On-Site Visits: Coordinate On-Site visits.
- M. Closeout Documents: Transmittal of CDBG Closeout documents, Final Expenditure Report (Final Expenditure Report ED), Contract Closeout Certifications and Beneficiary Report.
- N. Job Tracking: Gather and complete Income Certification Forms, Job Tracking Log and Quarterly Job Status Reports.

REQUEST FOR PROPOSALS FOR ADMINISTRATIVE SERVICES
FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT

I. GENERAL INFORMATION

- A. The _____ is requesting proposals to obtain
(Grant Recipient)
The services of a certified consultant or consulting firm to administer the Community Development Block Grant (CDBG) received from the Oklahoma Dept. of Commerce (ODOC) for _____.
(Identify Project Funded)
All qualified proposals will be considered without regard to race, creed, color, sex, disability or national origin.
- B. Who May Respond: Only firms or individuals who have been certified by ODOC to administer CDBG projects.
- C. Instructions and Proposal Submission:
 - 1. Due Date for Proposals: Proposals must be submitted no later than _____ on _____.
(Time) (Date)
All proposals received will be opened and possible selection made at _____ on _____.
(Time) (Date)
at _____.
(Place)
Following the proposal opening, each proposal will be reviewed in accordance with the evaluation criteria stated later in this RFP.
 - 2. Inquiries: Inquiries should be directed to:
_____.
(Name & Phone Number)
 - 3. Preparation of Proposal Costs: All costs associated with the preparation of a proposal in response to this RFP will be the responsibility of the offeror and will not be reimbursed by the _____.
(Grant Recipient)
 - 4. Composition: All proposals must be submitted in writing. The proposal must include the following separate components:
 - a. Statement of Experience: Four (4) copies;
 - b. Complete Scope of Services to be provided, including "Administrative Responsibilities set forth in **Attachment 2**;

- c. Statement of Price (form enclosed): One (1) copy;
 - d. Affidavit (form enclosed): One (1) copy.
5. Submittal of Proposal:
- a. Proposals may be mailed or hand delivered. It is important that the offeror's proposal be submitted in a sealed envelope clearly marked on the lower left-hand corner with the following information:

CDBG CONTRACT ADMINISTRATION PROPOSAL: DUE: _____
 (Date of Opening)

SEALED PROPOSAL - DO NOT OPEN

Failure to do so may result in premature disclosure of your proposal or price. Proposals submitted will not be opened and reviewed until the time specified. It is the responsibility of the offerors to ensure that the proposal is received by the date and time specified above.

- b. Proposals are to be submitted to:

 (Enter address proposals are to be delivered to)

6. Withdrawal/Resubmission of Proposal: The offeror may withdraw the proposal at any time prior to the award of the contract. A proposal may also be retrieved and resubmitted from the above person only prior to the date and time listed for submission. Proper identification and a formal letter will be required to withdraw the proposal.
7. Right to Reject:
- a. Any proposal indicating a total fee in excess of resources allocated to the services being requested will be rejected.
 - b. A contract for the accepted proposal will be based only on the factors described in this RFP.
8. Small and Minority-Owned Businesses: Efforts will be made to utilize small and minority-owned businesses.

9. Notification of Award: A decision to select the successful administrator will be made within _____ days after the opening of the proposals. All offerors submitting proposals in response to the RFP will be informed in writing of the name of the successful offeror.
10. Anticipated Start and Completion Dates of Contract: The contract is scheduled to start on _____, (Date) and will be effective for _____ (Time Period).

- D. **(When applicable, use the following language.)** The _____ has (or will) also contracted (Grant Recipient) for engineering or architectural services which will be needed throughout the design and construction phases of the project. The successful administrator is expected to cooperate fully with the engineer in accomplishing the project.
- E. **(Briefly describe the community or county, including population, geographic location in the State and any special problems or needs. Also indicate the frequency of board meetings, number of employees and any other relevant characteristics.)**
- F. At the discretion of the _____ the (Grant Recipient) administrative contract may be extended to coincide with the contract received from ODOC.

II. SPECIFICATIONS

- A. Identify who will perform the tasks in **Attachment 2** "Administrative Responsibilities" and ensure these tasks are completed in a timely manner and the necessary documentation submitted to ODOC, as applicable.
- B. Statement of Price: The offeror's proposed fees should be submitted on the form provided in this manual and placed in a separate sealed envelope marked: "Statement of Price". Any out-of-pocket expenses such as indirect costs, travel and lodging included in the hourly and total fee may also be included. The contract will be awarded as a "not to exceed" contract; the statement of price or fee must clearly state the fee for providing each of the services required, with a maximum fee for providing all services through completion of the project.

III. OFFEROR'S MINIMUM REQUIREMENTS

Each proposal must include clear information regarding the offeror's prior experience, organization structure and qualifications of the offeror. Minimum qualifications for consideration have been established to ensure that only fully-qualified firms or individuals capable of providing the services desired are considered.

A. Prior Experience: All proposals must meet the following minimum qualifications to be considered:

1. A minimum of _____ separate Federal grants or contracts have been administered by the offeror within the past _____ years for units of local government.
2. The names, addresses and telephone numbers of the units of local governments assisted must be supplied.
3. A brief description of the grants or contracts administered must be given.

B. Organization: The offeror must provide a brief description of the administrator's firm, including the following:

1. Total years in business, including years in business under previous firm names;
2. If the firm qualifies as a small or minority firm (requested for informational purposes only; not a qualifying factor for section);
3. Organizational Structure: Describe how the firm administers a typical project and, where applicable, roles and responsibilities of individuals within the firm who may provide some or all of the services;
4. Complete resumes for all individuals who will be providing any of the required services. Education and experience must be provided for each individual.

C. Qualifications:

1. Offeror must be a certified CDBG Administrator or an apprentice CDBG Administrator in accordance with ODOC regulation _____.
2. Offeror must provide copies of any licenses or certificates required in its field of expertise, i.e., engineering, architect, inspectors, CDBG Administrator or other professional, as required, which they feel may enhance his/her qualifications.

IV. PROPOSAL EVALUATION

- A. Proposals shall be judged non-responsive and removed from further consideration if any of the following occur:
1. The proposal is not received by the submission deadline stated in this RFP.
 2. The proposal does not include all required components of I.C.4. above.
 3. The affidavit is not properly completed.
 4. The offeror does not meet the minimum required qualifications and experience.
 5. Any conflict of interest is determined.
- B. Proposals shall be rejected from final consideration for the following:
1. Any references contacted report unsatisfactory performance regarding previous administration of Federal programs or contracts.
 2. No references were obtained after attempting to contact nine (9) separate references provided.
 3. Three (3) references are contacted, but all three references decline to respond to the questions.
- C. Evaluation:
1. Evaluation of each proposal will be based on the following criteria and rates as indicated on the attached rating sheets. The proposals will be ranked based upon the total number of points received. The top five offerors, or all if less than five responsive proposals are received, shall be requested to participate in a personal interview with the evaluator(s). Additional rating points will be awarded based upon the personal interview. The proposal with the highest overall rating will be awarded the contract.
 2. Initial Rating Criteria:
 - a. Prior experience;
 - b. Organization;
 - c. Qualifications;

d. Statement of Price;

e. References.

D. In the event of a tie in the ranking of proposals, the lowest total price as indicated in the Statement of Price will be awarded the contract.

STATEMENT OF PRICE

Name of Offeror: _____

FEI No. or SS No., if
Individual

I. STATEMENT OF PRICE REQUIREMENTS

Any costs incurred with the preparation of the attached Proposal shall not be included in determining the proposed fee. The contract will be awarded as a "not to exceed" contract; the fee below must be the maximum fee for providing all services and the offeror may select either of the following options in providing the required supporting fee information:

A. Option A: Provide a Fee Schedule that lists the individual fee for each service listed on the Scope of Services. Reimbursement will be based upon the progress towards completion of each service, i.e., completion of 25% of a particular service would result in payment of 25% of the stated fee for that service. No form is provided. Offeror shall prepare and attach a Fee Schedule.

B. Option B: Provide an Hourly Price Schedule which includes: (1) Each individual who will be performing the work and the hourly rate for each individual; and (2) An estimate of the total number of hours required to perform each required Service. Reimbursement will be based on the hourly rate(s) listed, not to exceed the Total Fee. Note, however that actual reimbursement will not exceed the percentage of completion for each service as compared to the total hours required for that service. (Example: 20 hours required for a service; service is 50% complete. Actual number of hours invoiced is 14 hours; reimbursement will be for a maximum of 10 hours, which is 50% of 20 hours.) Cumulative hours per service should be listed. No form is provided. Offeror shall prepare and attach an Hourly Price Schedule.

II TOTAL FEE STATEMENT

_____, as compensation for administrative (Name of Firm or Individual) consulting services described in the Scope of Services, requests a fee not to exceed \$_____. It is understood that, if selected as the Contractor for these services, payment will be on a reimbursement basis and will be made in conformance with the Fee Schedule located in Requirement 404 of the CDBG Implementation Manual. It is further understood that reimbursement will be made only after receipt of itemized invoices. The invoices must list the individual services that were provided, their percentage of completion, the fee requested and identity of each staff member, where applicable, who provided the services.

I certify the above-stated fee is true and correct and that I am authorized to submit this fee on behalf of the offeror.

Signature

Date: _____

Also find attached:

_____ Fee Schedule

_____ Hourly Price Schedule

24 CFR 85.36 Procurement

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards.

(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that Grant Recipients perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will 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 grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(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 Grant Recipients, potential Grant Recipients, 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 Grant Recipients or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative

items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible Grant Recipients possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition.

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 85.36. 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.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which 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, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. 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 salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed.

(1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in Sec. 85.36(d)(2)(i) apply.

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

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

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

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) Contract cost and price.

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the grant recipient's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Sec. 85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review.

(1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

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

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) A maintenance bond on the part of the contractor for 100 percent of the contract price. A "maintenance bond" is one executed in connection with a contract which obligates the contractor for all damages, loss and expenses which may result from defective materials and/or workmanship within one year of acceptance of work.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

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

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

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their Grant Recipients or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327A 330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

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

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

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

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

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

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

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871). [53 FR 8068, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]

Oklahoma Department of Commerce (ODOC)
Community Development (OCD)

DAVIS-BACON DETERMINATION REQUEST FORM
www.wdol.gov

THIS FORM MUST BE SUBMITTED TO ODOC 45 DAYS BEFORE BID OPENING

CDBG Grantee: (City, Town, County) _____ Mayor/Chairman Name: _____ Address: _____ _____ Phone# _____ Fax# _____	CDBG Contract # _____ Administrator: _____ Phone# _____ Fax# _____ Engineer/Architect: _____ Phone# _____ Fax# _____
<p><u>Project Detail:</u></p> County in which project is located: _____ Detail Type of Project/Activity (be specific): _____ _____	
<p><u>Davis-Bacon Wage Determination Information:</u></p> <p>If the wage determination(s) is retrieved by grantee from the web site above, please provide ODOC the information below:</p> Wage Determination # _____ Mod# _____ Date _____ Wage Determination # _____ Mod# _____ Date _____ ODOC will send the appropriate determination(s) to the grantee, administrator, and engineer if the above is incorrect or blank. <p>NOTE: 10-day call - Ten days before bid opening, the grantee must call ODOC to verify any modifications to the wage determination(s).</p>	
<p>ODOC Use Only (confirmation of wage determination(s):</p> _____ YES - The above wage determination(s) is correct. ODOC Project Manager _____ Date _____ _____ NO - Please use the following wage determination(s): Wage Determination # _____ Mod# _____ Date _____ ODOC Project Manager _____ Date _____	

MINORITY/WOMEN OWNED BUSINESS INFORMATION

The following organizations certify and maintain listings of disadvantages or minority-owned businesses.

1. Oklahoma Department of Commerce

<http://www.Okcommerce.gov/>
Business Development
New & Small Business Support
Women-Owned businesses
Director of Certified Businesses in OK

2. Oklahoma Department of Transportation (ODOT), 200 N.E. 21st Street, Room aC-5, Oklahoma City, OK 73105-3204, 405-521-6406 or 800-788-4539.

Certifies Women and Minority Owned Businesses as Disadvantaged Business Enterprises (DBE).

Eligible businesses are those that provide services, products or supplies relates to transportation projects or facilities.

www.okladot.state.ok.us: Click on "DBE Information", click on "Directory of Certified Firms". Updated monthly.

3. U.S. Small Business Administration (SBA), Oklahoma District Office, Minority Enterprise Division, 210 Park Avenue, Suite 1300, Oklahoma City, OK 73102, 405-231-5521.

One of SBA's key certification programs is certification as a Small Disadvantaged Business (SDB). The list can be accessed through the Central Contractor Registration (CCR) web site and printed.

www.ccr.gov: Click on the "Dynamic Small Business Search" button, under "States", select "Oklahoma", select "required (Active Certification Only)" under the certification for "Small Disadvantaged Business", scroll down to "Other Ownership Data" and select "Minority", "Native American", and "Woman/Women", scroll down to "General Nature of Business" and select "Construction", scroll down to "Maximum Number of Firms to be Returned at a Time", click the down menu and select 200 (sufficient for Oklahoma). Click on "Search Using These Criteria" for a listing you can print out. You can look at each firm individually for its profile data.

4. Oklahoma Minority Supplier Development Council (OMSDC), 6701 N. Broadway, Suite #216, P.O. Box 18228, Oklahoma City, OK 73154-0228, 405-767-9900.

Certifies eligible minority businesses as Minority Business Enterprises (MBE).

Charges a fee to provide information to persons other than Council members. You have to contact them to get a copy of their MBE listing or directory.

www.OMSDC.org: Click on "Link" for different subjects about the organization.

The information listed above may be used to select small, certified, minority and women owned businesses to include on solicitation lists for your CDBG projects.

**OKLAHOMA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM**

**REQUIREMENT NO. 403
ENVIRONMENTAL REVIEW**

Effective July 2007

I. OVERVIEW OF THE PROCESS

- A. Grant Recipients shall comply with the National Environmental Policy Act of 1969 (NEPA) and the Environmental Review Procedures for the Community Development Block Grant, 24 CFR 58 [Attachment 19], covering the following areas: Historic Properties, Floodplains, Wetlands, Noise, Manmade Hazards, Air Quality, Water Quality, Endangered Species, Farmlands Protection, Wild and Scenic Rivers, Solid Waste, Fish and Wildlife, Environmental Standards, sole source aquifers, clearzones, and environmental justice.
- B. Grant Recipients shall not obligate or expend funds until the environmental review process is complete and a notice of removal of contract conditions is received from ODOC. Obligating or expending funds prior to the environmental review process is an ineligible use of contract funds and such expenditures will be disallowed and the CDBG Contract will be de-obligated.
- C. Environmental responsibilities have both legal and financial ramifications. A Grant Recipient assumes the role of Federal official under the provisions of NEPA and 24 CFR 58.
- D. The Grant Recipient's chief executive official will assume overall responsibility for the environmental review process, including making determinations and signing required certifications. This environmental duty may not be delegated, although certified CDBG administrators, staff and/or State resources may provide technical assistance to support local efforts. Local officials should review the liability and indemnification statutes as well as the status and coverage of local liability insurance policies when accepting responsibility under environmental laws. If a suit is filed against a program in Federal court on findings/environmental grounds, the chief executive official will be named the respondent.
- E. In administering the program, the State of Oklahoma accepts no responsibilities or liabilities for the quality or accuracy of the local environmental review process. ODOC's responsibility is to ensure that the Grant Recipient has complied with the procedural requirements of various environmental statutes, regulations and executive orders.

- F. Contract responsibilities require a complete environmental review of all project activities related geographically or functionally even if some activities are funded by other sources CFR 58.32.

II. PROCEDURES

The certifications of Exempt and Categorically Excluded (Not subject to 24 CFR 58.34 and 58.35(b) activities have been addressed in the contract with ODOC. Once both parties have signed the contract, the Grant Recipient is released from any further environmental requirements for these activities only.

- A. Exempt Activities (24 CFR 58.34, subject to CFR 58.6): Certain activities are exempt from the environmental review requirements of NEPA and the environmental requirements of other applicable Federal laws. Examples of these activities include administrative and engineering costs. The Grant Recipient is still required to address the requirements under 24 CFR 58.6.
- B. Categorically Excluded Activities (Not Subject to 24 CFR 58.5 Federal Laws and Authorities, subject to CFR 58.6): Purchase of Equipment. The Grant Recipient is still required to address the requirements under 24 CFR 58.6.
- C. Categorically Excluded Activities (24 CFR 58.35):
1. Certain activities are "excluded" from NEPA requirements; however, other Federal laws and authorities listed in 24 CFR 58.5 are applicable. These Categorically Excluded Activities can be found in 24 CFR 58.35(a) and (c) **[Attachment 19]**.
 2. To complete the environmental requirements for categorically excluded activities and document compliance with 24 CFR 58.5, contact the applicable Statutory/Regulatory agencies found on the Environmental Cross-Reference Chart **[Attachment 2]** **[See Sample Letter, Attachment 1.]** Document the agencies' responses along with any mitigating measures required on the Environmental Statutory Checklist **[Attachment 7]**.
 - a. Historic Properties: Determine if the project activities will affect historic properties or archeological concerns. Request concurrence from the **State Historic Preservation Office** and the **Oklahoma Archeological Survey**.

- b. Floodplain Management: 24 CFR Part 66 Attachment 20 determines whether or not a project activity is affected by or may modify the base 100-year flood hazard area. This may be done by reviewing the applicable **Flood Hazard Boundary Map** or the **Flood Insurance Rating Map**. If activities are located in a floodplain, the Grant Recipient must follow Executive Order 11988, the Eight-Step Decision-Making Process [**Attachment 9**]. This process includes the publication of two public notices at least 16 days apart: an Early Public Notice identifying the activity and soliciting comments, and a Notice of Explanation, including a judgment whether the benefits of the activity outweigh the environmental considerations and a determination that there are no practical alternatives to the activity site. These notices must be part of the Grant Recipient's Environmental Review Record (ERR) and a copy must be submitted to ODOC. Request concurrence from the **Federal Emergency Management Agency (FEMA)**, **Natural Resource Conservation Services (NRCS)**, and the **U.S. Corps of Engineers** [**Attachment 4**].

NOTE: The Corps of Engineers charges a fee to review floodplain compliance requests. If the applicable Flood Hazard Boundary Map or Flood Insurance Rating Map shows that the project activity is not located within the 100-year flood hazard area, the Corps of Engineers need not be contacted.

- c. Wetlands Protection: Determine, by site visit if necessary if wetlands are affected by a project activity. Executive Orders 11990 and 11988 are effective the same as above. Request concurrence from **U.S. Fish and Wildlife**, the **Conservation Commission**, **NRCS**, and the **U.S. Corps of Engineers**.
- d. Noise: Noise assessments are no longer required. Remediation may be necessary for noise sensitive projects.
- e. Manmade Hazards: Determine if a project activity is near a hazard operation handling petroleum products or chemicals of an explosive or flammable nature or within an aircraft clear zone. Request concurrence from the **Environmental Protection Agency (EPA)** and the **Department of Environmental Quality (DEQ)**, along with site evaluation. Project cannot increase density or subject citizens or buildings to above-ground storage tanks greater than 100 gallons. Acceptable Separation Distance (ASD) must be determined.

- f. Air Quality: Determine if the project conforms to the latest approved State Implementation Plan (SIP) regarding air quality. Request concurrence from **EPA** and **DEQ**.
- g. Water Quality - Aquifers: Determine if the project activity will affect an aquifer recharge area which is a primary source of local drinking water or involving dredging, filling or disposal of dredged materials upon water bodies. Request concurrence from **EPA**, **DEQ** and the **U.S. Corps of Engineers [Attachment 4]**.
- h. Coastal Areas: Not applicable to Oklahoma.
- i. Endangered Species: Go to the web site listed on **Attachment 3** to determine if project activity will endanger species of wildlife or if habitat areas are impacted. Request concurrence from **U.S. Fish and Wildlife**. NOTE: If it is determined that there will be no impact, document the checklist and do not contact the agency. [**Attachment 3, Department of Interior**]
- j. Farmlands Protection: Determine if a proposed activity converts farmland to non-agricultural uses. Request concurrence from **NRCS**.
- k. Wild and Scenic Rivers: Determine if a project activity impacts a designated wild and scenic river in Oklahoma. Contact agency is the **Oklahoma Scenic Rivers Commission (OSRC)**. Any construction or modification projects outside Adair, Cherokee, Delaware, Sequoyah, LeFlore or McCurtain Counties are exempt from review by OSRC. Place a copy of **Attachment 5** in the ERR if the project is not in one of these counties.
- l. Environmental Standards: Determine if the properties being proposed for use are free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances that could affect the health and safety of the occupants. The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must evaluate previous uses of the site or other evidence of contamination. This evaluation must include any proposed site in or near areas such as dumps, landfills, industrial sites, or other locations that have, or may have, contained hazardous waste. Obtain the services of qualified professionals who use current techniques to undertake the investigations

that are considered necessary. A Phase I Report or equivalent analysis as appropriate may comply with this part.

A Phase I Environmental Site Assessment is a report prepared for commercial property that identifies potential or existing environmental contamination liabilities. It is to assess past and present land use practices, site operations and conditions, and to identify the potential presence of hazardous substances and soil and/or groundwater contamination at the site. It typically addresses both the underlying land as well as physical improvements to the property.

m. Tribal Interests:

Determine if a project activity impacts a reservation, may contain Native American cultural items, or may impact other tribal interests. Request concurrence from the affected tribal governments. [**Attachment 6**].

n. Environmental Justice:

The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. Fair treatment means that no group of people, including racial, ethnic or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local and tribal programs and policies. The goal of this "fair treatment" is not to shift risks among populations but to identify potential disproportionately high and adverse effects and identify alternatives that may mitigate these impacts.

Executive Order 12898 - to ensure that each Federal agency makes achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. For NEPA compliance, implement the following steps:

1. Analyze environmental effects, including human health, economic, and social effects of federal actions, including the effects on minority communities;
2. Address significant and adverse environmental effects of proposed federal actions on minority communities and low-income communities with

mitigation measures outlined or analyzed in the environmental assessment or environmental impact statement; and

3. Provide opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving accessibility of public meetings, official documents, and notices to affected communities.

Request concurrence from the Environmental Protection Agency (EPA) if significant impact is anticipated.

- o. In addition to the above Statutory/Regulatory compliance, Environmental Reviews at the community level must be addressed. Areas of concern include: Water quality, solid waste disposal, fish and wildlife and State or local statutes.

3. Finding of Categorical Exclusion/Exempt from Release of Funds Publication:

- a. When it is determined (after contacting the applicable Statutory/Regulatory agencies and completion of the Statutory Checklist [**Attachment 7**], that the other Federal laws and authorities in CFR 58.5 and 58.6 are not applicable to a categorically excluded activity, the activity will be exempt from Release of Funds Publication.
- b. A Finding of Categorical Exclusion/Exempt from Release of Funds Publication [**Attachment 10**] must be part of the Grant Recipient's ERR and a copy must be sent to ODOC.

4. Finding of Categorical Exclusion:

- a. When it is determined that the other Federal laws and authorities in CFR 58.5 and 58.6 are applicable to a categorically excluded activity, a Finding of Categorical Exclusion [**Attachment 11, Sample 403-5**] must be made. The Finding, which identifies the activity and states the statutory authority for the exclusion, must be part of the Grant Recipient's ERR and a copy must be sent to ODOC.
- b. After completion of the review and after the Finding has been made, the Grant Recipient's chief elected official will sign the completed Environmental Certification [**Attachment 13, Form 403-B**] and publish a Notice of Intent to Request Release of Funds. The Notice must be mailed to entities on the Distribution List [**Attachment 16**] the same day it is published. [**Attachment 12**]. The publication

must be published in a newspaper of general circulation, which informs interested parties of the Grant Recipient's intent to request a Release of Funds from ODOC. The publication must allow seven (7) calendar days for public comments to the Grant Recipient and an additional fifteen (15) calendar days for public comment to ODOC.

- c. When the Grant Recipient's seven-day (7-day) comment period has elapsed and all public comments have been addressed, the Grant Recipient will submit the Request for Release of Funds [**Requirement 401, Attachment 1 or Attachment 2**] and required documentation to ODOC. Comments received as a result of the notices should be included in the Grant Recipient's ERR and copies sent to ODOC.
- d. The Grant Recipient may post the Notice of Intent to Request Release of Funds in lieu of publication. The Notice must be mailed to the entities on the Distribution List [**Attachment 16**] the same day it is posted. If posted, it must be prominently displayed in public buildings such as the local Post Office as well as other public buildings within the project area. It must be posted for ten (10) calendar days for public comment. When the ten-day (10-day) comment period has elapsed and all public comments have been addressed, the Grant Recipient will submit the Request for Release of Funds [**Requirement 401, Attachment 1 or Attachment 2**] and the required documentation to ODOC. Comments received as a result of the posting of the Notice should be included in the Grant Recipient's ERR and copies sent to ODOC. Upon receipt, ODOC must hold the Environmental Review for an additional fifteen (15) calendar days for public comment.

D. Activities Requiring an Environmental Assessment (EA):

1. Activities which are neither Exempt nor Categorically Excluded will require an EA to document not only compliance with the other Federal laws and authorities, but the requirements of NEPA 24 CFR 58.5 and 58.6. New construction requires an environmental assessment except in certain circumstances. See 24 CFR 58.35 for further guidance.
2. For activities requiring an environmental assessment, the applicable statutory/regulatory agencies found on the Environmental Cross-Reference Chart [**Attachment 2**] must be contacted and the agencies' responses and any mitigating measures required documented on the

Environmental Assessment Checklist [**Attachment 8**]. All other Impact Categories (NEPA) on the Environmental Assessment Checklist must also be addressed and documented. By performing the assessment, the Grant Recipient will make a finding of level of clearance for the activity. The assessment will determine if an activity will significantly affect the quality of the human environment. The finding found in Sample 403-C [**Attachment 14**] must be signed by the Certifying Officer and made a part of the ERR. A copy of the finding must be submitted to ODOC.

- a. If an activity is one that will significantly affect the quality of the human environment, contact ODOC before preparing an Environmental Impact Statement (EIS).
 - b. If the EA results in a finding that the activity is not an action which significantly affects the quality of the human environment, the Grant Recipient must publish and distribute a public notice to that effect to the agencies on Attachment 18 at the time of publication or posting.
3. When the assessment is complete and the finding has been made, the Grant Recipient's chief elected official will sign the completed Environmental Certification [**Attachment 13**] and publish a Notice of Intent to Request Release of Funds and Finding of No Significant Impact [**Attachment 15 or Attachment 14**]. The Notice must be mailed to the entities on the Distribution List [**Attachment 16**] the same day it is published. The Notice must be published in a newspaper of general circulation to inform interested parties of the Grant Recipient's intent to request a Release of Funds from ODOC. The publication must allow fifteen (15) calendar days for public comment to the Grant Recipient.
 4. When the Grant Recipient's fifteen-day (15-day) comment period has elapsed and all public comments have been addressed, the Grant Recipient will submit the Request for Release of Funds [**Requirement 401, Attachment 1 or Attachment 2**] and required documentation to ODOC. Comments received as a result of the notices should be included in the Grant Recipient's ERR and copies sent to ODOC. Upon receipt, ODOC must hold the Environmental Review for an additional fifteen (15) calendar days for public comment.
 5. The Grant Recipient may post the Notice of Intent to Request Release of Funds and Finding of No Significant Impact (Concurrent Notice) in lieu of publication. The Notice must be mailed to the entities on the Distribution List [**Attachment 16**] the same day it is posted. If

posted, it must be prominently displayed in public buildings such as the local Post Office as well as other public buildings within the project area. It must be posted for eighteen (18) calendar days for public comment. When the eighteen-day (18-day) comment period has elapsed and all public comments have been addressed, the Grant Recipient will submit the Request for Release of Funds [**Requirement 401, Attachment 1 or Attachment 2**] and required documentation to ODOC. Comments received as a result of the posting of the Notice should be included in the Grant Recipient's ERR and copies sent to ODOC. Upon receipt, ODOC must hold the Environmental Review for an additional fifteen (15) calendar days for public comment.

E. Re-Evaluation of the Environmental Review Process:

1. The Grant Recipient must re-evaluate the results of its original review process *if* it:
 - a. Makes substantial changes in the nature, magnitude or extent of the project, including adding new activities; or
 - b. Discovers new circumstances and environmental conditions that may affect the project or the environment.
 - c. Has been over twelve (12) months since any action has been taken.
2. The purpose of a re-evaluation is to determine if the new circumstances still justify and support the environmental finding originally issued. If the original finding is still valid, the Grant Recipient needs only to provide appropriate documentation in file. However, if the re-evaluation is the result of a change in the scope of work requiring an amendment to the contract, the Grant Recipient must submit a Certification of Continued Environmental Compliance [**Attachment 17**] with its request to ODOC for amendment approval.
 4. If the Grant Recipient determines that the original finding is no longer valid, it must re-initiate the appropriate review process following the procedures outlined above.

III. Attachments:

1. Sample Request for Agency Comment Letter
2. Environmental Review Cross-Reference Chart
3. Fish and Wildlife Blanket Clearance Letter

4. Corps of Engineers Information Sheet
5. Oklahoma Scenic Rivers Blanket Clearance
6. List of Tribal Governments
7. Statutory Checklist and Instructions
8. Environmental Assessment Checklist and Instructions
9. Executive Order 11988, Eight-Step Decision-Making Process (Floodplains)
10. Finding of Categorical Exclusion/Exempt from Release of Funds Publication
11. Finding of Categorical Exclusion
12. Notice of Intent to Request Release of Funds
13. Environmental Certification Form
14. Finding of No Significant Impact
15. Combined Notice to Public of Finding of No Significant Impact and Notice of Intent to Request Release of Funds
16. Distribution List
17. Certification of Continued Environmental Compliance
18. Notice regarding Runway Clearzones/Clearzones/Accident Potential Zones
19. Title 24, Part 58, Environmental Review Procedures
20. Title 24, Part 55, Flood Plain Management

(Date)

(Environmental Review Agency)

Re: (Grant Recipient)
(Project)

(Salutation)

(Grant Recipient) has received a Community Development Block Grant (CDBG) from the Oklahoma Department of Commerce (ODOC) for (project). Compliance with the National Environmental Protection Act of 1969 (NEPA) and the Environmental Review Procedures for CDBG, 254 CFR 58 is required. The environmental review must cover the following areas: Historic Properties, Floodplains, Wetlands, Noise, Manmade Hazards, Air Quality, Water Quality, Endangered Species, Farmlands protection, Wild and Scenic Rivers, Solid Waste, Fish and Wildlife, and Environmental Standards and tribal interests.

A detailed project description and a location map of the project are enclosed. We have determined that this project will have no significant impact on environmental impacts of concern to (name of agency). Please reply with your concurrence or non-concurrence of our determination.

Your immediate attention to this request will be appreciated. If you have any questions or need additional information, please contact (name of contact person) at (telephone number).

Sincerely,

(Name of Sender)
(Title of Sender)

Enclosures

Sample

ENVIRONMENTAL REVIEW CROSS-REFERENCE CHART

	1	2	3	4	5	6	7	8	9	10
	EPA	CC	F&W	NRCS	SHPO	ARCH	CORPS	FEMA	DEQ	OSRC
Historic Property										
Floodplain										
Wetlands										
Noise										
Air Quality										
Manmade Hazards										
Water Quality										
Solid Waste										
Endangered Species										
Farmland										
Wild and Scenic Rivers										
Environmental Standards										
1. Environmental Protection Agency										
2. Conservation Commission										
3. U.S. Fish & Wildlife										
4. Natural Resources Conservation Service										
5. State Historic Society										
6. Oklahoma Archaeological Society										
7. U.S. Army Corps of Engineers										
8. Federal Emergency Management Agency										
9. Oklahoma Department of Environmental Quality										
10. Oklahoma Scenic Rivers Commission										
11. Tribal Governments										

1	Environmental Protection Agency Region 6 1446 Ross Avenue Dallas, TX 75202-2733 214-655-7451 [Coordination not required unless significant impact(s) determined] (See Note A on the following page)
2	Conservation Commission 2800 North Lincoln Suite 160 Oklahoma City, OK 73105 405-521-2384 Fax # 405-521-6686 www.okcc.state.ok.us
3	U.S. Fish and Wildlife 9014 E. 21st Tulsa, OK 74129 918-581-7458 (See Note B on the following page.)
4	Natural Resources Conservation Service (Individual Counties)
5	State Historic Society State Historic Preservation Officer 2401 N. Laird Ave. Oklahoma City, OK 73105 405-521-6249 Fax # 405-522-0816

6	Oklahoma Archaeological Survey 111 East Chesapeake, Building 134 Norman, OK 73019-0575 405-325-7211 Fax # 405-325-7604
7	Department of the Army, Corps of Engineers Flood Plain , Attn: Joe Remondini Wetland , Attn: David Manning 1645 South 101 East Avenue Tulsa, OK 74129 918-669-7197 (See Note C on the following page.)
8	Federal Emergency Management Agency Region VI, Federal Center, 800 North Loop 288 Denton, TX 76201-3698 940-898-5399 (Contact only if Floodplain Mgr. Is not known)
9	Department of Environmental Quality Attn.: Margaret Graham 707 N. Robinson (P.O. Box 1677) Oklahoma City, OK 73102 (73101-1677) 405-702-9122 (1-800-869-1400) Fax # 405-702-9101
10	Oklahoma Scenic Rivers Commission P.O. Box 292 Tahlequah, OK 74465 918-456-3251 Fax # 918-456-8466 (See Note D on the following page)
11	Tribal Governments (Attachment 6)

ENVIRONMENTAL REVIEW CROSS-REFERENCE CHART

Note A Unless the project entails extraordinary circumstances which would require an analysis of whether a significant environmental impact is possible, EPA does not need to be contacted for the following project activities:

- Replacement or upgrade of existing water supply or wastewater infrastructure which does not expand capacity by more than 30%;
- Minor housing rehabilitation;
- Improvements to existing facilities to meet ADA or public safety requirements, e.g., fire, police, medical, etc.; or
- New housing involving four units or less.

Note B The U.S. Fish and Wildlife Service does not need to be contacted if the project exhibits the following characteristics:

- Rehabilitation of existing houses and similar building, including structures attached to or associated with those buildings, particularly where no new soil disturbance is anticipated, and any loans or mortgages affiliated with such rehabilitation.
- Acquisition of existing houses and other buildings, including structures attached to or associated with those buildings, and any loans or mortgages affiliated with such acquisition.
- Removal of dead or dying trees in urban, residential areas.
- Construction of safe rooms and storm shelters within existing structures or in previously developed urban areas and any loans or mortgages affiliated with such construction.
- Removal of trash and debris, provided such removal does not involve significant soil disturbance.
- Resurfacing of existing streets, runways, and taxiways.
- Administrative and similar activities that do not include any physical land disturbance or alteration.

Projects involving larger areas of clearing of native vegetation or ground disturbance are likely candidates for review. Grant Recipients are encouraged to obtain the publication, "Endangered and Threatened Species of Oklahoma", available from Mr. Jim Criswell, Oklahoma State University Extension Pesticide Coordinator, 127 Noble Research Center, Stillwater, OK 74078 (Phone 405-744-5531).

See Attachment 3, Fish and Wildlife Letter dated March 3, 2006.

Note C To determine whether you need to contact the U.S. Army Corps of Engineers, ask the following questions:

- Would the proposed action involve physical disturbance to lands or waters, regardless of property ownership? (Issue = Wetlands and water bodies)
- Would the proposed action raise the ground surface or involve construction above ground? (Issue = Floodplains)
- Would the proposed action occur on or directly impact lands owned by and operated by the U.S. Army Corps of Engineers? (Issue = Federal government property)

If the answer to any of the above is yes, contact the Corps of Engineers relevant to that issue.

Permits and Wetlands: Regulatory Branch, 918-669-7400

Floodplains: Floodplain Management Services, 918-669-7197

Government Lands: Internal Environmental Compliance, 918-669-7409

When requesting information regarding the impacts of a proposed project, provide the following:

- Site map with specific location of proposed action marked "USGS 7.5". (Quadrangle maps provide a good base map.);

- Legal description of project location in quarters, Section, Township, and Range (Lot/block numbers are not helpful.);
- Full description of the type of construction or action to be accomplished.

Note D

Before contacting the Oklahoma Department of Scenic Rivers Commission, determine in which county the project is located. Any construction or modification project outside of Adair, Cherokee, Delaware, Sequoyah, LeFlore or McCurtain Counties is exempt from environmental review by the Oklahoma Scenic Rivers Commission.

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Division of Ecological Services
222 South Houston, Suite A
Tulsa, Oklahoma 74127
918/581-7458 (FAX) 918/581-7467

March 3, 2006

D. Scott Myers
Department of Commerce
900 North Stiles Avenue
P.O. Box 26980
Oklahoma City, Oklahoma 73126-0980

Dear Mr. Myers:

Thank you for your February 9, 2006, request regarding renewal of a blanket clearance concerning Department of Commerce Community Development Block Grant projects located in throughout Oklahoma. As provided in our previous blanket clearance dated April 11, 2006 we are providing pertinent technical assistance that will enable you to perform more thorough evaluations and refer you to sources from which you may obtain relevant information. Numerous actions we review, such as those being proposed, have little or no impact on important fish and wildlife resources including wetlands, migratory birds, and federally-listed species. The U.S. Fish and Wildlife Service (Service) does not need to review actions for which there is no impact to important fish and wildlife resources. Consequently, due to the number of requests we receive and limited staff resources, we are no longer providing individual written responses for certain types of projects, as identified in this letter. In the interest of addressing your request and assisting you in complying with various environmental statutes, we offer the following assistance.

Wetlands

Information on the occurrence of wetlands within your project area may be obtained from the relevant National Wetlands Inventory (NWI) map. These NWI maps provide information on wetland type, location, and size and can assist you in analyzing the effect of your project. However, these maps may not necessarily provide information on wetlands regulated by the U.S. Army Corps of Engineers (Corps) under the Rivers and Harbors Act of 1899 and the Clean Water Act of 1977.

The NWI maps can be acquired from the appropriate State distribution center, one of six USGS Earth Science Information Center regional offices, or by calling the USGS national toll-free number: 1-800-USA-MAPS. Maps can also be viewed at the Library of Congress and the Federal Depository Library System and, where available, downloaded cost-free through the NWI Home Page on the Internet at <<http://www.nwi.fws.gov>>. These maps also are available for viewing in this office, by appointment.

Mr. Myers (Page 2)

The appropriate Cooperator-Run State Distribution Center offers paper composites of the NWI maps and establishes their own pricing structure, product types and ordering procedures. The Oklahoma Water Resources Board, 3800 N. Classen, Oklahoma City, 73118 (405 530-8800) is the current NWI distribution center for Oklahoma.

Floodplain Management

Floodplain information may be obtained from the Corps or is available for purchase from the Federal Emergency Management Agency (FEMA). Many commercial sources also offer FEMA floodplain maps. Information on floodplain areas will assist you in complying with Executive Order 11988 as part of your NEPA review. The Service cannot support projects that would have a significant adverse impact on floodplains.

Designated Wilderness Areas and Wildlife Preserves

With respect to officially designated wilderness areas or wildlife preserves, the Service manages a wide variety of "special designation areas" such as Wilderness Areas, Research Natural Areas, and Wetlands of International Significance. Currently, the Service manages some 76 wilderness areas encompassing roughly 20.7 million acres in 26 States. This total represents only about 20 percent of the National Wilderness Preservation System. Other agencies such as the U.S. Forest Service (USFS), Bureau of Land Management (BLM), National Park Service (NPS), and others may also manage officially designated wilderness areas or wildlife preserves. We suggest you also contact these agencies for relevant information. The general locations of the Service's National Wildlife Refuges and Fish Hatcheries are often indicated on many map products including topographical maps, county maps, and State Highway maps. Similarly, locations of State Parks and Wildlife Management Areas are often available on these types of maps. If more precise boundaries are needed, they may be obtained directly from the affected refuge. A list of these refuges and their contact information is provided on our regional website at <http://southwest.fws.gov/refuges/okrefuges.html>. Information on State Parks or Wildlife Management Areas should be obtained directly from the appropriate State agency.

Cultural Resources

The Service does not have expertise regarding or exercise jurisdiction over cultural resources unless those resources are located on lands owned or managed by the Service. Your principal point of contact should be your State Historic Preservation Office. The State Historic Preservation Office is generally responsible for the identification, evaluation, and protection of a State's prehistoric and historic cultural resources.

Wild and Scenic Rivers

The NPS exercises primary jurisdiction over the National Wild and Scenic Rivers system. However, the Service as well as the BLM and the USFS also are charged with protecting and managing the Nation's Wild and Scenic Rivers. A list, by State, of waters having this designation can be obtained at <<http://www.nps.gov/rivers/wildriverslist.html>>. Although there are currently no federally-designated wild or scenic rivers in Oklahoma, several such state designated rivers occur in Oklahoma. Your principal point of contact is the Oklahoma Scenic Rivers Commission. Relevant information can be obtained at <<http://www.scenicrivers.state.ok.us>>.

Federally-listed species

Section 7(a)(2) of the Endangered Species Act (ESA) requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any federally-listed threatened or endangered species or result in the destruction or adverse modification of designated critical habitat. In the event that a federal agency determines that its action may affect a listed threatened or endangered species or designated critical habitat, the agency is required to consult with the Service regarding the degree of impact, and measures available to avoid or minimize the adverse effects. When it is determined that a proposed project will not affect any listed species or designated critical habitat, no further consultation with the Service is necessary. The Federal action agency or their designated representative makes this determination. More detailed information on the section 7 consultation process is available in the Service's *Endangered Species Consultation Handbook*. This publication may be accessed at: <<http://endangered.fws.gov/consultations/s7hndbkls7hndbk.htm>>. Detailed information on Oklahoma's threatened and endangered species, including counties of occurrence, may be obtained from our website at <<http://ifw2es.fws.gov/Oklahoma>>.

National Environmental Policy Act

In accordance with the National Environmental Policy Act (NEPA), projects that are determined to have little or no potential to individually or cumulatively affect the human environment are not required to prepare an environmental assessment or an environmental impact statement. Typical projects may involve actions such as alteration and repair of existing buildings, acquisition of existing buildings, and very small-scale land modification.

The Service believes the following general types of actions would not likely have an adverse impact on any federally-listed species or federally-designated critical habitat in Oklahoma. Similarly, we do not believe they are likely to individually or cumulatively have a significant effect on wetland habitats or other important fish and wildlife resources.

Mr. Myers (Page 4)

- Rehabilitation of existing houses and similar buildings, including structures attached to or associated with those buildings, particularly where no new soil disturbance is anticipated, and any loans or mortgages affiliated with such rehabilitation.
- Acquisition of existing houses and other buildings, including structures attached to or associated with those buildings, and any loans or mortgages affiliated with such acquisition.
- Removal of dead or dying trees in urban, residential areas.
- Construction of safe rooms and storm shelters within existing structures or in previously developed urban areas and any loans or mortgages affiliated with such construction.
- Removal of trash and debris, provided such removal does not involve significant soil disturbance.
- Resurfacing of existing streets, curbs, sidewalks, parking lots, runways, and taxiways.
- Administrative and similar activities that do not include any physical land disturbance or alteration.

Activities similar to those outlined above also can proceed without the need to contact the Service for approval. **You may use this letter as a blanket approval from this office for the** above types of actions. While unusual circumstances could always occur which might negate such a blanket approval, our experience in reviewing similar requests over the past several years indicate that such unusual circumstances rarely occur for the above types of projects.

In addition, the construction or demolition of single-family residences within a previously developed urban area would be expected to have little or no environmental impact, provided they are not in the immediate vicinity of wetlands, habitat for federally-listed species, wildlife refuges or related significant fish and wildlife resources. Consequently, if such resources would not be impacted by your proposed construction or demolition project, you may proceed without first contacting the Service for approval. If you are unsure whether such resources may be impacted by your construction or demolition project, please contact us for further information.

Mr. Myers (Page 5)

In compliance with NEPA, the action entity or their representative should determine if certain fish and wildlife resources, such as wetlands or federally-listed species, could be impacted by the proposed action. Once you have determined whether any of these important fish and wildlife resources would be impacted by your action, you should then submit your project to us for evaluation. We do not need to evaluate projects for which no important fish and wildlife resource would be impacted. You may proceed with these projects without first contacting the Service for approval. Remember, the ultimate responsibility to ensure compliance with the ESA and NEPA rests with the Federal action agency and not the Service.

When submitting projects for our evaluation, please include all pertinent information related to the project, including information concerning the environmental resources proposed to be impacted. A list of information generally required by the Service to fully evaluate most requests may be obtained from our website at <<http://ifw2esfws.gov/Oklahoma/Sect7.htm>>. Incomplete requests likely will delay our evaluation. Normally, we require a minimum of 30 days to review and respond to requests. Complex projects may require additional review and response time.

Please ensure the Service is provided with a copy of all final decision documents associated with this project. Final decision documents include the issued permit or license, final environmental impact statement, record of decision, integrated natural resource management plan or similar document. These decision documents advise the Service of the final specifications of the proposed project and should indicate which of the measures recommended for the protection of fish and wildlife resources are to be implemented.

We appreciate the opportunity to review your proposed projects and provide comments. **The comments provided in this letter are valid until December 31, 2006.** After that date, you will need to contact us, in writing, to renew this blanket approval. If you have any questions, please contact Chris O'Meilia at 918-581-7458, ext. 245.

Sincerely,

Kenneth D. Frazier
Assistant Field Supervisor

COPY

Section 7 Consultations – Oklahoma

The Oklahoma Ecological Services Field Office reviews hundreds of projects each month for potential impacts to Federally-listed species in Oklahoma. To expedite the review process for your project, please supply the following information:

- A complete description of the project, including all associated actions, methods, equipment, and a timeline for beginning and completing the project.
- A legal description of the project site.
- Name of county where project is located.
- A photocopy of a U.S. Geological Survey quadrangle map (with quadrangle name) and a legend; the project location should be clearly highlighted.
- The project coordinates (latitude and longitude) formatted in decimal degree units.
- A datum used to collect the latitude and longitude [North American Datum 1927 (NAD27), North American Datum 1983 (NAD83), World Geodetic System 1984 (WGS84), etc.]
- A brief description of the habitat
- Clearly marked pipeline routes, appurtenance locations, etc.
- Clear distinction between existing and proposed construction.
- A description of the methods of construction used in wetlands, streams, etc. - such as directional boring, trenching, and blasting.
- Appropriate contact information - name, address, organization name, telephone number, FAX number, and email address.
- When possible on smaller projects, a panoramic set of photographs of the project site.

Additional information related to:

- Communication tower projects.
- American Burying beetle surveys (PDF Document 5.24MB) and Project Evaluation Form (PDF Document 26 KB).
- Recommended Best Management Practices for Proposed Activities in Karst Areas.

Please allow 30 days for the processing of your complete request, starting with the day this office receives it. All requests should be mailed to:

U.S. Fish and Wildlife Service
Oklahoma Ecological Services Field Office
222 S. Houston, Suite A
Tulsa, OK 74127

US Army Corps
of Engineers
Tulsa District

INFORMATION SHEET

CORPS OF ENGINEERS REGULATORY PROGRAM AUTHORITIES

Section 10 of the Rivers and Harbors Act (RHA) of 1899

The U.S. Army Corps of Engineers is directed by Congress through Section 10 (33 USC 403) to regulate all work or structures in, over, under, or otherwise affecting the course, condition, or capacity of navigable waters of the United States. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404 of the Clean Water Act (Federal Water Pollution Control Act of 1972)

The Corps is directed by Congress through Section 404 (33 USC 1344) to regulate discharges of dredged or fill material into navigable water, lakes, rivers, streams, mudflats, sandflats, wetlands, playa lakes, and other natural water bodies. The intent of this law is to protect these waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical, and biological integrity. Activities requiring a permit under Section 404 include any placement of fill material, excavation, ditching, channelization, or heavy mechanized landclearing within a wetland or other waterbody subject to the jurisdiction of Section 404.

CORPS OF ENGINEERS FLOOD PLAIN AUTHORITY

Water Resources Development Act of 1990

As authorized by Section 321 of the Water Resources Development Act of 1990 (Public Law 101-640), the Corps of Engineers Flood Plain Management Services office can provide technical assistance on flood plain matters to state agencies, local governments, and Indian tribes without charge. Flood plain assistance is offered to Federal agencies and private concerns on a cost-recovery basis.

ASSISTANCE AND INFORMATION REQUESTS

To determine whether you need to contact the U.S. Army Corps of Engineers, ask the following questions:

- a. Would the proposed action involve physical disturbance to lands or waters, regardless of property ownership? (Issue = Wetlands and Waterbodies)
- b. Would the proposed action raise the ground surface or involve construction above ground? (Issue = Flood Plains)
- c. Would the proposed action occur on or directly impact lands owned and operated by the U.S. Army Corps of Engineers? (Issue = Federal government property)

If the answer to any of the above questions is yes, contact the Corps of Engineers relevant to that issue.

When requesting information from the Corps regarding the impacts of a proposed project upon wetlands, flood plains, or government property, please provide the following information so that your request may be answered in a timely manner.

1. Site map with specific location of proposed action marked (USGS 7.5" Quadrangle Maps provide a good base map).
2. Legal description of project location in quarters, Section, Township, and Range (lot/block numbers are not helpful).
3. Full description of the type of construction or action to be accomplished in the project.

CONTACT

Permits and Wetlands: Mr. David A. Manning, Chief, Regulatory Branch, (918) 669-7400.

Flood Plains: Mr. Joe Redmondini, Flood Plain Management Services Coordinator, (918) 669-7197

Government Land: Mr. Loren Mason, PhD, District Internal Environmental Compliance Manager, (918) 669-7409.

Mailing Address: Corps of Engineers, P.O. Box 61, Tulsa, OK 74121-0061

Street Location: 1645 S. 101st E. Ave, Tulsa, OK 74128

ED FITE
ADMINISTRATOR



BRAD HENRY
GOVERNOR

STATE OF OKLAHOMA
OKLAHOMA SCENIC RIVERS COMMISSION

March 16, 2005

Mr. D. Scott Myers
Community Infrastructure Team
Office of Community Development
Oklahoma Department of Commerce
P. O. Box 26980
Oklahoma City, OK 73126-0980

Re: Blanket Clearance Letter for Community Development Block Grant Projects

Dear Mr. Myers:

This letter is provided to inform you that any construction or modification project your agency has outside of Adair, Cherokee, Delaware, Sequoyah, LeFlore or McCurtain counties would be exempt from environmental review by our office. All designated Oklahoma Scenic Rivers are within the six above-mentioned counties and are the only counties requiring environmental review.

Of course, we would certainly be happy to continue environmental review of projects outside this six-county area, if you desire. However, only Adair, Cherokee, Delaware, Sequoyah, LeFlore or McCurtain Counties require such. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Fite, III".

Ed Fite, III
Administrator

OKLAHOMA INDIAN AFFAIRS COMMISSION TRIBAL GOVERNMENTS, OFFICIALS AND LOCATIONS

TRIBAL GOVERNMENT	OFFICIAL	ADDRESS	PHONE NO.	FAX NO.
ABSENTEE SHAWNEE TRIBE	Kenneth Blanchard, Gov.	2025 S. Gordon Cooper Dr. Shawnee, OK 74801	405 275-4030	405 275-5637
ALABAMA QUASSARTE TRIBAL TOWN	Tarpie Yargee, Chief	P.O. Box 187 Wetumka, OK 74863	405 452-3987	405 452-3968
APACHE TRIBE	Alonzo Chalepah, Chairman	P.O. Box 1220 Anadarko, OK 73005	405 247-9493	405 247-2686
CADDO TRIBE	LaRue Parker, Chairperson	P.O. Box 487 Binger, OK 73009	405 656-2344	405 656-2892
CHEROKEE NATION	Chad Smith, Principal Chf.	P.O. Box 948 Tahlequah, OK 74465	918 456-0671	918 458-5580 800 256-0671
CHEYENNE-ARAPAHO TRIBES	William Blind, Acting Chairman	P.O. Box 38 Concho, OK 73022	405 262-0345	405 262-6872
CHICKASAW NATION	Bill Anoatubby, Governor	P.O. Box 1548 Ada, OK 74821	580 436-2603	580 436-4287
CHOCTAW NATION	Greg Pyle, Principal Chief	P.O. Drawer 1210 Durant, OK 74702	580 924-8280	580 924-1150
CITIZEN POTTAWATOMIE NATION	John A. Barrett, Jr., Chmn.	1601 S. Gordon Cooper Dr. Shawnee, OK 74801	405 275-3121	405 275-0198
COMANCHE NATION	Wallace Coffey, Chairman	P.O. Box 908 Lawton, OK 73502	580 492-3751	580 492-3796
DELAWARE NATION	Bruce Gonzales, President	P.O. Box 825 Anadarko, OK 73005	405 247-2448	405 247-9393
DELAWARE TRIBE OF INDIANS	Joe Brooks, Chief	220 NW Virginia Avenue Bartlesville, OK 74003	918 336-5272	918 336-5513
EASTERN SHAWNEE TRIBE	Charles Enyart, Chief	P.O. Box 350 Seneca, MO 64865	918 666-2435	918 666-2186
FORT SILL APACHE TRIBE	Jeffrey Houser, Chairman	Route 2, Box 121 Apache, OK 73006	580 588-2298	580 588-3133
IOWA TRIBE OF OKLAHOMA	Phoebe O'Dell, Chairman	RR 1, Box 721 Perkins, OK 74059	405 547-2402	405 547-5294
KAW NATION OF OKLAHOMA	Guy Munroe, Chairman	P.O. Box 50 Kaw City, OK 74641	580 269-2552	580 269-2301
KIALEGEE TRIBAL TOWN	Mekko Evelyn Bucktrot	P.O. Box 332 Wetumka, OK 74883	405 452-3262	405 452-3413
KICKAPOO TRIBE OF OKLAHOMA	Tony Salazar, Chairman	P.O. Box 70 McLoud, OK 74851	405 964-7053	405 964-2745
KIOWA TRIBE	Billy Evans Horse Chairman	P.O. Box 369 Carnegie, OK 73015	580 654-2300	580 654-2188
MIAMI NATION	Floyd E. Leonard, Chief	P.O. Box 1326 Miami, OK 74355	918 542-1445	918 542-7260

MODOC TRIBE	Bill Follis, Chief	515 "G" SE Miami, OK 74354-8224	918 542-1190	918 542-5415
MUSCOGEE (CREEK) NATION	A. D. Ellis, Principal Chief	P.O. Box 580 Okmulgee, OK 74447	918 756-8700	918 758-1434
OSAGE NATION	Jim Gray, Principal Chief	813 Grandview Pawhuska, OK 74056	918 287-5432	918 287-2257
OTOE-MISSOURIA TRIBE	James Grant, Chairman	8151 Highway 177 Red Rock, OK 74651	580 723-4466	580 723-4273
OTTAWA TRIBE	Charles Todd, Chief	P.O. Box 110 Miami, OK 74355	918 540-1536	918 542-3214
PAWNEE NATION OF OK	George E. Howell, President	P.O. Box 470 Pawnee, OK 74058	918 762-3621	918 762-6446
PEORIA TRIBE OF INDIANS OF OK	John P. Froman, Chief	P.O. Box 1527 Miami, OK 74355	918 540-2535	918 540-2538
PONCA NATION	Dwight Head, Chairman	20 White Eagle Drive Ponca City, OK 74601	580 762-8104	580 762-2743
QUAPAW TRIBE OF OKLAHOMA	John Berrey, Chairman	P.O. Box 765 Quapaw, OK 74363	918 542-1853	918 542-4694
SAC & FOX NATION	Kay Rhoads, Principal Chief	Route 2, Box 246 Stroud, OK 74079	918 968-3526	918 968-1142
SEMINOLE NATION	Kenneth Chambers, Principal Chief	P.O. Box 1498 Wewoka, OK 74884	405 257-6287	405 257-6205
SENECA-CAYUGA TRIBE OF OK	Leroy Howard, Chief	P.O. Box 1283 Miami, OK 74355	918 542-6609	918 542-3684
SHAWNEE TRIBE	Ron Sparkman, Chairman	P.O. Box 189 Miami, OK 74355	918 542-2441	918 542-2922
THLOPTHLOCCO TRIBAL TOWN	Mekko Louis McGertt, Chairman	P.O. Box 188 Okemah, OK 74859-0188	918 623-2620	918 623-1810
TONKAWA TRIBE	Carl Martin, President	P.O. Box 70 Tonkawa, OK 74653	580 628-2561	580 628-3375
UNITED KEETOOWAH BAND OF CHEROKEES	Dallas Proctor, Chief	P.O. Box 746 Park Hill, OK 74465	918 431-1818	918 431-1873
WICHITA & AFFILIATED TRIBES	Gary McAdams, President	P.O. Box 729 Anadarko, OK 73005	405 247-2425	405 247-2430
WYANDOTTE NATION	Leaford Bearskin, Chief	P.O. Box 250 Wyandotte, OK 74370	918 678-2297	918 678-2944
YUCHI (EUCHEE) TRIBE OF INDIANS	Andrew Skeeter, Chairman	P.O. Box 10 Sapulpa, OK 74067	918 224-3065	918 224-3140

**STATUTORY CHECKLIST
24 CFR §58.5 STATUTES, EXECUTIVE ORDERS & REGULATIONS**

Project Name: _____

Project Description (Include purpose, need, and all actions which are either geographically or functionally related):

Location: _____

This project is determined to be categorically excluded according to: [Cite Section(s)] _____

Compliance Factors:
Statutes, Executive Orders, and
Regulations listed at 24 CFR §58.5

N/A Consultation,
Review,
Permits
Required Consistency
Determination Condition,
Mitigation

***Compliance
Documentation***

Appendix III

Historic Preservation [36 CFR Part 800]					
Floodplain Management [24 CFR 55, Executive Order 11988]					
Wetland Protection [Executive Order 11990]					
Coastal Zone Management Coastal Zone Management Act [Sections 307(c), (d)]					
Sole Source Aquifers Safe Drinking Water Act (42 USC 201, 300(f) & 21 U.S.C. 349) [40 CFR 149]					
Fish and Wildlife Endangered Species Act [50 CFR 402]					
Wild and Scenic Rivers Wild and Scenic Rivers Act [Sections 7(b), and (c)]					
Clean Air Clean Air Act [Sections 176(c), (d),					

Compliance Factors:
 Statutes, Executive Orders, and
 Regulations listed at 24 CFR §58.5

N/A Consultation, Review, Permits Required
 Consistency Determination
 Condition, Mitigation

**Compliance
 Documentation**

Appendix III

and 40 CFR 6, 51, 93]					
Farmland Protection Farmland Protection Policy Act [7 CFR 658]					
Environmental Justice [Executive Order 12898]					
Water Quality					
State/Local Statutes					
HUD ENVIRONMENTAL STANDARDS					
Noise Abatement and Control [24 CFR 51B]					
Explosive and Flammable Operations [24 CFR 51C]					
Toxic Chemicals and Radioactive Materials [24 CFR 58.5(i)]					
Airport Clear Zones and Accident Potential Zones [24 CFR 51D]					
Solid Waste Disposal					

PREPARER SIGNATURE: _____

DATE: _____

PREPARER NAME: _____

RESPONSIBLE ENTITY AGENCY

OFFICIAL SIGNATURE: _____ DATE: _____

NAME, TITLE: _____

Compliance Documentation Checklist
24 CFR 58.6

PROJECT NAME / DESCRIPTION: _____

Level of Environmental Review Determination: _____

Select One: (1) Exempt per 24 CFR 58.34, or (2) Categorically Excluded not subject to statutes per § 58.35(b), or (3) Categorically Excluded subject to statutes per § 58.35(a), or (4) Environmental Assessment per § 58.36, or (5) EIS per 40 CFR 1500

STATUTES and REGULATIONS listed at 24 CFR 58.6

FLOOD DISASTER PROTECTION ACT

1. Does the project involve acquisition, construction or rehabilitation of structures located in a FEMA-identified Special Flood Hazard?

[] No; Cite Source Document:

[] Yes; Source Document: _____

2. Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

[] Yes (Flood Insurance under the National Flood Insurance Program must be obtained and maintained for the economic life of the project, in the amount of the total project cost. A copy of the flood insurance policy declaration must be kept on file). (Appendix I)

[] No (Federal assistance may not be used in the Special Flood Hazards Area).

COASTAL BARRIERS RESOURCES ACT

1. Is the project located in a coastal barrier resource area?

[] No; Cite Source Documentation:

(This element is completed).

[] Yes - Federal assistance may not be used in such an area.

AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES DISCLOSURES

1. Does the project involve the sale or acquisition of existing property within a Civil Airport's Runway Clear Zone or a Military Installation's Clear Zone?

[] No; Source Documentation:

Project complies with 24 CFR 51.303(a)(3).

[] Yes; Disclosure statement must be provided to buyer and a copy of the signed disclosure must be maintained in this Environmental Review Record (Appendix II)

Form Prepared By: (Name, title, please print)

Signature: _____

Date: _____

CHECKLISTS

Compliance Documentation Checklist (24 CFR 58.6)

Statutory Checklist (24 CFR §58.5 Statutes, Executive Orders & Regulations)

Environmental Assessment Checklist

The Statutory Checklist covers statutes, regulations, and Executive Orders, other than NEPA to which every project subject to 24 CFR 58 review must respond, unless it is exempt or categorically excluded under 24 CFR 58.35(b). A listing of activities that a project can include to be exempt from the environmental requirements of NEPA and other related authorities, such as administrative actions, planning and environmental studies is found in 24 CFR 58.34.

If the project is categorically excluded from NEPA procedures under 24 CFR 58.35(a), this is the only checklist that applies. If the project is not exempt or categorically excluded, then the Statutory Checklist should be completed in conjunction with the Environmental Assessment Checklist. The Environmental Assessment Checklist helps to organize an early consideration of numerous environmental issues. Together they become companion documents, with the Environmental Assessment Checklist recording anticipated impacts and the Statutory Checklist documenting compliance with laws and regulations.

Statutory Checklist

This checklist covers Federal laws, regulations, and Executive Orders (see 24 CFR 58.5 and 58.6). In some cases, compliance means that the grant recipients must follow detailed procedures required by the particular law, regulations, or Executive Order.

Findings presented in the Statutory Checklist include:

Not Applicable to this Project – Check here, only when it is known that the project is located in an area where the environmental condition or resource is nonexistent (e.g., project is not located near a coastal zone or near a wild & scenic river).

Consultation/Review Procedures Required – This determination requires that there has been coordination with the appropriate individuals at Federal or federally authorized agencies and those interactions documented through attached notes and correspondence. (e.g., completion of the 106 procedure of the Advisory Council on Historic Preservation).

Determination of Consistency, Approvals and Permits Obtained – (e.g., consistency with state coastal zone management plan). In areas requiring consistency or where projects required Federal permits, licenses of other forms of approval, such requirements should be recorded here as having been met or required procedures followed. Any condition, temporary permit or partial approval is recorded in the next column to a document recorded in the ERR.

Conditions or Mitigation Actions Required – These should be listed and attached including any correspondence from reviewing agencies and a designation of responsibility for implementation.

For each Checklist category there may be more than one applicable law or regulation. For example, in the case of water it will be necessary to indicate that the project is in compliance with the Safe Drinking Water Act and that the various water acts and regulations have been considered. Check all applicable laws or regulations.

In addition, there is space provided on the Checklist form to document compliance with the applicable law, regulation, or Executive Order and to indicate sources of information and reference that support the finding. Notes, correspondence and documents (e.g., approval letters, permits) can also be attached to the Checklist.

It is recommended that state or local environmental laws or regulations be added to the Statutory Checklist as applicable to a particular community. Space has been provided to do so on this form. In addition, new federal statutes and regulations should be added when issued.

Grant recipients are reminded that they must certify that they have complied with the obligations and requirements of all other applicable laws and authorities.

Statutory Checklist

A. Are all the project's activities exempt under 58.34(a)(1)-(11) and/or Categorical Excluded (CE) from NEPA procedures under 58.35(b)? Yes No.

If "Yes" attach supporting documentation including citations to applicable subsection of 58.34(a)(1)-(11) or 58.35(b) and complete Other Requirements Checklist (58.6). Sign and date certification and keep in the project ERR. Remaining portions of the Checklist need not be completed. Do not initiate RROF procedures. Funds may be obligated for this project.

If "No" proceed to question B.

B. Perform all relevant compliance requirement reviews of the Statutory Checklist and complete all columns as appropriate, sign and date form.

1. Is this a 58.35(a) CE Project? Yes No.

If "Yes", document by specific reference(s) to Part 58.35(a) how this project qualifies as a 58.35(a) CE project and respond to question B2.

If "No" then go to question C.

2. Does the project trigger a 58.5 Compliance Threshold? Yes No.

If "Yes" then initiate RROF procedures, beginning with publication/posting of RROF Notice.

If "No"; project may be reclassified as exempt under 58.34(a)(12); do not initiate RROF procedures, and funds may be obligated after signing and dating this form and completing Compliance Documentation Checklist.

C. If No to B (1), then this project requires an Environmental Assessment (EA)

Fill out the Environmental Assessment Checklist and document all determinations as necessary and appropriate. Sign and date.

Even if an EA has already been completed, 24 CFR Part 58, Subpart H procedures, beginning with publication/posting of FONSI/RROF Notice, cannot be initiated until all 58.5 and 58.6 determinations and compliance processes have been completed. Some CE projects may require an EA or an EIS because of their environmental effect.

Compliance Thresholds

Historic Properties (including archeology):

A) The RE and SHPO agree that there are No Historic Properties Affected per 36 CFR 800.4, no adverse effects on historic properties per §800.5(b), or SHPO has not objected within 30 days to such fully documented determinations.

B) The proposal has an adverse effect on historic properties. Consult with SHPO et al., per §800.5 et seq., to resolve or mitigate adverse effects.

* The National Historic Preservation Act of 1966 (16 U.S.C. 470f *et seq.*): as amended: particularly section 106 (16 U.S.C. 470f): except as provided in § 58.17 of this part for section 17 projects.

* Executive Order 11593. Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 *et seq.*): particularly section 2(c).

* The Reservoir Salvage Act of 1960 (16 U.S.C. 469 *et seq.*) particularly section 3 (16 U.S.C. 469a-1): as amended

* The Archeological Historic Preservation Act of 1974.

Floodplain Management:

A) The project does not involve property acquisition, management, construction or improvements within (or will impact) a 100 year floodplain (Zones A or V) identified by FEMA maps, and does not involve a "critical action" (e.g., emergency facilities, facility for mobility impaired persons, etc.) within a 500 year floodplain (Zone B). If FEMA has not published flood maps, the RE must make a finding based on best available data, e.g. from the City/County Engineer or local Flood Control Agency.

B) Complete the 8-step decision making process according to 24 CFR Part 55.20 to document that there are no practicable alternatives to the proposal and to mitigate effects of the project in a floodplain.

* Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*) as amended: particularly sections 102(a) (42 U.S.C. 4012a (a) and 4106 (a).

* Executive Order 11988. Floodplain Management, May 24, 1977 (42 FR28931 *et seq.*): particularly section 2(a).

Statutory Checklist

COMPLIANCE THRESHOLDS (continued)

Wetlands Protection:

A) The project does not involve new construction within or adjacent (or will affect) to wetlands, marshes, wet meadows, mud flats or natural ponds per field observation and maps issued by the USDI Fish & Wildlife Service or U.S. Corps of Engineers.

B) Complete the 8-step decision making process in 24 CFR 55.20 to document there are no practicable alternatives and to mitigate effects of the project on wetlands. Such action also requires obtaining a permit from the U.S. Corps of Engineers under Section 404 of the Clean Water Act.

* Executive Order 11990. Protection of Wetlands. May 24, 1977 (42 FR 28951 *et seq.*): particularly section 2 and 5.

Coastal Zone Management:

A) The project does not involve the placement, erection or removal of materials, nor an increase in the intensity of use in the Coastal Zone (CZ) per certified local coastal plan, California Coastal Commission, SF BCDC, etc.

B) Secure concurrence from the CZ Commission or delegated local planning commission with your determination of consistency with the applicable CZ Plan, or obtain coastal zone permit.

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

* The Coastal Barrier Resources Act of 1982 (16 U.S.C. 3501 *et seq.* particularly sections 5 and 6 (16 U.S.C. 3504 and 3505).

Sole Source Aquifers (Safe Drinking Water Act):

A) The project is not located within a U.S. EPA-designated sole source aquifer watershed area per EPA Ground Water Office, **OR** the project need not be referred to EPA for evaluation according to the HUD-EPA (Region IX) Sole Source Aquifer Memorandum of Understanding of 1990.

B) Consult with the Water Management Division of EPA to design mitigation measures to avoid contaminating the aquifer and implement appropriate mitigation measures.

* The Safe Drinking Water Act of 1974 (42 U.S.C. 201.300 (f) *et seq.* and 21 U.S.C. 349) as amended: particularly section 1424(e) (42 U.S.C.300b-303(e)).

Farmland Protection:

A) The project site does not include prime or unique farmland, or other farmland of statewide or local importance as identified by the U.S. Department of Agriculture, Natural Resources Conservation Service NRCS (formerly the Soil Conservation Service, **OR** the project site includes prime or unique farmland, but is located in an area committed to urban uses;

B) Request evaluation of land type from the NRCS using Form AD-1006, and consider the resulting rating in deciding whether to approve the proposal, as well as mitigation measures (including measures to prevent adverse effects on adjacent farmlands).

* Farmland Protection Policy Act of 1961 (7 U.S.C. 4201 *et seq.*) particularly section 1540(b) and 1541 (7U.S.C. 4201 and 4242).

Endangered Species:

A) The RE determines that the proposal will have “no effect” **or** “is not likely to adversely affect” any federally protected (listed or proposed) Threatened or Endangered Species (i.e., plants or animals, fish, or invertebrates), nor adversely modify critical habitats. This finding is to be based on contact made with the U.S. Fish and Wildlife Service and/or with State Department of Fish and Game, or by special study completed by a professional biologist or botanist and approved by the above agency. Only a determination of “no effect” does not require being sent to U.S. FWS for concurrence.

B) Consult with the U.S. FWS or with the National Marine Fisheries Service, in accordance with procedural regulations contained in 50 CFR Part 402. Formal consultation with FWS or NMFS is always required for federally funded “major construction” activities and anytime a “likely to adversely affect” determination is made.

* The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.* as amended: particularly Section 7 (b) and (c) (16 U.S.C. 1278 (b) and (c)).

Wild and Scenic Rivers:

A) The project is not located within one mile of a listed Wild and Scenic River, **OR** the project will have no effects on the natural, free flowing or scenic qualities of a river in the National Wild and Scenic Rivers system.

B) Consult with the U.S. Department of Interior, National Park Service for impact resolution and mitigation.

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

Air Quality:

A) The project is located within an “attainment” area, **OR**, if within a “non-attainment” area, conforms with the EPA-approved State Implementation Plan (SIP), per contact with the State Air Quality Management District or Board, **AND** the project requires no individual NESHAP permit or notification;

B) Negotiate suitable mitigation measures with the Air Quality Management District or Board, obtain necessary permits, issue required notices. (For example, 40 CFR §61.145 requires 10-day prior notification to the Air Quality District Administrator whenever either 260 linear ft., 160 sq.ft., or 35 cubic ft., of asbestos containing material is to be disturbed).

* The Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended: particularly section 176 (c) and (d) (42 U.S.C. 7308 (c) and (d))

Noise Abatement and Control:

A) The project does not involve development of noise sensitive uses, **OR** the project is not within 1,000 feet of a major or arterial roadway, 3,000 feet of a railroad, or 15 miles from a major (listed) airport **OR** ambient noise level is documented to be 65 LDN (CNEL) or less, based upon the HUD Noise Assessment Guidelines (NAG) for calculating noise levels and Airport Noise Contour map;

B) Apply the noise standard, per 24 CFR §51.101, to the decision whether to approve the proposal (see §51.104), and implement noise attenuation measures (NAG page 39-40) as applicable.

* Environmental Criteria and Standards (24 CFR Part 51) and Site Contamination.

Explosive or Flammable Operations:

A) The project is located at an Acceptable Separation Distance (ASD) from any above-ground explosive or flammable fuels or chemicals containers according to “Siting of HUD-Assisted Projects Near Hazardous Facilities” (Appendices F & G, pp. 51-52), **OR** the project will expose neither people nor buildings to such hazards;

B) mitigate the blast overpressure or thermal radiation hazard with the construction of a barrier of adequate size and strength to protect the project (per 24 CFR 51.205).

* Environmental Criteria and Standards (24 CFR Part 51) and Site Contamination.

Airport Clear Zones and Accident Potential Zones:

A) The project is not within an FAA-designated civilian airport Runway Clear Zone (RCZ) -or Runway Protection Zone, or within a military airfield Clear Zone (CZ) or Accident Potential Zone (APZ) -Approach Protection Zone, based upon information from the airport or military airfield administrator identifying the boundaries of such zones, **OR** the project involves only minor rehabilitation, **OR** the project involves only the sale or purchase of an existing property in the RCZ or CZ;

B) It is HUD policy not to provide any development assistance, subsidy or insurance in RCZs or CZs unless the project will not be frequently used or occupied by people and the airport operator provides written assurances that there are no plans to purchase the project site.

* Environmental Criteria and Standards (24 CFR Part 51) and Site Contamination.

Toxic Chemicals and Radioactive Materials:

A) The subject and adjacent properties are free of hazardous materials, contamination, toxic chemicals, gasses and radioactive substances which could affect the health or safety of occupants or conflict with the intended use of the subject property. Particular attention should be given to nearby dumps, landfills, industrial sites and other operations with hazardous wastes.

B) Mitigate the adverse environmental condition by removing, stabilizing or encapsulating the toxic substances in accordance with the requirements of the appropriate Federal, state or local oversight agency;

OR reject the proposal.

* Environmental Criteria and Standards (24 CFR Part 51) and Site Contamination.

Environmental Justice:

A) The proposed site is suitable for its proposed use and will NOT be adversely impacted by adverse environmental conditions;

B) Site suitability is a concern; the proposal is adversely affected by environmental conditions impacting low income or minority populations. Avoid such impacts or mitigate them to the extent practicable. Address and mitigate the disproportional human health or environmental effects adversely affecting the low income or minority populations **OR** reject the proposal.

* Executive Order 12898 Federal Actions to address environmental justice in minority populations and low-income populations.

STATUTORY CHECKLIST
Section B.

LISTING OF APPLICABLE STATUTES AND REGULATIONS BY AREA OF COMPLIANCE

Historic Properties

National Historic Preservation Act of 1966, Section 106 (16 U.S.C. 470, particularly section 470f)

Reservoir Salvage Act of 1960, as amended by the Preservation of Historic and Archaeological Data Act of 1974 (16 U.S.C. 469, particularly section 469a-1)

Executive Order 11593, Protection and Enhancement of the Cultural Environment

Floodplain

Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.) and Implementing Regulations

Title 24, Chapter X, Subchapter B, National Flood Insurance Program (44 CFR 59-79)

Executive Order 11988 and HUD Procedure for Floodplain Management (24 CFR 55) (When Issued)

Executive Order 11990

Wetlands

Executive Order 11990, Protection of Wetlands and Applicable State Legislation or Regulations. Also 24 CFR 55 (When Issued)

Noise

HUD Regulations (24 CFR 51, Subpart B)

Air Quality*

Clean Air Act of 1970, as amended (42 U.S.C. 740-764) EPA Regulation 40 CFR 50 and Partially 40 CFR 51, 52, 61.

Manmade Hazards

HUD Regulations (24 CFR 51, Subparts C and D) HUD Notice 79-33, Indefinite Notice, September 10, 1979.

Water Quality*

Federal Water Pollution Control Act, as Amended (33 U.S.C. 1251-1376)

Safe Drinking Water Act of 1974 (42 U.S.C. 300f - 300j-10), as amended

U.S. Environmental Protection Agency Implementing Regulations 40 CFR 100-149

Solid Waste Disposal*

Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6987)

U.S. Environmental Protection Agency Implementing Regulations 40 CFR 240-265

Endangered Species

Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543)

Farmlands Protection

Farmlands Protection Policy Act of 1981 (U.S.C. 4201, et seq.) Implementing Regulations 7 CFR 658

Wild and Scenic Rivers

Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271, et seq.)

Environmental Justice

Executive Order 12898

* Environmental laws that have permit, license or other forms of compliance usually implemented through a State agency.

Environmental Assessment Checklist

Project Name and Identification No. _____

Impact Categories	IMPACT ANTICIPATED			REQUIRES MITIGATION OR MODIFICATION	NOTE CONDITIONS AND/OR SOURCE DOCUMENTATION THAT SUPPORTS FINDING REFERENCE NOTES
	NONE	MINOR	MAJOR		
Land Development					
Conformance with Comprehensive Plans and Zoning					
Compatibility and Urban Impact					
Slope					
Erosion					
Soil Suitability					
Hazards and Nuisances Including Site Safety					
Energy Consumption					
Noise					
Effects of Ambient Noise on Project and Contribution to Community Noise Levels					
Air Quality					
Effects of Ambient Air Quality on Project and Contribution to Community Pollution Levels					
Environmental Design, Historic Values and Urban Impact					
Visual Quality Coherence, Diversity, Compatible Use and Scale					
Historic, Cultural and Archaeological Resources					

Environmental Assessment Checklist

Impact Categories	IMPACT ANTICIPATED			REQUIRES MITIGATION OR MODIFICATION	NOTE CONDITIONS AND/OR SOURCE DOCUMENTATION THAT SUPPORTS FINDING REFERENCE NOTES
	NONE	MINOR	MAJOR		
Socioeconomic					
Demographic Character Changes					
Displacement					
Employment and Income Patterns					
Community Facilities and Services.					
Educational Facilities					
Commercial Facilities					
Health Care					
Social Services					
Solid Waste					
Waste Water					
Storm Water					
Water Supply					
Public Safety	Police				
	Fire				
	Emergency Medical				
Open Space and Recreation	Open Space				
	Recreation				
	Cultural Facilities				
Transportation					

Environmental Assessment Checklist

Impact Categories	IMPACT ANTICIPATED			REQUIRES MITIGATION OR MODIFICATION	NOTE CONDITIONS AND/OR SOURCE DOCUMENTATION THAT SUPPORTS FINDING REFERENCE NOTES
	NONE	MINOR	MAJOR		
Natural Features					
Water Resources					
Surface Water					
Floodplains					
Wetlands					
Coastal Zone					
Unique Natural Features and Agricultural Lands					
Vegetation and Wildlife					

Summary of Findings and Conclusions

Summary of Environmental Conditions

Environmental Assessment Checklist

Alternatives

Determine and describe possible alternatives to the proposed project, including the 'no action' alternative. The feasibility of each alternative and the reasons why each should be adopted or rejected should be discussed sufficiently to indicate that an adequate consideration of each alternative has occurred.

Summary of Existing Conditions and Future Trends

Additional Studies Performed (Attach Study or Summary)

Mitigation Measures Needed:

**Environmental Assessment Checklist
Finding of No Significant Impact**

1. Is project in compliance with applicable laws and regulations? Yes No
2. Is an EIS required? Yes No
3. Finding of No Significant Impact (FONSI) can be made. Project will not significantly affect the quality of the human environment. Yes No

Prepared By: _____

Title: _____

Date: _____

Reviewed By: _____

Title: _____

Date: _____

CHECKLISTS

Environmental Assessment Checklist

For all CDBG projects subject to NEPA procedures, the Environmental Assessment Checklist is a valuable step in that analysis. Completion of this Checklist constitutes a quick, yet well documented review of environmental issues surrounding a specific project or group of projects and a decision as to how to proceed in further analysis.

Purpose

The major purpose of the Checklist is to allow a more detailed analysis to focus on those categories of potential significant impact. This can avoid a lot of wasted energy in data collection, analysis and report writing for these categories which have no potential for significant impacts and require no mitigation efforts or ones for which the analyst has already done the work on previous projects. Assuming there is a file of solid environmental information about the community, the Checklist is intended to be filled out in a few hours – no more than a day even for projects with many potential effects. More time may be needed later for thorough analysis where the Checklist review indicates either potential impacts or where insufficient data is readily available. Judgments at this stage should be based upon available data with perhaps the addition of a few well placed phone calls or a site visit if the area is unfamiliar to the analyst.

Organization

The Environmental Assessment Checklist covers seven major impact areas and 36 specific impact categories within those seven areas. The seven general areas represent categories with related and overlapping issues, shared data sources and similar requirements as to background for analysis. The presentation of a detailed list of 36 impact categories is provided to jog the memory of the reviewer, raise questions and assure that all potential impacts are considered. Note that some impact categories are also included on the Statutory Checklist. A project may be in compliance with the provisions of a specialized law, regulation or Executive Order and still have an impact. For example, a site for a residential use may not be subjected to unacceptable noise levels and, therefore, be in compliance. If, however, the site will be used for an activity which will produce high levels of noise (short or long term), this may have an impact on the surrounding area and should be considered when completing the Environmental Assessment Checklist. If, however, it is determined that the subject has been covered adequately on the Statutory Checklist, this should be noted in the space provided for documentation, and no further analysis is required for that environmental factor.

How to Complete - For each impact category the local environmental analyst is asked to check the appropriate box relating to potential impacts, needed study, and mitigation or modification. In many cases more than one box could be or should be checked. In each case a source should be cited which may be a report, phone contact, previous ERR, field observation, or general knowledge of the area. The determinations to be made for each impact category include:

No Impact Anticipated – A checkmark here indicates no more analysis or mitigation effort is needed. Clear and specific documentation is essential, referencing the factual conditions or specific circumstances that support the finding. Mere conclusions are not sufficient.

Minor Impact Anticipated – Beneficial or adverse impacts should be indicated here. Notations supporting that finding can be attached. A more detailed analysis is not necessary. In some cases, this quick review may be all that is needed to evaluate impacts. They may be so small as to require no more study; they may be construction effects only for which standard mitigation procedures have been established; or they may have been analyzed for previous assessments in a fully comparable situation.

Major Impact Anticipated – Again, major impacts may be beneficial or adverse. Both need to be considered. Documentation here is particularly important and will require attached notes outlining sources explaining the factual basis of the impact finding and describing any mitigation efforts. If this is checked, the impact category in question will be subject to a detailed review (site visits, review of data, consultation with experts, etc.). The points to remember are that (1) only those categories with a check in this box need to be subject to a detailed assessment and (2) this is not a decision about EIS preparation but a decision to investigate further.

CHECKLISTS

Needs Mitigation or Modification– This column should be used in combination with the prior columns indicating some type of potential adverse impact. In some cases specific measures to reduce adverse effects on a community cannot be discussed in full detail right away. Instead, such measures are subject to review and development and implementation responsibility as part of a more detailed analysis which follows. In other cases mitigation measures may be known and recorded. Mitigation measures or safeguards should be listed for easy reference on page 4 of the checklist. Early project review, affords a special opportunity to identify needed changes in the project itself before final applications are made or programs finalized. Often such changes can eliminate the need for further analysis by eliminating the source of the problem. It is also possible that changes (such as moving a project to a different site outside a high noise zone, or combining it with a new project to provide needed sewer or water lines) could be identified at this time.

In addition to these early decisions as to potential impact or mitigation needs, the Checklist calls for sources or contacts to be identified which have contributed to the decision in a specific impact category. This may be done in the space provided, or more likely by reference to attached notes which indicate sources or contacts and describe considerations made. On pages 3 and 4 of the Checklist, the analyst is asked to look back over the individual decisions made and draw some conclusions for further action. This includes a listing of project modifications, impact categories requiring more study and mitigation efforts needed.

Based on the conclusions of the environmental assessment, on the last page of the Checklist, the preparer will state his or her finding as to whether or not the request for release of funds for the project will constitute an action significantly affecting the quality of the human environment.

**EXECUTIVE ORDER 11988
EIGHT-STEP DECISION-MAKING PROCESS**

STEP

1. Determine whether or not the site is to be located in an identified 100-year floodplain. If the site is located in a floodplain, follow steps 2 through 8.
2. Publish a public notice of the intent to carry out an action in the floodplain. This should be done at the earliest possible time. The notice will have a 15-day comment period.
3. Identify, evaluate, and list practicable alternatives considered to locating the 100-year floodplain. In discussing practicality of alternative address:
 - a. Natural environment
 - b. Social concerns
 - c. Economic aspects
 - d. Legal constraints
4. Discuss direct or indirect adverse impacts associated with the modification of the floodplain. Issue a statement as to whether or not the action conforms to applicable floodplain protection.
5. Mitigate adverse impacts.
6. Re-evaluate alternatives and mitigation measures:
 - a. Is it still practicable?
 - b. If project is practicable, acceptable flood-proofing measures shall be applied.
7. Publish a second notice explaining the final decision and that there are no practicable alternatives to locating in a floodplain. This notice will have a 7-day comment period.
8. Review implementation and post-implementation of flood proofing measures to insure that they are in compliance with mitigation measures.

NOTE: If the above procedures are not followed, ODOC will not participate in the projects.

Public Notice for Early Public Review

 (Name of Grant Recipient) is proposing to expend Federal funds in an area that is subject to flooding as identified by the Federal Emergency Management Administration. The subject funds are Community Development Block Grant funds administered by the Oklahoma Department of Commerce. *

The (Name of Grant Recipient) is proposing to undertake the following activities in the area:

*Describe the project, being specific as to location of proposed activities
and total number of acres of floodplain involved.*

The purpose of this notice is to give an early opportunity for interested agencies, persons or groups to comment on the proposed action(s). The (Name of Grant Recipient) is desirous of considering any feasible alternatives or adjustments to the anticipated project which might minimize any potential adverse effects upon the floodplain as a result of the project.

The (Name of Grant Recipient) has additional information concerning this project available for public review and copying, upon request, at (location) . Any comments relative to this proposed expenditure of Federal funds in an area identified as a flood hazard area should be submitted in writing to *(Name and address)* on or before (Date **) .

- | |
|---|
| <p>* Mention any other federal funds involved, if applicable.</p> <p>** Must be 16 days after the date of publication or posting.</p> |
|---|

Notice of Explanation of Project Located In a Floodplain

The (Name of Grant Recipient) has determined that there is not a practicable alternative to locating the proposed Community Development Block Grant project described below in a floodplain.

Description of project and project activities.

The improvements must be located in the floodplain because *(state reasons why the project must be located in the floodplain; include other alternatives that were considered and mitigating measures to be taken to minimize adverse effects.)*

By publication of this notice, (Name of Grant Recipient) is inviting any final comments prior to undertaking the proposed action. All comments should be addressed to (Name and address) , not later than (Date *) .

* No less than 8 days after date of publication or posting.

FLOOD INSURANCE PROTECTION

Duration of Flood Insurance Coverage. The statutory period for flood insurance coverage may extend beyond project completion. For loans, loan insurance or guaranty, flood insurance coverage must be continued for the term of the loan. For grants and other non-loan forms of assistance, coverage must be continued for the life of the property, regardless of transfer of ownership of such property. Section 582I of the Community Development and Regulatory Improvement Act of 1994 mandates that "...The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property." (42 U.S.C. 5154a)

Such anticipated economic or useful life of the property may vary with the nature of the assisted activity. For example, construction of a new or substantially improved building requires flood insurance coverage for the life of the building, while for minor rehabilitation such as repairing, weatherizing, or roofing of a building, the grantee may require flood insurance coverage ranging from five to fifteen years as deemed feasible. HUD will accept any period within that range that appears reasonable.

Dollar Amount of Flood Insurance Coverage. For loans, loan insurance or guaranty, the amount of flood insurance coverage need not exceed the outstanding principal balance of the loan. For grants and other forms of financial assistance, the amount of flood insurance coverage must be at least equal to the development or project cost (less estimated land cost) or to the maximum limit of coverage made available by the Act with respect to the particular type of building involved (SF-Single Family, OR-Other Residential, NR-Non Residential, or SB-Small Business), whichever is less. The development or project cost is the total cost for acquiring, constructing, reconstructing, repairing or improving the building. This cost covers both the Federally assisted and the non-Federally assisted portion of the cost, including any machinery, equipment, fixtures, and furnishings. If the Federal assistance includes any portion of the cost of any machinery, equipment, fixtures or furnishings, the total cost of such items must also be covered by flood insurance.

Proof of Purchase. The standard documentation for compliance with Section 102 (a) is the Policy Declarations form issued by the National Flood Insurance Program or issued by any property insurance company offering coverage under the National Flood Insurance Program. The insured has its insurer automatically forward to the grantee in the same manner as to the insured, information copies of the Policy Declarations form for verification of compliance with the Act. Any financially assisted SFHA building lacking a current Policy Declarations form is in Noncompliance.

Grantee's Evidence of Compliance under the Certification. The grantee must maintain a complete and up-to-date listing of its on-file and current Policy Declarations for all financially assisted SFHA buildings. As a part of the listing, the grantee should identify any such assisted building for which a current Policy Declarations form is lacking and attach a copy of the written request made by the grantee to the owner to obtain a current Policy Declarations form.

Certification of Exemption for HUD Funded Projects

Determination of activities listed at 24 CFR 58.34(a)

May be subject to provisions of Sec 58.6, as applicable

Grant Recipient: _____ Project Name: _____

Project Description (Include all actions which are either geographically or functionally related):

Location:

Funding Source: CDBG HOME ESG HOPWA EDI Capital Fund Operating Subsidy Hope VI Other

Funding Amount: _____ Grant Number: _____

I hereby certify that the abovementioned project has been reviewed and determined an Exempt activity per 24 CFR 58.34(a) as follows:

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

If your project falls into any of the above categories, no Request for Release of Funds (RROF) is required, and no further environmental approval from HUD will be needed by the recipient for the draw-down of funds to carry out exempt activities and projects. The responsible entity must maintain this document as a written record of the environmental review undertaken under this part for each project.

By signing below the Responsible Entity certifies in writing that each activity or project is exempt and meets the conditions specified for such exemption under section 24 CFR 58.34(a). Please keep a copy of this determination in your project files.

Responsible Entity Certifying Official Name

Title (please print)

Responsible Entity Certifying Official Signature

Date

Certification of Categorical Exclusion (subject to 58.5)

Determination of activities listed at 24 CFR 58.35(a)

May be subject to provisions of Sec 58.6, as applicable

Grant Recipient: _____ Project Name: _____

Project Description (Include all actions which are either geographically or functionally related):

Location: _____

Funding Source: CDBG HOME ESG HOPWA EDI Capital Fund Operating Subsidy Hope VI Other

Funding Amount: _____ Grant Number: _____

I hereby certify that the abovementioned project has been reviewed and determined to be a Categorical Excluded activity (subject to 58.5) per 24 CFR 58.35(a) as follows:

	1. Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets);
	2. Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons;
	3. Rehabilitation of buildings and improvements when the following conditions are met: i. In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland; ii. In the case of multifamily residential buildings: (A) Unit density is not changed more than 20 percent; (B) The project does not involve changes in land use from residential to non-residential; and (C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation. iii. In the case of non-residential structures, including commercial, industrial, and public buildings: (A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and (B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
	4. (i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or (ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site. (iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).
	5. Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.
	6. Combinations of the above activities.

The responsible entity must also complete and attach a **Statutory Checklist**. By signing below the Responsible Entity certifies in writing that each activity or project is Categorical Excluded (subject to 58.5) and meets the conditions specified for such exemption under section 24 CFR 58.35(a). Please keep a copy of this determination in your project files.

Responsible Entity Certifying Official Name

Title (please print)

Responsible Entity Certifying Official Signature

Date

SAMPLE

NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

 (Date of Notice)

 (Name of Responsible Entity [RE])

 (Address)

 (City, State, Zip Code)

 (Telephone Number of RE Preparer Agency)

On or about (at least one day after the end of the comment period) the (name of RE) will [if the re is not also the grantee insert the following language here--"authorize the (name of grantee) to"] submit a request to the (HUD/state administering agency) for the release of (name of grant program) funds under [title/section ()] of the (name of the Act) of (date of Act), as amended, to undertake a project known as (project title), for the purpose of (nature/scope of project, and project address/location if applicable).

The activities proposed [Alternative #1: are categorically excluded under HUD regulations at 24 CFR Part 58 from National Environmental Policy Act requirements--Alternative #2: comprise a project for which a finding of no significant impact on the environment was (published/posted) on (date of finding publication or posting)]. An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at (name and address of RE office where ERR can be examined and name and address of other locations where the record is available for review) and may be examined or copied weekdays () A.M. to () P.M.

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the (RE designated office responsible for receiving and responding to comments). All comments received by (if notice is published: notice date plus seven days--if notice is posted: posting date plus ten days) will be considered by the (name of RE) prior to authorizing submission of a request for release of funds.

RELEASE OF FUNDS

The (name of RE) certifies to (HUD/state) that (name of certifying officer) in (his/her) capacity as (official title) consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. (HUD's/state's) approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the (name of grantee) to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

(HUD/state) will consider objections to its release of funds and the (RE's name) certification received by (anticipated date of HUD/state receipt of RROF/c plus fifteen days) or for a period of fifteen days following its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer of the (name of RE); (b) the (RE) has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient or other participants in the project have committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by (HUD/state); or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be addressed to (HUD/state grant administration office) at (address of that office). Potential objectors should contact (HUD/state) to verify the actual last day of the objection period.

 Name and Title of Re-certifying Officer

Part 2. Environmental Certification (to be completed by responsible entity)

With reference to the above Program Activity(ies)/Project(s), I, the undersigned officer of the responsible entity, certify that:

1. The responsible entity has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project(s) named above.
2. The responsible entity has assumed responsibility for and complied with and will continue to comply with, the National Environmental Policy Act of 1969, as amended, and the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5; and also agrees to comply with the authorities in 24 CFR 58.6 and applicable State and local laws.
3. After considering the type and degree of environmental effects identified by the environmental review completed for the proposed project described in Part I of this request, I have found that the proposal did ____did not ____ require the preparation and dissemination of an environmental impact statement.
4. The responsible entity has disseminated and/or published in the manner prescribed by 24 CFR 58.43 and 58.55 a notice to the public in accordance with 24 CFR 58.70 and as evidenced by the attached copy (copies) or evidence of posting and mailing procedure.
5. The dates for all statutory and regulatory time periods for review, comment or other action are in compliance with procedures and requirements of 24 CFR Part 58.
6. In accordance with 24 CFR 58.71(b), the responsible entity will advise the recipient (if different from the responsible entity) of any special environmental conditions that must be adhered to in carrying out the project.
As the duly designated certifying official of the responsible entity, I also certify that:
7. I am authorized to and do consent to assume the status of Federal official under the National Environmental Policy Act of 1969 and each provision of law designated in the 24 CFR. 58.5 list of NEPA-related authorities insofar as the provisions of these laws apply to the HIJO responsibilities for environmental review, decision-making and action that have been assumed by the responsible entity.
8. I am authorized to and do accept, on behalf of the recipient personally, the jurisdiction of the Federal courts for the enforcement of all these responsibilities, in my capacity as certifying officer of the responsible entity.

Signature of Certifying Officer of the Responsible Entity	Name & Title of Certifying Officer
Date signed	
X	
Address of Certifying Officer	
Part 3. To be completed when the Recipient is not the Responsible Entity	
The recipient requests the release of funds for the programs and activities identified in Part 1 and agrees to abide by the special conditions, procedures and requirements of the environmental review and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions in accordance with 24 CFR 58.71(b).	
Signature of Authorized Officer of the Recipient	Title of Authorized Officer
Date signed	
X	

[Municipal/County letterhead]

FINDING OF NO SIGNIFICANT IMPACT

ODOC CDBG Contract Number: _____

It is the finding of *[Name of Grant Recipient]*, Oklahoma, that the following activities proposed in its Community Development Block Grant project do not constitute an action that would have a significant impact on the quality of the human environment, consistent with the provisions of 24 CFR 58, Subpart E and that these activities are in compliance with the environmental requirements of related Federal authorities. The activities and the related authority for this finding are listed below:

[List the activities and the basis for determining their environmental status]

Preparer

Date

Environmental Certifying Officer

Date

SAMPLE

**COMBINED NOTICE OF FINDING OF NO SIGNIFICANT
IMPACT AND INTENT TO REQUEST RELEASE OF FUNDS**

(Date of Notice)
(Name of Responsible Entity [RE])
(Address)
(City, State, Zip Code)
(Telephone Number of RE Preparer Agency)

This Notice shall satisfy the above-cited two separate but related procedural notification requirements.

REQUEST FOR RELEASE OF FUNDS

On or about (at least one day after the end of the comment period) **the** (name of RE) **will** [if the RE is not also the grantee insert the following language here--"authorize the (name of grantee) to"] **submit a request to the** (HUD/state administering agency) **for the release of** (name of grant program) funds under [Title/Section ()] **of the** (name of the Act) **of** (date of Act), **as amended, to undertake a project known as** (project title), **for the purpose of** (nature/scope of project, and project address/location if applicable).

FINDING OF NO SIGNIFICANT IMPACT

The (name of RE) **has determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at** (name and address of RE office where err can be examined and name and address of other locations where the record is available for review) **and may be examined or copied weekdays () a.m. to () p.m.**

PUBLIC COMMENTS

Any individual, group, or agency disagreeing with this determination or wishing to comment on the project may submit written comments to the (RE designated office responsible for receiving and responding to comments). **All comments received by** (if notice published: notice date plus fifteen days--if notice posted: posting date plus eighteen days) **will be considered by the** (name of RE) **prior to authorizing submission of a request for release of funds. Commentors should specify which part of this Notice they are addressing.**

RELEASE OF FUNDS

The (name of RE) certifies to (HUD/state) that (name of certifying officer) in (his/her) capacity as (official title) consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. (HUD's/state's) approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the (name of grantee) to use Program funds.

OBJECTIONS TO RELEASE OF FUNDS

(HUD/state) will consider objections to its release of funds and the (RE's name) certification received by (anticipated date of HUD/state receipt of rrof/c plus fifteen days) or a period of fifteen days from its receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer or other officer of the (name of RE) approved by (HUD/state) (b) the (RE) has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient or other participants in the project have committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by (HUD/state) or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and shall be addressed to (HUD/state grant administration office) at (address of that office). Potential objectors should contact (HUD/state) to verify the actual last day of the objection period.

Name and title of RE certifying officer)

DISTRIBUTION LIST

The following agencies must be provided a copy of the Concurrent Notice or Notice of Intent (Attachments 14 and 17):

Department of Environmental Quality
Attn: Environmental Officer
707 N. Robinson
Oklahoma City, OK 73102

Oklahoma Department of Commerce
Office of Community Development
P.O. Box 26980
Oklahoma City, OK 73126-0980

Oklahoma Historic Preservation Office
Oklahoma Historical Society
2704 Villa Prom
Oklahoma City, OK 73107

Federal Emergency Management Agency
FEMA Region VI, Federal Regional Center
800 N. Loop 288, Room 206
Denton, TX 76201-3698

U.S. Department of Housing & Urban Development
Attn: Environmental Officer
301 N.W. 6th St, Ste 200
Oklahoma City, OK 73102

U.S. Environmental Protection Agency
EPA Regional Office
1445 Ross Avenue
Dallas, TX 75202

Area Substate Planning District

Area Community Action Agency

Local Special Interest Group

County Health Department

Individuals and Groups Known to be Interested

Local News Media

Appropriate Tribal Governments

CERTIFICATION OF CONTINUED ENVIRONMENTAL COMPLIANCE

Oklahoma Department of Commerce
 Community Development Block Grant Program

Grant Recipient Name:	Contract Number:
-----------------------	------------------

Original Level of Finding: _____

Date of Finding: _____

Date Notice of Intent Published: _____

Date Request to Release Funds Submitted to ODOC: _____

Date Cleared by ODOC: _____

It is the finding of the Environmental Certifying Officer of the above-referenced Grant Recipient that revisions to the scope of work of the above-referenced contract project have not caused a revised finding of original environmental status. The basis for this finding, for each revised activity, is described as follows:

I certify that the above statements accurately reflect the revisions to the project scope of work and that such revisions do not alter the basis under which the project received its original environmental status finding.

Signature of Certifying Officer of the Grant Recipient:	Address:
Title:	
Date	

**NOTICE TO PROSPECTIVE BUYERS OF PROPERTIES
LOCATED IN RUNWAY CLEAR ZONES
AND CLEAR ZONES/ACCIDENT POTENTIAL ZONES**

(In accordance with 24 CFR Part 51, Section 51.303(a)(3), this notice must be given to anyone interested either in buying an existing HUD property, or using HUD assistance to buy an existing property, which is located in either a Runway Clear Zone at a civil airport or a Clear Zone/Accident Potential Zone at a military installation.)

The property which you are interested in purchasing at _____ is located in the Runway Clear Zone/Clear Zone/Accident Potential Zone for _____.

Studies have shown that if an accident were to occur it is more likely to occur within the Runway Clear Zone/Clear Zone/Accident Potential Zone than in other areas around the airport/airfield. Please note that we are not discussing the chances that an accident will occur, only where one is most likely to occur.

You should also be aware that the airport/airfield operator may wish to purchase the property at some point in the future as part of a Runway Clear Zone/Clear Zone/Accident Potential Zone acquisition program. Such programs have been underway for many years at airports and airfields across the country. We cannot predict if or when this might happen since it is a function of many factors, particularly the availability of funds, but it is a possibility.

We wanted to bring this information to your attention. Your signature on the space below indicates that you are now aware that the property you are interested in is located in a Runway Clear Zone/Clear Zone/Accident Potential Zone.

Signature of prospective buyer

Date

Type or print name of prospective buyer

(This notice must be maintained as part of the file on this action.)

**TITLE 24 PART 58 ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES
ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES**

Subpart A-Purpose, Legal Authority, Federal Laws and Authorities

Sec. 58.1 Purpose and Applicability.

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

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

- (1) Community Development Block Grant programs authorized by Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));
- (2) [Reserved]
- (3)
 - (i) Grants to states and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);
 - (ii) Grants beginning with Fiscal Year 2001 to private non-profit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);
- (4) The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);
- (5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));

- (6)
- (i) Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for Fiscal Year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);
 - (ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998); and
 - (iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);
- (7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the heading “Annual Contributions for Assisted Housing” in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547);
- (8) The FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9)(12 U.S.C. 1707 note); and
- (9) The Self-Help Homeownership Opportunity Program under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120, 110 Stat. 834), in accordance with section 11(m)).
- (10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with:
- (i) Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal Housing Authorities (25 U.S.C. 4115 and 4226); and
 - (ii) Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);
- (11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z-13a(k)); and
- (12) Grants for Housing Opportunities for Persons with AIDS (HOP WA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with Fiscal Year 2001 and all formula grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998).

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

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

Sec. 58.2 Terms, Abbreviations and Definitions.

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

- (1) **Activity** means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.
- (2) **Certifying Officer** means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of Sec. 58.13.
- (3) **Extraordinary Circumstances** means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:
 - (i) Actions that are unique or without precedent;
 - (ii) Actions that are substantially similar to those that normally require an EIS;
 - (iii) Actions that are likely to alter existing HUD policy or HUD mandates; or
 - (iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.
- (4) **Project** means an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.

- (5) **Recipient** means any of the following entities, when they are eligible recipients or grantees under a program listed in Sec. 58.1(b):
- (i) A State that does not distribute HUD assistance under the program to a unit of general local government;
 - (ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;
 - (iii) A unit of general local government;
 - (iv) An Indian tribe;
 - (v) With respect to Public Housing Programs under Sec. 58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under Sec. 58.1(b)(6)(ii) or Section 8 assistance under Sec. 58.1(b)(6)(iii), a public housing agency;
 - (vi) Any direct grantee of HUD for a special project under Sec. 58.1(b)(7);
 - (vii) With respect to the FI-IA Multifamily Housing Finance Agency Program under 58.1(b)(8), a qualified housing finance agency;
 - (viii) With respect to the Self-Help Homeownership Opportunity Program under Sec. 58.1(b)(9), any direct grantee of HUD.
 - (ix)
 - (A) With respect to NAHASDA assistance under Sec. 58.1(b)(10), the Indian tribe or the Department of Hawaiian Home Lands; and
 - (B) With respect to the Section 184 Indian Housing Loan Guarantee program under Sec. 58.1(b)(11), the Indian tribe.
 - (x) With respect to the Shelter Plus Care and Supportive Housing Programs under Sec. 58.1(b)(3)(ii), nonprofit organizations and other entities.
- (6) **Release of Funds.** In the case of the FHA Multifamily Housing Finance Agency Program under Sec. 58.1 (b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient’s request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under Sec. 58.1(b)(11), Release of Funds refers to HUD’s issuance of a commitment to guarantee a loan, or if there is no commitment, HUD’s issuance of a certificate of guarantee.
- (7) **Responsible Entity.** Responsible Entity means:
- (i) With respect to environmental responsibilities under programs listed in Sec. 58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.
 - (ii) With respect to environmental responsibilities under the programs listed in Sec. 58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) listed in Sec. 58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in Sec. 58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

- (A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;
 - (B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;
 - (C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;
 - (D) For Indian housing authorities (outside of Alaska), the Indian tribe in whose jurisdiction the project is located, or if the project is located outside of a reservation, the Indian tribe that established the authority; and
 - (E) For Indian housing authorities in Alaska, the Alaska native village in whose community the project is located, or if HUD determines this infeasible, a unit of general local government or the State, as designated by HUD.
- (8) **Unit Density** refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.
- (9) **Tiering** means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.
- (10) **Vacant Building** means a habitable structure that has been vacant for more than one year.
- (b) The following abbreviations are used throughout this part:
- (1) CDBG-Community Development Block Grant;
 - (2) CEQ-Council on Environmental Quality;
 - (3) EA-Environmental Assessment;
 - (4) EIS-Environmental Impact Statement;
 - (5) EPA-Environmental Protection Agency;
 - (6) ERR-Environmental Review Record;
 - (7) FONSI-Finding of No Significant Impact;
 - (8) HUD-Department of Housing and Urban Development;
 - (9) NAHA-Cranston-Gonzalez National Affordable Housing Act of 1990;
 - (10) NEPA-National Environmental Policy Act of 1969, as amended;
 - (11) NOI/EIS-Notice of Intent to Prepare an EIS;
 - (12) NOI/RROF-Notice of Intent to Request Release of Funds;
 - (13) ROD-Record of Decision;
 - (14) ROF-Release of Funds; and
 - (15) RROF-Request for Release of Funds.

Sec. 58.4 Assumption Authority.**(a) Assumption authority for responsible entities:**

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

(b) Particular responsibilities of the States.

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

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

(c) Particular responsibilities of Indian tribes. An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (other than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.**Sec. 58.5 Related Federal laws and authorities.**

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

(a) **Historic properties.**

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

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

(3) Federal historic preservation regulations as follows:

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

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

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

(b) **Floodplain management and wetland protection.**

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

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, particularly sections 2 and 5.

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

(d) **Sole source aquifers.**

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

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

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

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

(g) **Air quality.**

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

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

(h) **Farmlands protection.**

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

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

(i) **HUD environmental standards.**

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

(2)

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

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

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

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

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

Sec. 58.6 Other requirements.

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

(a)

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

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

- (ii) Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.
- (2) Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.
- (3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.
- (b) Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if:
 - (1) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and
 - (2) The person failed to obtain and maintain flood insurance.
- (c) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.
- (d) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

Subpart B-General Policy: Responsibilities of Responsible Entities

Sec. 58.10 Basic environmental responsibility.

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

Sec. 58.11 Legal capacity and performance.

- (a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.
- (b) If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.
- (c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with Sec. 58.77(d)(1).
- (d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

Sec. 58.12 Technical and administrative capacity.

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

Sec. 58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by Sec. 58.71, a responsible entity's certifying officer is the "responsible Federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in Sec. 58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in Sec. 58.5. The Certifying Officer must also:

- (a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and
- (b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

Sec. 58.14 Interaction with State, Federal and non-Federal entities.

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

Sec. 58.15 Tiering.

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

Sec. 58.18 Responsibilities of States assuming HUD responsibilities.

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

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

- (1) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.
 - (2) Receive public notices, RROFs, and certifications from recipients pursuant to Sec. Sec. 58.70 and 58.71; accept objections from the public and from other agencies (Sec. 58.73); and perform other related responsibilities regarding releases of funds.
- (b) Fulfill the state role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

Subpart C-General Policy: Environmental Review Procedures

Sec. 58.21 Time periods.

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

Sec. 58.22 Limitations on activities pending clearance.

- (a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in Sec. 58.1(b) on an activity or project until HUD or the state has approved the recipients RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in Sec. 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.
- (b) If a project or activity is exempt under Sec. 58.34, or is categorically excluded (except in extraordinary circumstances) under Sec. 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in Sec. 58.34(b) and Sec. 58.35(d), but the recipient must comply with applicable requirements under Sec. 58.6.
- (c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

- (d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.
- (e) Self-Help Homeownership Opportunity Program (SHOP). In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding paragraph (a) of this section. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.
- (f) Relocation. Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

Sec. 58.23 Financial assistance for environmental review.

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

Subpart B-Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

Sec. 58.30 Environmental review process.

- (a) The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with Sec. 58.32.
- (b) The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

Sec. 58.32 Project aggregation.

- (a) A responsible entity must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.
- (b) In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: **functional aggregation** when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; **geographic aggregation** when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or a **combination of aggregation approaches**, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.
- (c) The purpose of project aggregation is to group together related activities so that the responsible entity can:
 - (1) Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).
 - (2) Consider reasonable alternative courses of action.
 - (3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.
 - (4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.
- (d) **Multi-year project aggregation-**
 - (1) **Release of funds.** When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.
 - (2) V/hen one or more of the conditions described in Sec. 58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

Sec. 58.33 Emergencies.

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

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

Sec. 58.34 Exempt activities.

- (a) Except for the applicable requirements of Sec. 58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in Sec. 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:
- (1) Environmental and other **studies**, resource identification and the development of plans and strategies;
 - (2) Information and financial **services**;
 - (3) **Administrative** and management activities;
 - (4) **Public services** that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
 - (5) **Inspections and testing** of properties for hazards or defects;
 - (6) Purchase of **insurance**;
 - (7) Purchase of **tools**;
 - (8) **Engineering** or design costs;
 - (9) Technical assistance and **training**;

- (10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or **arrest the effects from disasters** or imminent threats to public safety including those resulting from physical deterioration;
 - (11) Payment of principal and interest on **loans** made or obligations guaranteed by HUD;
 - (12) Any of the categorical exclusions listed in Sec. 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in Sec. 58.5.
- (b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

Sec. 58.35 Categorical exclusions.

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

(a) Categorical exclusions subject to Sec. 58.5.

The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in Sec. 58.5:

- (1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
- (2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
- (3) Rehabilitation of buildings and improvements when the following conditions are met:
 - (i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland;
 - (ii) In the case of multifamily residential buildings:
 - (A) Unit density is not changed more than 20 percent;
 - (B) The project does not involve changes in land use from residential to non-residential; and
 - (C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
 - (iii) In the case of non-residential structures, including commercial, industrial, and public buildings:

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

(B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(4)

(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

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

(5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

(6) Combinations of the above activities.

(b) Categorical exclusions not subject to Sec. 58.5.

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

(1) Tenant-based rental assistance;

(2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

- (5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.
- (6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
- (7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under Sec. 58.47.

(c) Circumstances requiring NEPA review.

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

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

Sec. 58.36 Environmental assessments.

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

Sec. 58.37 Environmental impact statement determinations.

- (a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.
- (b) An EIS is required under any of the following circumstances, except as provided in paragraph.(c) of this section:
 - (1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.
 - (2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under Sec. 58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.

- (3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.
- (c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.
- (d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where Sec. 58.53 is applicable.
- (e) **Recommended EIS Format.** The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

Sec. 58.38 Environmental review record.

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

- (a) **ERR Documents.** The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decisionmaking and actions pertaining to a particular project of a recipient. The document shall:
 - (1) Describe the project and the activities that the recipient has determined to be part of the project;
 - (2) Evaluate the effects of the project or the activities on the human environment;
 - (3) Document compliance with applicable statutes and authorities, in particular those cited in Sec. 58.5 and 58.6; and
 - (4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).
- (b) **Other documents and information.** The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

Subpart E-Environmental Review Process: Environmental Assessments (EAs)

Sec. 58.40 Preparing the environmental assessment.

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

- (a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.
- (b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.
- (c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in Sec. 58.5 and Sec. 58.6.
- (d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.
- (e) Examine alternatives to the project itself, if appropriate, including the alternative of no action.
- (f) Complete all environmental review requirements necessary for the projects compliance with applicable authorities cited in Secs. 58.5 and 58.6.
- (g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:
 - (1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to Sec. 58.43.
 - (2) A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subpart F or G of this part. 23.

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

- (a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a **minimum**, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently

displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

- (b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by Sec. 58.70. If the notices are released as a combined notice, the combined notice shall:
 - (1) Clearly indicate that it is intended to meet two separate procedural requirements; and
 - (2) Advise the public to specify in their comments which “notice” their comments address.
- (c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

Sec. 58.45 Public comment periods.

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

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

Sec. 58.46 Time delays for exceptional circumstances.

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

- (a) There is a considerable interest or controversy concerning the project;
- (b) The proposed project is similar to other projects that normally require the preparation of an EIS; or
- (c) The project is unique and without precedent.

Sec. 58.47 Re-evaluation of environmental assessments and other environmental findings.

- (a) A responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when:
- (1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;
 - (2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or
 - (3) The recipient proposes the selection of an alternative not in the original finding.
- (b)
- (1) If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must affirm the original findings and update its ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.
 - (2) If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts.
 - (3) Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.

Subpart F-Environmental Review Process: Environmental Impact Statement Determinations**Sec. 58.52 Adoption of other agencies' EISs.**

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

Sec. 58.53 Use of prior environmental impact statements.

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

- (a) The ERR contains a decision based on a finding pursuant to Sec. 58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:
 - (1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;
 - (2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;
 - (3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;
 - (4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.
- (b) The prior final EIS has been filed within five (5) years, and updated as follows:
 - (1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;
 - (2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.
- (c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

Subpart G-Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

Sec. 58.55 Notice of intent to prepare an EIS.

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

Sec. 58.56 Scoping process.

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

Sec. 58.57 Lead agency designation.

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

Sec. 58.59 Public hearings and meetings.

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

- (1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.
- (2) The degree of interest in or controversy concerning the project.
- (3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.
- (4) The extent to which public involvement has been achieved through other means.

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

- (1) State the date, time, place, and purpose of the hearing or meeting.
- (2) Describe the project, its estimated costs, and the project area.
- (3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.
- (4) State the responsible entity's name and address and the name and address of its Certifying Officer.
- (5) State what documents are available, where they can be obtained, and any charges that may apply.

Sec. 58.60 Preparation and filing of environmental impact statements.

- (a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the final environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.
- (b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:
 - (1) Five copies to EPA Headquarters;
 - (2) Five copies to EPA Regional Office;
 - (3) Copies made available in the responsible entity's and the recipient's office;
 - (4) Copies or summaries made available to persons who request them; and
 - (5) FEIS only-one copy to State, HUD Field Office, and HUD Headquarters library.
- (c) The responsible entity may request waivers from the time requirements specified for the draft and final ETS as prescribed in 40 CFR 1506.6.
- (d) When substantial changes are proposed in a project or when significant new circumstances or information becomes available during an environmental review, the recipient may prepare a supplemental ETS as prescribed in 40 CFR 1502.9.
- (e) The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR 1505.2.

Subpart H-Release of Funds for Particular Projects

Sec. 58.70 Notice of intent to request release of funds.

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

Sec. 58.71 Request for release of funds and certification.

- (a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in Sec. 58.1(b). The RROF and certification must be in a form specified by HUD.
- (b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in Sec. 58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the

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

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

Sec. 58.72 HUD or State actions on RROFs and certifications.

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

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

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

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

Sec. 58.73 Objections to release of funds.

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

Sec. 58.74 Time for objecting.

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

Sec. 58.75 Permissible bases for objections.

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

- (a) The certification was not in fact executed by the responsible entity's Certifying Officer.
- (b) The responsible entity has failed to make one of the two findings pursuant to Sec. 58.40 or to make the written determination required by Secs. 58.35, 58.47 or 58.53 for the project, as applicable.
- (c) The responsible entity has omitted one or more of the steps set forth at subpart E of this part for the preparation, publication and completion of an EA.
- (d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.
- (e) The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the state).
- (f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

Sec. 58.76 Procedure for objections.

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

- (a) Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.
- (b) Be dated when signed.
- (c) Describe the basis for objection and the facts or legal authority supporting the objection.
- (d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

Sec. 58.77 Effect of approval of certification.

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

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

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

(d) **Responsibility for monitoring and training.**

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

- (i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;
- (ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;
- (iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;
- (iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;
- (v) HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.

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

Title 24: Housing and Urban Development Part 55-FLOODPLAIN MANAGEMENT

Subpart A—General

§ 55.1 Purpose and basic responsibility.

- (a) This part implements the requirements of Executive Order 11988, Floodplain Management, and employs the principles of the Unified National Program for Floodplain Management. It covers the proposed acquisition, construction, improvement, disposition, financing and use of properties located in a floodplain for which approval is required either from HUD under any applicable HUD program or from a grant recipient subject to 24 CFR part 58. This part does not prohibit approval of such actions (except for certain actions in high hazard areas), but provides a consistent means for implementing the Department’s interpretation of the executive order in the project approval decision making processes of HUD and of grant recipients subject to 24 CFR part 58. The implementation of Executive Order 11988 under this part shall be conducted by HUD, for Department-administered programs subject to environmental review under 24 CFR part 50, and by authorized recipients of HUD financial assistance subject to environmental review under 24 CFR part 58.
- (b) Under section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), proposed HUD financial assistance (including mortgage insurance) for acquisition or construction purposes in any “area having special flood hazards” (a flood zone designated by the Federal Emergency Management Agency (FEMA)) shall not be approved in communities identified by FEMA as eligible for flood insurance but which are not participating in the National Flood Insurance Program. This prohibition only applies to proposed HUD financial assistance in a FEMA-designated area of special flood hazard one year after the community has been formally notified by FEMA of the designation of the affected area. This prohibition is not applicable to HUD financial assistance in the form of formula grants to states, including financial assistance under the State-administered CDBG Program (24 CFR part 570, subpart I) and the State-administered Rental Rehabilitation Program (24 CFR 511.51), Emergency Shelter Grant amounts allocated to States (24 CFR parts 575 and 576), and HOME funds provided to a state under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701-12839).
- (c) Except with respect to actions listed in §55.12(c), no HUD financial assistance (including mortgage insurance) may be approved after May 23, 1994 with respect to:
- (1) Any action, other than a functionally dependent use, located in a floodway;
 - (2) Any critical action located in a coastal high hazard area; or
 - (3) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area or is a functionally dependent use. An action will be considered to be designed for location in a coastal high hazard area if:
 - (i) In the case of new construction or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or
 - (ii) In the case of existing construction (including any minor improvements)

- (A) The work met FEMA elevation and construction standards for a coastal high hazard area (or if such a zone or such standards were not designated, the 100-year floodplain) applicable at the time the original improvements were constructed; or
- (B) If the original improvements were constructed before FEMA standards for the 100-year floodplain became effective or before FEMA designated the location of the action as within the 100-year floodplain, the work would meet at least the earliest FEMA standards for construction in the 100-year floodplain.

§ 55.2 Terminology.

- (a) With the exception of those terms defined in paragraph (b) of this section, the terms used in this part shall follow the definitions contained in section 6 of Executive Order 11988 and in the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978) issued by the Water Resources Council; and the terms “criteria” and “Regular Program”, shall follow the definitions contained in FEMA regulations at 44 CFR 59.1.
- (b) The definitions of the following terms in Executive Order 11988 and related documents affecting this part are modified for purposes of this part:

(1) **Coastal high hazard area** means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) under FEMA regulations as Zone V1—30, VE, or V. (FIRMs as well as Flood Hazard Boundary Maps (FHBM) shall also be relied on for the delineation of “100- year floodplains” (55.2(b)(8)), “500-year floodplains” (55.2(b)(3)), and “floodways” (55.2(b)(4)).

(2) **Critical action** means any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that:

- (A) Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;
- (B) Provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events (e.g., data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or
- (C) Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, e.g., persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. Housing for independent living for the elderly is not considered a critical action.
- (D) Critical actions shall not be approved in floodways or coastal high hazard areas.

(3) **500-year floodplain** means the minimum floodplain of concern for Critical Actions and is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year. (See §55.2(b)(1) for appropriate data sources.)

(4) **Floodway** means that portion of the floodplain which is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest. The term “floodway” as used here is consistent with “regulatory floodways” as identified by FEMA. (See §55.2(b)(1) for appropriate data sources.)

(5) **Functionally dependent use** means a land use that must necessarily be conducted in close proximity to water (e.g., a dam, marina, port facility, water-front park, and many types of bridges).

(6) **High hazard area** means a floodway or a coastal high hazard area.

(7) **100-year floodplain** means the floodplain of concern for this part and is the area subject to a one percent or greater chance of flooding in any given year. (See §55.2(b)(1) for appropriate data sources.)

(8)

(i) **Substantial improvement** means either:

(A) Any repair, reconstruction, modernization or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(1) Before the improvement or repair is started; or

(2) If the structure has been damaged, and is being restored, before the damage occurred; or

(B) Any repair, reconstruction, modernization or improvement of a structure that results in an increase of more than twenty percent in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be on-site at any one time for a commercial or industrial project.

(ii) **Substantial improvement** may not be defined to include either:

(A) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions, or

(B) Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places.

(iii) Structural repairs, reconstruction, or improvements not meeting this definition are considered “minor improvements”.

§ 55.3 Assignment of responsibilities.

(a)(1) *The Assistant Secretary for Community Planning and Development (CPD)* shall oversee:

(i) The Department's implementation of the order and this part in all HUD programs, and

(ii) The implementation activities of HUD program managers and grant recipients for HUD financial assistance subject to 24 CFR part 58.

(2) In performing these responsibilities, the Assistant Secretary for CPD shall make pertinent policy determinations in cooperation with appropriate program offices and provide necessary assistance, training, publications, and procedural guidance.

(b) *Other HUD Assistant Secretaries, the General Counsel, and the President of the Government National Mortgage Association (GNMvLA)* shall:

(1) Ensure compliance with this part for all actions under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain;

(2) Ensure that actions approved by HUD or grant recipients are monitored and that any prescribed mitigation is implemented;

(3) Ensure that the offices under their jurisdiction have the technical resources to implement the requirements of this part; and

(4) Incorporate in departmental regulations, handbooks, and project and site standards those criteria, standards, and procedures necessary to comply with the requirements of this part.

(c) *Recipient Certifying Officer*. In accordance with section 9 of Executive Order 11988, Certifying Officers of grant recipients administering activities subject to 24 CFR part 58 shall:

(1) Comply with this part in carrying out HUD-assisted programs, and

(2) Monitor approved actions and ensure that any prescribed mitigation is implemented.

Subpart B—Application of Executive Order on Floodplain Management

§ 55.10 Environmental review procedures under 24 CFR parts 50 and 58.

- (a) Where an environmental review is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, and 24 CFR part 50 or part 58, compliance with this part shall be completed before the completion of an environmental assessment (EA) including a finding of no significant environmental impact (FONSI), or an environmental impact statement (EIS), in accordance with the decision points listed in 24 CFR 50.17 (a) through (h), or before the preparation of an EA under 24 CFR 58.40 or an EIS under 24 CFR 58.36. For types of proposed actions that are categorically excluded from National Environmental Policy Act (NEPA) requirements under 24 CFR part 50 (or part 58), compliance with this part shall be completed before the Department's initial (SAMA, conditional, etc.) approval (or the conditional commitment or approval by a grant recipient subject to 24 CFR part 58) of proposed actions in a floodplain.
- (b) The categorical exclusion of certain proposed actions from environmental review requirements under NEPA and 24 CFR parts 50 and 58 (see 24 CFR 50.20 and 58.35) does not exclude those actions from compliance with this part.

§ 55.11 Applicability of subpart C decision making process.

- (a) Before reaching the decision points described in §55.10(a), HUD (for Department- administered programs) or the grant recipient (for HUD financial assistance subject to 24 CFR part 58) shall determine whether Executive Order 11988 and this part apply to the proposed action.
- (b) If Executive Order 11988 applies, the approval of a proposed action or initial commitment shall be made in accordance with this part. The primary purpose of Executive Order 11988 is to “avoid direct or indirect support of floodplain development.”
- (c) The following table indicates the applicability, by location and type of action, of the decision making process for implementing Executive Order 11988 under subpart C of this part.

Table 1

Type of Proposed Action	Type of Proposed Location			
(new reviewable action or an amendment)	Floodways	Costal High Hazard Areas	100-year Floodplain outside high hazard area	Area between 100- and 500- year floodplain
Critical Actions as defined in § 55.2(b)(2)	Critical Actions not allowed	Critical actions not allowed	Allowed if the proposed critical action is processed under § 55.20\1\	Allowed if the proposed critical action is processed under § 55.20\1\
Non-Critical actions not excluded under § 55.12(b) or (c)	Allowed only if the proposed action is a functionally dependent use and processed under § 55.20\1\	Allowed only if the proposed action: (1) is either (a) designed for location in a costal high hazard area or (b) a functionally dependent use; and (2) is processed under § 55.20\1\	Allowed if the proposed action is processed under § 55.20\1\	Any non-critical action is allowed without processing under this part

\1\ Or those paragraphs of § 55.20 that are applicable to an action listed in § 55.12(a).

§ 55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

(a) The decision making steps in §55.20 (b), (c) and (g) (steps 2, 3 and 7) shall not apply to the following categories of proposed actions:

(1) HUD actions involving the disposition of HUD-acquired multifamily housing projects or “bulk sales” of HUD-acquired one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24).

(2) HUD’s actions under section 223(f) of the National Housing Act (12 U.S.C. 1715n(f)) for the purchase or refinancing of existing multifamily housing projects (including hospitals, nursing homes, board and care facilities, and intermediate care facilities) in communities that are in good standing under the NFIP.

(3) HUD mortgage insurance actions for the repair, rehabilitation, modernization or improvement of existing multifamily housing projects (including nursing homes, board and care facilities and intermediate care facilities) and existing one- to four-family properties, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, and the footprint of the structure and paved areas is not significantly increased.

(b) The decision making process in §55.20 shall not apply to the following categories of proposed actions:

- (1) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway or coastal high hazard area;
- (2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for "substantial improvement" under §55.2(b)(8);
- (3) HUD actions involving the disposition of individual HUD-acquired, one- to four-family properties; and
- (4) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance.

(c) This part shall not apply to the following categories of proposed HUD actions:

- (1) HUD-assisted exempt activities described in 24 CFR 58.34;
- (2) Policy level actions described at 24 CFR 50.16 that do not involve site-based decisions;
- (3) HUD's implementation of the full disclosure and other registration requirements of the Interstate Land Sales Disclosure Act (15 U.S.C. 1701—1720);
- (4) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUDs financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;
- (5) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain;
- (6) HUDs approval of a project site, an incidental portion of which is situated in an adjacent floodplain, but only if:
 - (i) The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, etc.) do not occupy or modify the 100-year floodplain or the 500-year floodplain (for Critical Actions);
 - (ii) Appropriate provision is made for site drainage; and
 - (iii) A covenant or comparable restriction is placed on the property's continued use to preserve the floodplain;
- (7) An action for interim assistance, assistance under the section 2320) Fire Safety Equipment Loan Insurance Program, or emergency activities involving imminent threats to health and safety, and limited to necessary protection, repair or restoration activities to control the imminent risk or damage;
- (8) HUD's approval of financial assistance for a project on any site in a floodplain for which FEMA has issued:
 - (i) A final Letter of Map Amendment (LOMA) or final Letter of Map Revision (LOMR) that removed the property from a FEMA-designated floodplain location; or
 - (ii) A conditional LOMA or conditional LOMR if the HUD approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

(9) HUD's acceptance of a housing subdivision approval action by the Department of Veterans Affairs or Farmers Home Administration in accordance with section 535 of the Housing Act of 1949 (42 U.S.C. 1490o);

(10) An action that was, on May 23, 1994, already approved by HUD (or a grant recipient subject to 24 CFR part 58) and is being implemented (unless approval is requested for a new reviewable action), provided that §55.21 and 55.22 apply where the covered transactions under those sections have not yet occurred, and that any hazard minimization measures required by HUD (or a grant recipient subject to 24 CFR part 58) under its implementation of Executive Order 11988 before May 23, 1994 shall be completed;

(11) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (*i.e.*, do not involve site-specific subsidies); and

(12) Secondary mortgage operations of the Government National Mortgage Association (GNMA).

Subpart C—Procedures for Making Determinations on Floodplain Management

§ 55.20 Decision making process.

The decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives. The steps to be followed in the decision making process are:

(a) *Step 1.* Determine whether the proposed action is located in a 100-year floodplain (or a 500- year floodplain for a Critical Action). If the proposed action would not be

(b) *Step 2.* Notify the public at the earliest possible time of a proposal to consider an action in a floodplain (or in the 500-year floodplain for a Critical Action), and involve the affected and interested public in the decision making process.

(1) The public notices required by paragraphs (b) and (g) of this section may be combined with other project notices wherever appropriate. Notices required under this part must be bilingual if the affected public is largely non-English speaking. In addition, all notices must be published in an appropriate local printed news medium, and must be sent to federal, state, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.

(2) A minimum of 15 calendar days shall be allowed for comment on the public notice.

(3) A notice under this paragraph shall state: the name, proposed location and description of the activity; the total number of acres of floodplain involved; and the HUD official and phone number to contact for information. The notice shall indicate the hours and the HUD office at which a full description of the proposed action may be reviewed.

(c) Step 3. Identify and evaluate practicable alternatives to locating the proposed action in a floodplain (or the 500-year floodplain for a Critical Action).

(1) The consideration of practicable alternatives to the proposed site or method may include:

- (i) Locations outside the floodplain (or 500-year floodplain for a Critical Action);
- (ii) Alternative methods to serve the identical project objective; and
- (iii) A determination not to approve any action.

(2) In reviewing practicable alternatives, the Department or a grant recipient subject to 24 CFR part 58 shall consider feasible technological alternatives, hazard reduction methods and related mitigation costs, and environmental impacts.

(d) Step 4. Identify the potential direct and indirect impacts associated with the occupancy or modification of the floodplain (or 500-year floodplain for a Critical Action).

(e) Step 5. Where practicable, design or modify the proposed action to minimize the potential adverse impacts within the floodplain (including the 500-year floodplain for a Critical Action) and to restore and preserve its natural and beneficial values. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include:

- (1) Preparation of and participation in an early warning system;
- (2) An emergency evacuation and relocation plan;
- (3) Identification of evacuation route(s) out of the 500-year floodplain; and
- (4) Identification marks of past or estimated flood levels on all structures.

(f) Step 6. Reevaluate the proposed action to determine:

- (1) Whether it is still practicable in light of its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains, and its potential to disrupt floodplain values; and
- (2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of the information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(g) Step 7.

(1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the floodplain (or the 500-year floodplain for a Critical Action), publish a final notice that includes:

- (i) The reasons why the proposal must be located in the floodplain;
- (ii) A list of the alternatives considered; and
- (iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.

(2) In addition, the public notice procedures of §55.20(b)(1) shall be followed, and a minimum of 7 calendar days for public comment before approval of the proposed action shall be provided.

(h) *Step 8.* Upon completion of the decision making process in Steps 1 through 7, implement the proposed action. There is a continuing responsibility to ensure that the mitigating measures identified in Step 7 are implemented.

§ 55.21 Notification of floodplain hazard.

For HUD programs under which a financial transaction for a property located in a floodplain (a 500-year floodplain for a Critical Action) is guaranteed, approved, regulated or insured, any private party participating in the transaction and any current or prospective tenant shall be informed by HUD (or by HUDs designee, e.g., a mortgagor) or a grant recipient subject to 24 CFR part 58 of the hazards of the floodplain location before the execution of documents completing the transaction.

§ 55.22 Conveyance restrictions for the disposition of multifamily real property.

(a) In the disposition (including leasing) of multifamily properties acquired by HUD that are located in a floodplain (a 500-year floodplain for a Critical Action), the documents used for the conveyance must:

(1) Refer to those uses that are restricted under identified federal, state, or local floodplain regulations; and

(2) Include any land use restrictions limiting the use of the property by a grantee or purchaser and any successors under state or local laws.

(b)(1) For disposition of multifamily properties acquired by HUD that are located in a 500-year floodplain and contain Critical Actions, HUD shall, as a condition of approval of the disposition, require by covenant or comparable restriction on the property's use that the property owner and successive owners provide written notification to each current and prospective tenant concerning:

(i) The hazards to life and to property for those persons who reside or work in a structure located within the 500-year floodplain, and

(ii) The availability of flood insurance on the contents of their dwelling unit or business.

(2) The notice shall also be posted in the building so that it will be legible at all times and easily visible to all persons entering or using the building.

§ 55.24 Aggregation.

Where two or more actions have been proposed, require compliance with subpart C of this part, affect the same floodplain, and are currently under review by the Department (or by a grant recipient subject to 24 CFR part 58), individual or aggregated approvals may be issued. A single compliance review and approval under this section is subject to compliance with the decision making process in §55.20.

§ 55.25 Areawide compliance

(a) A HUD-approved areawide compliance process may be substituted for individual compliance or aggregated compliance under §55.24 where a series of individual actions is proposed or contemplated in a pertinent area for HUD's examination of floodplain hazards. In areawide compliances, the area for examination may include a sector of, or the entire, floodplain—as relevant to the proposed or anticipated actions. The areawide compliance process shall be in accord with the decision making process under §55.20.

(b) The areawide compliance process shall address the relevant executive orders and shall consider local land use planning and development controls (e.g., those enforced by the community for purposes of floodplain management under the National Flood Insurance Program (NFIP)) and applicable state programs for floodplain management. The process shall include the development and publication of a strategy that identifies the range of development and mitigation measures under which the proposed HUD assistance may be approved and that indicates the types of actions that will not be approved in the floodplain.

(c) Individual actions that fit within the types of proposed HUD actions specifically addressed under the areawide compliance do not require further compliance with §55.20 except that a determination by the Department or a grant recipient subject to 24 CFR part 58 shall be made concerning whether the individual action accords with the areawide strategy. Where the individual action does not accord with the areawide strategy, specific development and mitigation measures shall be prescribed as a condition of HUDs approval of the individual action.

(d) Areawide compliance under the procedures of this section is subject to the following provisions:

(1) It shall be initiated by HUD through a formal agreement of understanding with affected local governments concerning mutual responsibilities governing the preparation, issuance, implementation, and enforcement of the areawide strategy;

(2) It may be performed jointly with one or more Federal departments or agencies, or grant recipients subject to 24 CFR part 58 that serve as the responsible Federal official;

(3) It shall establish mechanisms to ensure that:

(i) The terms of approval of individual actions (e.g., concerning structures and facilities) will be consistent with the areawide strategy;

(ii) The controls set forth in the areawide strategy are implemented and enforced in a timely manner; and

(iii) Where necessary, mitigation for individual actions will be established as a condition of approval.

(4) An open scoping process (in accordance with 40 CFR 1501.7) shall be used for determining the scope of issues to be addressed and for identifying significant issues related to housing and community development for the floodplain;

(5) Federal, state and local agencies with expertise in floodplain management, flood evacuation preparedness, land use planning and building regulation, or soil and natural resource conservation shall be invited to participate in the scoping process and to provide advice and comments; and

(6) Eligibility for participation in and the use of the areawide compliance must be limited to communities that are in the Regular Program of the National Flood Insurance Program and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24), thereby demonstrating a capacity for and commitment to floodplain management standards sufficient to perform responsibilities under this part.

(7) An expiration date (not to exceed ten years from the date of the formal adoption by the local governments) for HUD approval of areawide compliance under this part must be stated in the agreement between the local governments and HUD. In conjunction with the setting of an expiration date, a mechanism for HUDs reevaluation of the appropriateness of areawide compliance must be provided in the agreement.

§ 55.26 Adoption of another agency's review under the executive orders.

If a proposed action covered under this part is already covered in a prior review performed under the executive order by another agency, that review may be adopted by HUD or by a grant recipient authorized under 24 CFR part 58, provided that:

- (a) There is no pending litigation relating to the other agency's review for floodplain management;
- (b) The adopting agency makes a finding that:
 - (1) The type of action currently proposed is comparable to the type of action previously reviewed by the other agency; and
 - (2) There has been no material change in circumstances since the previous review was conducted; and
- (c) As a condition of approval, mitigation measures similar to those prescribed in the previous review shall be required of the current proposed action.

§ 55.27 Documentation

(a) For purposes of compliance with §55.20, the responsible HUD official who would approve the proposed action (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) shall require that the following actions be documented:

(1) Under §55.20(c), practicable alternative sites have been considered outside the floodplain, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government (as defined in 24 CFR 570.3), whichever geographic area is more appropriate to the proposed HUD action. Actual sites under review must be identified and the reasons for the non-selection of those sites as practicable alternatives must be described; and

(2) Under §55.20(e), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain as identified in §55.20(d) have been applied to the design for the proposed action.

(b) For purposes of compliance with §55.24, §55.25, or §55.26 (as appropriate), the responsible HUD official (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) who would approve the proposed action shall require documentation of compliance with the required conditions.

(c) Documentation of compliance with this part (including copies of public notices) must be attached to the environmental assessment, the environmental impact statement or the compliance record and be maintained as a part of the project file. In addition, for environmental impact statements, documentation of compliance with this part must be included as a part of the record of decision (or environmental review record for grant recipients subject to 24 CFR part 58).

OKLAHOMA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

REQUIREMENT NO. 404
FINANCIAL MANAGEMENT

Effective July 2007

I. INTRODUCTION

In order to assist you in fulfilling your financial management obligations, this Requirement will spell out the steps for the successful financial management of a CDBG grant. You will find copies of all required forms and a sample ledger page in the Attachments following this Requirement. [24 CFR 570, Subpart I, §489(d)]

II. ACCOUNTING SYSTEM REQUIREMENTS

The seven major elements to a complete financial management system include [11 O.S. §§17-207, 68 O.S. §§3003]:

A. Setting Up The Accounting Records:

1. All Grant Recipients are required by State statute to track Federal dollars by fund. This simply means that a separate set of accounting records (books) must be set up for each CDBG contract received. Each set of books will be considered a fund, much like the funds Grant Recipients are already required by law to operate under, i.e., water, street and alley, general, special revenue, etc. Within each fund, however, specific accounts are required to track expenditures by budgeted line item activity (construction, administration, engineering, etc.).
2. At a minimum, each fund should contain:
 - a. A cash receipt and disbursement journal [See Attachment 1 for a sample CDBG Ledger];
 - b. A complete set of expense accounts for each budgeted line item, i.e., construction, engineering, administration, etc.;
 - c. A payroll register for any Grant Recipient employees paid from CDBG funds.
3. The accounting records may be maintained on a cash or accrual basis.

4. All entries recorded in the cash disbursements journal must be traceable to some form of documentation, i.e., invoices, partial pay estimates, employee time sheets, etc. Additionally, you will need to have all original documentation filed in an orderly manner and readily available for review in the event ODOC performs a financial monitoring on your CDBG project.
- B. Accounting Systems: You may apply your normal accounting systems to CDBG funds, provided that all applicable State and Federal requirements can be met.
1. You may place CDBG funds in either an interest- or non-interest-bearing checking account. If funds are placed in an interest-bearing checking account, the interest must be tracked. Any interest earned in a one-year period in excess of \$100 must be paid to HUD. The check can be sent to ODOC but must be made payable to HUD. The one-year clock starts ticking from the date of your first deposit into the account. Grant Recipients may keep interest amounts up to \$100 per year if they are able to document allowable CDBG administrative expenses
 2. Once CDBG funds are requested, they will be automatically deposited by electronic funds transfer (EFT) into the checking account that has been designated for receipt of CDBG funds. In order to set this process up the Grant Recipient must submit an EFT Authorization. **[Attachment 2 or 3]**
 3. Grant Recipients, both municipalities and counties, are allowed **fifteen (15)** working days to expend the funds. Any money not expended after the maximum time allowed is considered excess cash on hand and must be returned to ODOC. The returned funds can be drawn at a later date when needed. **[Treasury Circular 1075]**
 4. The only exception to the "cash-on-hand" prohibition is that Grant Recipients are allowed to maintain funds (up to \$2,000) after the final drawdown of funds for the payment of the CDBG pro-rata share of a State-required "Yellow Book" audit. Although the Grant Recipient may technically have cash on hand at the time of closeout, these funds will be reported as expended on the closeout documents.
- C. Internal Controls: Adequate internal controls must be established to ensure CDBG funds are properly safeguarded. These controls must include the following:
1. Payment approval procedures must be defined. All invoices must be approved by the Municipal Council or Board of County Commissioners prior to payment. You may

use an authorized official if normal approval procedures by the Council or Board cannot be used. **[Per the requirements of 62 O.S. 1998 & 310.1]**

2. An authorized official is defined as any municipal or county officer or employee the Council or Board gives the authority to approve invoices on their behalf. **[11 O.S. §17A-102]**
3. Grant Recipient ordinance must reflect any departure from the normal approval procedures. An authorized official may approve all invoices prior to payment by initialing and dating each invoice. **[11 O.S. 1996, §§17A-102]**
4. All paid invoices must be defaced by writing the check number and date paid on each invoice or purchase order. A copy of the approved purchase order must be attached to each invoice. If Council or Board members do not sign purchase orders, documentation of approval of purchase orders as reflected in the meeting minutes must be readily available for review. **Every purchase order issued for invoices paid from CDBG funds must be identified in the meeting minutes.**
5. Non-Collusion Affidavits are required to be attached to all contracts for \$25,000 or more. Grant Recipients executing contracts for goods or services on a continuing basis may accept a single Non-Collusion Affidavit at the time of initial execution of the contract, which applies to all future work, services or materials completed or supplied under the terms of the contract. **[74 O.S. §3109]**
6. CDBG checks must be pre-numbered and signed by the proper officials as authorized by local ordinance or State statute. In the absence of such ordinance, the treasurer must sign all checks.
7. Blank checks, undelivered checks and signature stamps must be locked in a safe, drawer or file cabinet with access restricted to individuals authorized for their use.
8. Every CDBG bank statement should be reconciled. The statement balance (not including other sources of funds) should be reconciled back to the CDBG general ledger cash account. It is recommended that the reconciliation be performed by someone other than the CDBG accountant. All persons performing the reconciliation must initial and date the reconciliation to indicate approval.
9. CDBG dollars cannot be placed in a petty cash fund.

10. Any municipal or county official who plans to sign any of the Request for Payment forms and/or Monthly Expenditure Report forms must be listed in the "Fiscal Signatories" section of the Certificate of Authorized Signatures form. The Mayor or Chairman of the Board of County Commissioners must decide who they want the signatories to be. The Certificate is mailed with your CDBG contract and must be completed and returned to ODOC before any funds can be drawn down.

D. Leverage Funds Requirements:

1. The Grant Recipient must also be sure not to overlook the leverage funds requirements. The term leverage refers to any funds other than CDBG funds to be used on the project. These funds were originally identified in the grant application and were given credit (scoring points) in the rating of that application. Since this commitment was part of the basis upon which ODOC awarded financial assistance, the Grant Recipient is responsible for seeing that those funds are expended on the CDBG project. Failure to expend leverage funds on the project may result in disallowance of any or all CDBG funding.
2. For economic development projects, leveraged funds consist of "new money" contributed for the express purpose of implementing the proposed project. The source of new money can be cash or other asset resources (land), bank loans, proceeds from the sale of stocks or bonds or grants and loans from other public agencies. Net worth and existing assets are generally considered "old money" and cannot be counted as leverage for the project.
3. For community development projects, leverage may consist of cash or in-kind contributions. Cash includes other Federal/State grants and loans and local capital improvement funds set aside for a specified purpose in the Grant Recipient budget. In-kind includes the value of force account labor, voluntary labor, value of services and supplies provided by another local entity, the fair market value of land, buildings or materials that are a part of the project and the cost of using Grant Recipient-owned equipment.
4. Force account labor is defined as Grant Recipient labor used on the project that has been paid for from local funds. Voluntary labor is defined as labor performed by individuals who are not compensated for their services and time. The labor performed must be for services considered to be an integral part of the project and can only be charged at the rate of \$10.00 per hour for non-skilled labor and the current hourly market rate for skilled labor, i.e., electricians, plumbers, etc. If

Grant Recipient-owned equipment is used on the project, the FEMA rate schedule will be used as a guide in determining the proper equipment costs.

5. Documentation of leveraged funds must be maintained on file at the Grant Recipient for review.
 - a. Documentation includes invoices, partial pay estimates, monthly billings, executed contracts, etc. (For in-kind labor, it includes signed time sheets showing the amount of time charged to the CDBG project, the rate per hour paid to each employee and a brief description of the work performed. Each employee/volunteer and the employee's immediate supervisor must sign the time sheets. The employee's payroll records must also be available for review.) **[Attachment 9 for FEMA Rates]**
 - b. Documentation of Grant Recipient-owned equipment use must consist of a written log showing the type of equipment used, the date(s) used, total number of hours used, the appropriate FEMA hourly rate and a brief description of how the equipment was used, and must be signed by the on-site supervisor. **[Attachment 8 for CDBG Time Sheets]**
 - c. Documentation should also include accounting records and bank statements the leveraged funds were paid from, if applicable. If changes to either the source or use of leverage funding from those identified in the application are required, the Grant Recipient must secure prior ODOC approval. Allowable and unallowable leverage sources will be defined in each year's application for funding. **[See Requirement 401 for guidance on budget revisions.]**

E. Allowable and Unallowable Expenses:

1. At this point, it is important to cover what are considered allowable and unallowable expenses to your CDBG contract. **The single most important thing to remember is that you can only expend funds on the items that are listed in the detailed budget submitted with your application for funding.**
2. Your budget has already been reviewed and approved for funding through ODOC, therefore, all costs set out in the budget are considered approved. Any requests to deviate from the budget must be approved in writing by ODOC. Any CDBG funds expended on items not pre-approved by ODOC

will be considered disallowed expenses and must be paid for from local funding sources.

3. Your budget may contain two separate categories for administration. The first category, Direct Grantee Administration, can only be used for payment of Grant Recipient administration expenses. It cannot be used to pay for administrative consulting services. The second category, Public Facilities Administration, can be used to pay for Grant Recipient expenses or contract services, i.e., certified CDBG administrative consulting services.
4. As a general rule, administrative costs for the Grant Recipient may include:
 - a. Contracted certified CDBG administrative consulting services;
 - b. Personnel costs (payroll and fringe) for staff time on the project. The Grant Recipient's payroll account can be reimbursed with CDBG funds rather than creating an additional payroll for employees performing CDBG work activities. Time sheets are required for all employees paid with CDBG funds;
 - c. Pro-rata portion of the annual audit expense;
 - d. Miscellaneous: Legal fees, title opinions, pro-rata general liability insurance and fidelity bond costs, bid advertisement expenses and postage.
 - e. Travel: If you are planning to charge Grant Recipient travel expenses to your CDBG contract, the following requirements will apply. If the Grant Recipient's existing travel policies are more restrictive than the State's, the more restrictive local policies will take precedence. **[Consistent with 74 O.S. §500.1, et seq.]**
 - (1) The use of a Grant Recipient vehicle or a personal vehicle for CDBG-related travel can be reimbursed at the rate of \$0.445 per mile. Travel reimbursement must be documented by providing the following:
 - (a) Date of travel;
 - (b) Reason for travel;
 - (c) Destinations; and
 - (d) Beginning and ending odometer readings.

- (2) If you travel in-State on CDBG-related business overnight, you are eligible to receive lodging reimbursement. Such reimbursement must be for the actual cost but not to exceed \$60 per night. Documentation of hotel/motel receipts must be maintained in the CDBG files.
- (3) Reimbursement for meals and incidental expenses (per diem) will be reimbursed at the rate of \$39 per day. The way that per diem is computed is as follows: A day is a 24-hour period, which begins at the time of departure. Reimbursement for 1/4 days (6 hours) or a major fraction thereof (more than 3 hours) is made at a rate of \$9.75 per quarter. For example, if you:
 - (a) Are on travel status for 24 hours, you are entitled to a \$39 reimbursement;
 - (b) Are on travel status for 28 hours and one minute, you are entitled to an extra quarter or a \$48.75 reimbursement; or
 - (c) Travel overnight and stay with a friend or relative, per diem can be computed at the rate of \$49 per day and \$12.25 per quarter. **[See Attachment 4 for a summary.]**
- (4) Other charges for in-State travel, such as telephone, telegraph, registration fees and turnpike calls, can be reimbursed up to the actual amount and must be verified by receipts.

F. Program Income: Program income is simply money received by the Grant Recipient, in the amount of \$25,000 or more per year, that has been generated from the use of CDBG funds. **[24 CFR 570, Subpart I, § 489(e)]**

1. Program income is not your initial receipt of CDBG funds but money made from the use of those funds.
2. If the Grant Recipient earns less than \$25,000 per year from the use of CDBG funds, such earnings are not considered program income. The Grant Recipient may keep any amounts of money less than \$25,000 for its own use; however, the Grant Recipient is encouraged to use it for community development-related activities.
3. Any revenue received in the amount of \$25,000 or more per year must be reported to ODOC. As a general rule, all

program income must be returned to ODOC, however, the Grant Recipient may keep certain amounts of program income if it can justify the reason for keeping it and the money can be expended within the parameters of the CDBG Program. Examples of program income include:

- a. Proceeds from the sale of real property purchased or improved with CDBG funds;
- b. Proceeds from the sale of equipment purchased with CDBG funds and gross income from the use of real or personal property acquired with CDBG funds, less the costs incurred in creating the program income;
- c. Payment of principal and interest on loans made using CDBG funds.

G. Financial Management Files:

1. The last topic in the financial management process is setting up a financial management file. Your file should contain the following documents:
 - a. Copies of all Requests for Funds forms submitted to ODOC [**Attachment 5**];
 - b. Copies of all Monthly Expenditure Report forms submitted to ODOC [**Attachment 6 and 7**];
 - c. Any other correspondence between the Grant Recipient and ODOC concerning the financial management of your CDBG contract.
2. The financial management file should be readily available for any ODOC staff for inspection during a CDBG monitoring visit. Additionally, the following financial management records must be available during the CDBG monitoring visit:
 - a. CDBG General Ledger;
 - b. CDBG and leveraged fund bank statements;
 - c. Cancelled checks;
 - d. Invoices/purchase orders;
 - e. Board/Council meeting minutes;
 - f. CDBG project savings account statements (if applicable).

III. DRAWING DOWN FUNDS

- A. As noted earlier, Grant Recipients may request a drawdown of funds necessary to meet immediate needs. This is accomplished through the submission of a Request for Funds form. This form provides space to indicate how much money is needed and the intended use of the funds being requested. No more than 25% of the funds budgeted for public facilities administration can be drawn per phase. The funds can only be drawn after completion of the following:

ADMINISTRATION REMITTANCE SCHEDULE

Maximum Fee	Activity
25%	Release of Funds
65%	During project implementation; paid on a pro rata basis as project funds are expended
10%	Project Completion Report filed

A certified CDBG administrator may prepare this form but the authorized official of the Grant Recipient must execute (sign and date) it.

- B. After checking the Request for consistency with the contract budget and confirming that there are no impediments to honoring the request for funds, ODOC will initiate an EFT from the U.S. Treasury to the Grant Recipient's bank account.
- C. Be sure to keep in mind that it will take approximately five to seven working days from the date ODOC processes your Request for Payment of Contract Funds to receive your money.

IV. CDBG MONTHLY EXPENDITURE REPORTS:

- A. This report must be submitted by the 10th of every month following a month in which there has been a drawdown, expenditure or cash balance of CDBG funds. One version of this report is for community development projects [**Attachment 6**] and a second one is for economic development projects [**Attachment 7**].
- B. Leverage expenditures must also be included on the report. Leverage expenditures must be reported when incurred. If there are no CDBG expenses to report during the month, a report for leverage expenditures only must be submitted if leveraged expenditures occurred.

- C. Timely submission of the Monthly Expenditure Report is important. Requests for funds will not be processed if there are any delinquent reports outstanding.

V. **AUDIT REQUIREMENTS**

- A. At some point during the life of the project, it is highly likely that a financial audit of the Grant Recipient, including the CDBG funds received, will be required. The exact nature of any given audit, in terms of frequency, scope of coverage, when it is to be submitted and to whom, depends on several factors, including:
1. Whether the jurisdiction is a municipality or county [**11 O.S. §17-105 or 19 O.S. §171**];
 2. The total level of funding received in a given year from all sources [**OMB Circular A-133, as revised on June 27, 2003**]; and
 3. The total level of Federal funding received in a given year.
- B. Because of the complexity of these requirements, it is impossible to make any generalizations about how to comply, with two exceptions:
1. If the Grant Recipient's annual revenue is \$25,000 or more in funds (from any and all sources), it must conduct an annual audit of all funds received which complies with State statute; and
 2. If the Grant Recipient's revenue is \$25,000 or more, but it's population is less than 2,500, it has the option of having an agreed upon procedures agreement conducted by an independent licensed public or certified accountant in lieu of an independent audit as cited in 17-105 et. Al.
 3. If the Grant Recipient *expends* \$500,000 or more in Federal funds (regardless of the source), it is subject to the requirements of the Federal Single Audit Act.
- C. Grant Recipients should consult with ODOC and the ODOC Audit Policies and Procedures Manual for specific guidance.

VI. **SUMMARY**

If you are unclear on any procedural issue or requirement or feel that you need additional help, do not hesitate to call ODOC. Staff will be happy to assist you over the telephone or set up a time when either you can come and visit ODOC or we can come to the Grant Recipient's office. The current telephone number is 1-800-879-6552 or 1-800-TRY-OKLA.

VII. ATTACHMENTS

1. Sample CDBG Ledger
2. Electronic Funds Transfer Authorization
3. Bank Account Change
4. Maximum CDBG Travel Claims
5. Request for Payment of Contract Funds
6. CDBG Monthly Expenditure Report - Community Development
7. CDBG Monthly Expenditure Report - Economic Development
8. CDBG Time Sheet
9. FEMA Schedule of Equipment Rates
10. Request for CDBG Budget Modification - Community Development
11. Request for CDBG Budget Modification - Economic Development

Sample CDBG Ledger

CDBG Contract \$175,000

							\$151,300	\$ 15,700	\$ 6,500	\$ 1,500			
			Cash Rec.	Cash Dis.	Cash Bal.	Grant Rev.	Const.	Engineer	P.F. Adm.	D.G. Adm.	Int. Rec.	Int. Exp.	Int. Bal.
Date		Ref	(Dr)	(Cr)		(Cr)	(Dr)	(Dr)	(Dr)	(Dr)			
30-Jul	ODOC Warrant No. 1		\$ 45,000		\$ 45,000	\$ 45,000							
30-Jul	Williams Construction	#1		\$ 40,000	\$ 5,000		\$ 40,000						
31-Jul	Bowers Engineering	#2		\$ 3,000	\$ 2,000			\$ 3,000					
31-Jul	Interest Received										\$ 10		\$ 10
	Total		\$ 45,000	\$ 43,000	\$ 2,000	\$ 45,000	\$ 40,000	\$ 3,000			\$ 10		\$ 10
1-Aug	Miller & Associates	#3		\$ 800	\$ 1,200				\$ 800				
1-Aug	Daily Times	#4		\$ 200	\$ 1,000					\$ 200			
1-Aug	Bowers Engineering	#5		\$ 1,000				\$ 1,000					
31-Aug	Interest Received										\$ 2		\$ 12
31-Aug	Bank Service Charge											\$ 7	\$ 5
	Total		\$ 0	\$ 2,000	\$ 0			\$ 1,000	\$ 800	\$ 200	\$ 2	\$ 7	\$ 5
	Year to Date Totals		\$ 45,000	\$ 45,000	\$ 0		\$ 40,000	\$ 4,000	\$ 800	\$ 200	\$		\$ 5

STATE OF OKLAHOMA
OKLAHOMA DEPARTMENT OF COMMERCE
P.O. BOX 26980
OKLAHOMA CITY, OK 73126-0980

ELECTRONIC FUNDS TRANSFER AUTHORIZATION

CLASS NAME: CDB

GRANT RECIPIENT: _____

TAX IDENTIFICATION NUMBER: _____

I hereby authorize the State of Oklahoma Treasury, hereinafter call Treasury, to initiate credit entries and to initiate, if necessary, debit entries for any _____ [checking or savings] _____ account indicated below and the financial institution named below, hereinafter called DEPOSITORY, to credit and/or debit the same any amount(s) owed by or due to me by the State of Oklahoma. This authority is to remain in full force and effect until Treasury has received written notification from me of its termination in such time and in such manner as to afford TREASURY and DEPOSITORY a reasonable opportunity to act on it.

1. FINANCIAL INSTITUTION: _____
2. BANK TRANSIT NUMBER/ABA: _____
3. CHECKING/SAVINGS ACCT NUMBER: _____
4. TELEPHONE NUMBER (WORK): _____
5. AUTHORIZED SIGNATURE: _____
6. DATE: _____

FOR CHECKING ACCOUNTS, PLEASE ATTACH A VOIDED CHECK HERE. (DEPOSIT SLIPS ARE NOT ACCEPTED.)

FOR SAVINGS ACCOUNTS, PLEASE ATTACH AN OFFICIAL DOCUMENT FROM YOUR FINANCIAL INSTITUTION SHOWING THE BANK TRANSIT ROUTING AND ACCOUNT NUMBERS.

PLEASE MAIL COMPLETED FORM TO:
OKLAHOMA DEPARTMENT OF COMMERCE
ATTENTION: STEVE WALKER
P.O. BOX 26980
OKC, OK 73126-0980
PHONE NUMBER: (405)-815-5303

INSTRUCTIONS FOR COMPLETING THE ELECTRONIC FUNDS TRANSFER (EFT) FORM

CLASS NAME: The class name is a three-character code assigned by the State Treasurer's Office and is used to

ITEMS TO BE COMPLETED BY THE OKLAHOMA DEPARTMENT OF COMMERCE:

identify the program for which funds are being requested.

TAX IDENTIFICATION NUMBER: This is the same number as the Federal Employee Identification number on your Contract with the Oklahoma Department of Commerce.

Please note that a separate EFT form is required for each program a Grant Recipient has with the Oklahoma Department of Commerce.

For example: If the Grant Recipient is involved in Community Development Block Grant, Community Services Block Grant, Emergency Shelter Grant and Emergency Homeless Program, they would need to complete four separate EFT forms; one for each program.

As each program is implemented, the Department of Commerce will send you a new EFT form to complete.

1. **FINANCIAL INSTITUTION:** The bank that will be used to conduct your business transactions for a specific program.

ITEMS TO BE COMPLETED BY THE GRANT RECIPIENT:

2. **BANK TRANSIT NUMBER/ABA:** The Bank Transit number listed on your check. If you do not know which number is your Bank Transit Number then leave it blank and the Oklahoma State Treasurer's Office will complete this number.
3. **CHECKING/SAVINGS ACCOUNT NUMBER:** The account number listed on your voided check.
4. **TELEPHONE NUMBER:** The telephone number where you may be reached during working hours.
5. **AUTHORIZED SIGNATURE:** The individual listed on the Certificate of Authorized Signatures.
6. **DATE:** The date you complete the form.

FOR CHECKING ACCOUNTS, PLEASE ATTACH A VOIDED CHECK TO YOUR EFT FORM. (DEPOSITS SLIPS ARE NOT ACCEPTED.)

FOR SAVINGS ACCOUNTS, PLEASE ATTACH AN OFFICIAL DOCUMENT FROM YOUR FINANCIAL INSTITUTION SHOWING THE BANK TRANSIT ROUTING AND ACCOUNT NUMBERS.

Once the initial authorization agreement is on file, any changes to existing information must be pre-noted at least 30 days prior to any funds being drawn and credited to your designated bank account.

BANK ACCOUNT CHANGE*

STATE OF OKLAHOMA
OKLAHOMA DEPARTMENT OF COMMERCE
P.O. BOX 26980
OKLAHOMA CITY, OK 73126-0980

ELECTRONIC FUNDS TRANSFER AUTHORIZATION

CLASS NAME: CDB

GRANT RECIPIENT: _____

TAX IDENTIFICATION NUMBER: _____

I hereby authorize the State of Oklahoma Treasury, hereinafter call Treasury, to initiate credit entries and to initiate, if necessary, debit entries for any _____ [checking or savings] _____ account indicated below and the financial institution named below, hereinafter called DEPOSITORY, to credit and/or debit the same any amount(s) owed by or due to me by the State of Oklahoma. This authority is to remain in full force and effect until Treasury has received written notification from me of its termination in such time and in such manner as to afford TREASURY and DEPOSITORY a reasonable opportunity to act on it.

1. FINANCIAL INSTITUTION: _____
2. BANK TRANSIT NUMBER/ABA: _____
3. CHECKING/SAVINGS ACCT NUMBER: _____
4. TELEPHONE NUMBER (WORK): _____
5. AUTHORIZED SIGNATURE: _____
6. DATE: _____

FOR CHECKING ACCOUNTS, PLEASE ATTACH A VOIDED CHECK HERE. (DEPOSIT SLIPS ARE NOT ACCEPTED.)

FOR SAVINGS ACCOUNTS, PLEASE ATTACH AN OFFICIAL DOCUMENT FROM YOUR FINANCIAL INSTITUTION SHOWING THE BANK TRANSIT ROUTING AND ACCOUNT NUMBERS.

PLEASE MAIL COMPLETED FORM TO:
OKLAHOMA DEPARTMENT OF COMMERCE
ATTENTION: STEVE WALKER
P.O. BOX 26980
OKC, OK 73126-0980
PHONE NUMBER: (405)-815-5303

* Bank account changes require a two-week processing time; therefore, any changes made will delay Requests for Funds during this period.

INSTRUCTIONS FOR COMPLETING THE ELECTRONIC FUNDS TRANSFER (EFT) FORM
CLASS NAME: The class name is a three-character code assigned by the State Treasurer's Office and is used to identify the program for which funds are being requested.

ITEMS TO BE COMPLETED BY THE OKLAHOMA DEPARTMENT OF COMMERCE:

GRANT RECIPIENT The City, Town, County or Non-Profit listed on the Contract with the Oklahoma Department of Commerce.

GRANT RECIPIENT TAX IDENTIFICATION NUMBER: This is the same number as the Federal Employee Identification number on your Contract with the Oklahoma Department of Commerce.

Please note that a separate EFT form is required for each program a Grant Recipient has with the Oklahoma Department of Commerce.

For example: If the Grant Recipient is involved in Community Development Block Grant, Community Services Block Grant, Emergency Shelter Grant and Emergency Homeless Program, they would need to complete four separate EFT forms; one for each program.

As each program is implemented, the Department of Commerce will send you a new EFT form to complete.

1. FINANCIAL INSTITUTION: The bank that will be used to conduct your business transactions for a specific

ITEMS TO BE COMPLETED BY THE GRANT RECIPIENT:

program.

2. BANK TRANSIT NUMBER/ABA: The Bank Transit number listed on your check. If you do not know which number is your Bank Transit Number then leave it blank and the Oklahoma State Treasurer's Office will complete this number.

3. CHECKING/SAVINGS ACCOUNT NUMBER: The account number listed on your voided check.

4. TELEPHONE NUMBER: The telephone number where you may be reached during working hours.

5. AUTHORIZED SIGNATURE: The individual listed on the Certificate of Authorized Signatures.

6. DATE: The date you complete the form.

FOR CHECKING ACCOUNTS, PLEASE ATTACH A VOIDED CHECK TO YOUR EFT FORM. (DEPOSITS SLIPS ARE NOT ACCEPTED.)

FOR SAVINGS ACCOUNTS, PLEASE ATTACH AN OFFICIAL DOCUMENT FROM YOUR FINANCIAL INSTITUTION SHOWING THE BANK TRANSIT ROUTING AND ACCOUNT NUMBERS.

Once the initial authorization agreement is on file, any changes to existing information must be pre-noted at least 30 days prior to any funds being drawn and credited to your designated bank account.

Maximum CDBG Travel Claims

Day Travel Only

Mileage at .0445 per mile

Turnpike Fees

Overnight in a Hotel or Motel

Mileage at .0445 per mile

Turnpike Fees

Lodging up to \$60.00 per night

Per Diem at \$39.00 per day
(rounded quarterly at \$9.75 per 6 hours)

Overnight at a Friend's

Mileage at 0445 per mile

Turnpike Fees

Per Diem at \$49.00 per day

(round quarterly at \$12.25 per 6 hours)

However, the lodging rate can be different depending on the location of travel as identified in the Government Services Administration's (GSA) Continental United States (CONUS) rates for domestic locations and OCONUS for locations outside the continental United States. See <http://www.gsa.gov>.

OKLAHOMA DEPARTMENT OF COMMERCE
OFFICE OF COMMUNITY DEVELOPMENT

REQUEST FOR PAYMENT OF CONTRACT FUNDS

- I.
- a. Contract # _____ b. Request #: _____ c. Amount Requested: _____
- d. Prepared By: _____ e. Phone #: _____ f. Transfer funds on: _____
- g. Grant Recipient Name: _____
- h. Address: _____
- i. Purpose of Request: Place the requested dollar amounts by category and provide a brief explanation of funds expended: (Examples: Installed 5,000 L.F. of sewer line & 10 manholes. Received Release of Funds) (Attach an Additional Page if Necessary)

*****Request for Funds will be returned if NO explanation is provided*****

P.F.Admin.: \$ _____ Explanation: _____

D.G.Admin.: \$ _____ Explanation: _____

Eng./Arch.: \$ _____ Explanation: _____

Construction: \$ _____ Explanation: _____

Other: \$ _____ Explanation: _____

If public facilities administration funds are requested check the appropriate project phase below:
 _____ 25% Release of Funds _____ 65% Paid on a pro-rata basis during project implementation as project funds are expended
 _____ 10% Project Completion Report filed with ODOC.

II. I certify that this request complies with the terms of the above referenced contract.

 Signature of Authorized Official _____
 Date

FOR ODOC USE ONLY:
This Request for Funds is approved in the amount of: \$ _____

ROF: _____ IDIS PROJECT: _____ IDIS ACTIVITY _____

OCD: By: _____ Date: _____ 20____ ASD: By: _____ Date: _____ 20____

INSTRUCTIONS FOR PAYMENT OF CONTRACT FUNDS

- a. **Contract #:** Enter the complete Contract number as shown on Part I of the contract. Example: **8124 CDBG 98.**
- b. **Request #:** Number each request in the order that they are submitted: **1. 2. 3, etc.**
- c. **Amount Requested:** Enter the total amount of funds required from section i. below.
- d. **Prepared by:** Enter name of person preparing this Request for Funds.
- e. **Phone #:** Enter the Phone number of person preparing this request
- f. **Transfer funds on:** Enter the exact date the payment is needed for deposit in your designated financial institution. **Note:** Funds are electronically transferred directly to your account on the date you specify. Please be aware that you must allow ODOC a minimum of 5 working days for all fund transfers Funds deposited that are not utilized after 15 working days are to be immediately returned to the Oklahoma Department of Commerce, Office of Community Development. A letter of explanation should accompany the returned funds.
- g. **Grant Recipient Name:** Enter your organization name as shown on Part I of the contract.
- h. **Address:** Enter the complete address to be used for returning this form or other correspondence.
- i. **Purpose of Request:** Place the dollar amount in the appropriate blank space(s) as indicated below. Note that you may request funds for more than one category.
NOTE: In accordance with a HUD directive, a **Brief Explanation** is required for all funds requested. This explanation should identify why and how the funds are to be used. (Example: Administrator has received release of funds. Advertised for Grant Recipient. Installed 5,000 L.F. of sewer line, including 5 manhole, etc.)
EFFECTIVE JULY 1 2001 ALL PAY REQUESTS MUST BE SUBMITTED ON THE REVISED FORM.

"P.F. or D.G. Administration": Use these categories when requesting administrative funds. The appropriate project phase must be checked when requesting CDBG Public Facilities administrative funds. Public facilities admin. funds can only be drawn upon completion of the appropriate phase, Release of funds, etc.

"Engineering / Architect ": Use this category when requesting funds for professional services expenses.

"Project": Use this category when requesting funds for construction activities such as public facilities, purchase of equipment (such as fire protection equipment) or building construction.

NOTE: All housing related projects require release of funds for a specific address or property before funds can be drawn. Housing projects include **Acquisition/Relocation, Housing Rehabilitation, and Clearance/Demolition.**

You must attach a separate sheet, which lists each house address, the estimated cost, and the date of historical clearance by the State Historic Preservation Office (SHPO). Also attach a copy of the letter from the SHPO.

"OTHER": Use this category when requesting funds for items/services not identified from above, in accordance with the contract budget received for your project.

- II. An official designated on the "Certificate of Authorized Signatures" form must sign and date the request.

This form should be mailed to:Financial Unit, OCD
Oklahoma Department of Commerce,
P.O. Box 26980
Oklahoma City, OK 73126-0980

The form may also be electronically submitted by facsimile (FAX). The number is (405) 815-5344, or 815-5377. If you fax your request you are not required to send the original document.

**CDBG MONTHLY EXPENDITURE REPORT
COMMUNITY DEVELOPMENT**

NAME OF GRANT RECIPIENT	REPORT NUMBER	CONTRACT NUMBER	REPORT PERIOD
ADDRESS		PREPARER'S NAME	PHONE NUMBER

INTEREST EARNED RECONCILIATION

Total Interest Earned YTD \$ _____
 Less Interest Expended YTD \$ _____
 Interest Earned Cash Balance: \$ _____

CASH RECONCILIATION

Cash Received to Date \$ _____
 Less Total Expenditures YTD \$ _____
 Unexpended Cash Balance*: \$ _____

LINE ITEM BUDGET 101061	CODE	A CURRENT EXPENSE	B EXPENDITURES YEAR-TO-DATE	C BUDGET	D REMAINING BALANCE
1. PLANNING	551020				
2. ENGINEERING	551030				
3. ARCHITECTURE	551031				
4. INSPECTION	551032				
5. HOUSING REHABILITATION	551049				
6. ACQUISITION & DISPOSITION	551050				
7. CLEARANCE/DEMOLITION	551070				
8. UTILITIES	551080				
9. WATER SYSTEM	551090				
10. SEWER SYSTEM	551091				
11. SOLID WASTE	551100				
12. AMBULANCE	551161				
13. FIRE PROTECTION	551160				
14. HANDICAP	551044				
15. COMMUNITY FACILITY	551110				
16. SENIOR CITIZENS CENTER	551112				
17. PARKS	551150				
18. STREETS	551180				
19. FLOOD & DRAINAGE	551190				
20. OTHER (SPECIFY)	551210				
21. SUB-TOTAL (1 THRU 20)					
22. DIRECT GRANTEE ADMIN	551018				
23. PUBLIC FACILITIES ADMIN	551010				
24. TOTAL ADMIN (22 & 23)					
25. TOTAL CDBG COSTS (21 & 24)					
26. TOTAL MATCH FUNDS	555230				
27. GRAND TOTAL					

* Please explain any unexpended cash balance and how it will be expended.

ODOC USE ONLY:

I certify that the actual costs incurred are taken from the Original Books of Account and that such costs are valid and consistent with the contract.

Verified by: _____

Signature of Authorized Official

Date

Approved by: _____

**CDBG MONTHLY EXPENDITURE REPORT INSTRUCTIONS
COMMUNITY DEVELOPMENT**

This report must be submitted by the tenth of any month following expenditure. The report is also required the tenth of the month following the submission of any **Request For Payment of CDBG Funds**, even if no expenditures are incurred, until all cash on hand has been expended.

GENERAL INFORMATION:

1. Enter name of Grant Recipient, address
2. Enter the Contract Number, exactly as shown on the contract.
3. Enter the sequential number of this report (1, 2, 3, etc.)
4. Enter the month and year, or months and years, for which you are reporting expenditures. Examples: "August 1998", or "August, September 1998"
5. Enter your name and phone number, in case we have questions on how the form was prepared

INTEREST EARNED RECONCILIATION:

1. Enter the total interest earned to date
2. Enter the total interest expended to date for administrative cost
3. Subtract total interest expended from total interest earned to date. The interest earned cash balance must equal the CDBG accounting records cash balance.

CASH RECONCILIATION

1. Enter the cash received to date through the end of the specified report period
2. Enter the total expenditures year-to-date (YTD) taken from Line 19, Column B
3. Subtract the total expenditures to date from cash received to date

LINE ITEM BUDGET 101061

- A. Enter expenditures not previously reported for the report period indicated
- B. Add the amount in column A to previous expenditures YTD to report the present expenditures YTD in column B
- C. Enter the approved budget amount by line item in column C
- D. Subtract column B from column C to obtain the remaining balance

Line 22 - Total lines 1 through 21 for all columns

Line 25 - Enter the appropriate administration amount by adding lines 23 and 24

Line 26 - Add lines 22 and 25

CERTIFICATION:

Anyone listed under the fiscal section of the Certificate of Authorized Signatures submitted to our office may sign the Expenditure Report.

**CDBG Monthly Expenditure Report
ECONOMIC DEVELOPMENT**

GRANT RECIPIENT NAME	REPORT NUMBER	CONTRACT NUMBER	REPORT PERIOD
ADDRESS		PREPARER'S NAME	PHONE NO.

INTEREST EARNED RECONCILIATION

Total Interest Earned YTD \$ _____
 Less Interest Expended YTD \$ _____
 Interest Earned Cash Balance: \$ _____

CASH RECONCILIATION

Cash Received to Date \$ _____
 Less Total Expenditures YTD \$ _____
 Unexpended Cash Balance*: \$ _____

LINE ITEM BUDGET 101061	CODE	A CURRENT EXPENSE	B EXPENDITURES YEAR-TO-DATE	C BUDGET	D REMAINING BALANCE
1. ECON.DEV. - FACILITY CONSTRUCTION LOANS	551200				
2. ECON.DEV. - INFRASTRUCTURE IMPROVEMENTS	551201				
3. ECON.DEV. - EQUIPMENT/INVENTORY LOANS	551202				
4. ECON.DEV. - COMMERCIAL REHABILITATION LOANS	551203				
5. ECON.DEV. - INDUSTRIAL REHABILITATION LOANS	551204				
6. ECON.DEV. - OTHER LOANS	551205				
7. ECON.DEV. - FURNITURE & FIXTURES LOANS	551206				
8. ECON.DEV. - LAND & BUILDING LOANS	551207				
9. ECON.DEV. - MACHINER & EQUIPMENT LOANS	551208				
10. ECON.DEV. - INVENTORY LOANS	551209				
11. ECON.DEV. - REVOLVING LOAN FUND	551460				
12. ECON.DEV. - ENG., LEGAL & OTHER PROFESSIONAL	551241				
13. TOTAL CDBG PROJECT COST (TOTAL OF LINES 1 - 12)					
14. CDBG ADMINISTRATION	551010				
15. TOTAL CDBG COSTS (LINES 13 + 14)					
16. TOTAL LEVERAGES EXPENDITURES	555230				

* Please explain any unexpended cash balance and how it will be expended.

I certify that the actual costs incurred are taken from the Original Books of Account and that such costs are valid and consistent with the terms of the contract.

ODOC USE ONLY:

Verified By: _____

Approved By: _____

Signature of Authorized Official

Date

**CDBG MONTHLY EXPENDITURE REPORT INSTRUCTIONS
ECONOMIC DEVELOPMENT**

This report must be submitted by the tenth of any month following expenditure. The report is also required the tenth of the month following the submission of any **Request For Payment of CDBG Funds**, even if no expenditures are incurred, until all cash on hand has been expended.

GENERAL INFORMATION:

1. Enter name of Grant Recipient, address
2. Enter the Contract Number exactly as shown on the contract.
3. Enter the sequential number of this report (1, 2, 3, etc.)
4. Enter the month and year or months and years for which you are reporting expenditures. Examples: "August 1998" or "August, September 1998"
5. Enter your name and phone number in case we have questions on how the form was prepared

INTEREST EARNED RECONCILIATION:

1. Enter the total interest earned to date
2. Enter the total interest expended to date for administrative cost
3. Subtract total interest expended from total interest earned to date. The interest earned cash balance must equal the CDBG accounting records cash balance.

CASH RECONCILIATION

1. Enter the cash received to date through the end of the specified report period
2. Enter the total expenditures year-to-date (YTD) taken from Line 19, Column B
3. Subtract the total expenditures to date from cash received to date

LINE ITEM BUDGET 101061

- A. Enter expenditures not previously reported for the report period indicated
- B. Add the amount in column A to previous expenditures YTD to report the present expenditures YTD in column B
- C. Enter the approved budget amount by line item in column C
- D. Subtract column B from column C to obtain the remaining balance

Line 22 - Total lines 1 through 21 for all columns

Line 25 - Enter the appropriate administration amount by adding lines 23 and 24 together

Line 26 - Add lines 22 and 25

CERTIFICATION:

Anyone listed under the fiscal section of the Certificate of Authorized Signatures submitted to our office may sign the Expenditure Report.

CDBG Time Sheet

Employee Name _____

Month _____

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Week

Total Hours Worked _____

Total Hours Worked _____ X Hourly Rate _____ = _____

Signature of Employee

Employee Supervisor

Summary of Work Performed:

FEDERAL EMERGENCY MANAGEMENT AGENCY
RESPONSE AND RECOVERY DIRECTORATE
INFRASTRUCTURE DIVISION
WASHINGTON, D.C. 20472

The rates on this Schedule of Equipment Rates are for applicant-owned equipment in good mechanical condition, complete with all required attachments. Each rate covers all costs eligible under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., for ownership and operation of equipment, including depreciation, overhead, all maintenance, field repairs, fuel, lubricants, tires, OSHA equipment and other costs incident to operation. Standby equipment costs are not eligible.

Equipment must be in actual operation performing eligible work in order for reimbursement to be eligible. LABOR COSTS OF OPERATOR ARE NOT INCLUDED in the rates and should be approved separately from equipment costs.

Information regarding the use of the Schedule is contained in 44 CFR § 206.228 Allowable Costs. Rates for equipment not listed will be furnished by FEMA upon request. Any appeals shall be in accordance with 44 CFR § 206.206 Appeals.

THESE RATES ARE APPLICABLE TO MAJOR DISASTERS AND EMERGENCIES DECLARED BY THE PRESIDENT ON OR AFTER THE DATE OF PUBLICATION OF THIS SCHEDULE. - August 28, 2005

Cost Code	Equipment	Specification	Capacity/Size	HP	Notes	Unit	Rate
8490	Aerial Lift, Self-Propelled	Max. Platform Height	37 Ft	to 15	Articulated, Telescoping, Scissor.	hour	\$5.70
8491	Aerial Lift, Self-Propelled	Max. Platform Height	60 Ft	to 30	Articulated, Telescoping, Scissor.	hour	\$11.80
8492	Aerial Lift, Self-Propelled	Max. Platform Height	70 Ft	to 50	Articulated, Telescoping, Scissor.	hour	\$21.40
8493	Aerial Lift, Self-Propelled	Max. Platform Height	125 Ft	to 85	Articulated and Telescoping.	hour	\$38.50
8494	Aerial Lift, Self-Propelled	Max. Platform Height	150 Ft	to 130	Articulated and Telescoping.	hour	\$60.00
8486	Aerial Lift, Truck Mntd	Max. Platform Height	25 Ft		Articulated and Telescoping.	hour	\$5.40
8487	Aerial Lift, Truck Mntd	Max. Platform Height	50 Ft		Articulated and Telescoping.	hour	\$9.00
8488	Aerial Lift, Truck Mntd	Max. Platform Height	75 Ft		Articulated and Telescoping.	hour	\$19.10
8489	Aerial Lift, Truck Mntd	Max. Platform Height	100 Ft		Articulated and Telescoping.	hour	\$36.00
8010	Air Compressor	Air Delivery	41 CFM	to 10	Hoses included.	hour	\$1.55
8011	Air Compressor	Air Delivery	103 CFM	to 30	Hoses included.	hour	\$4.75
8012	Air Compressor	Air Delivery	130 CFM	to 50	Hoses included.	hour	\$9.25
8013	Air Compressor	Air Delivery	175 CFM	to 90	Hoses included.	hour	\$17.20
8014	Air Compressor	Air Delivery	400 CFM	to 145	Hoses included.	hour	\$24.80
8015	Air Compressor	Air Delivery	575 CFM	to 230	Hoses included.	hour	\$40.50
8016	Air Compressor	Air Delivery	1100 CFM	to 355	Hoses included.	hour	\$60.00
8017	Air Compressor	Air Delivery	1600 CFM	to	Hoses included.	hour	\$82.00

				500			
8020	Air Curtain Burner			to 50	In ground burner.	hour	\$6.60
8021	Air Curtain Burner			to 75	In ground burner.	hour	\$7.60
8022	Air Curtain Burner			to 100	In ground burner.	hour	\$8.75
8023	Air Curtain Burner			to 50	Above ground burner.	hour	\$9.05
8024	Air Curtain Burner			to 75	Above ground burner.	hour	\$11.60
8025	Air Curtain Burner			to 100	Above ground burner.	hour	\$15.30
8040	Ambulance			to 150		hour	\$21.50
8041	Ambulance			to 210		hour	\$32.00
8060	Auger, Portable	Hole Diameter	16 In	to 6		hour	\$1.40
8061	Auger, Portable	Hole Diameter	18 In	to 13		hour	\$3.30
8062	Auger, Tractor Mntd	Max. Auger Diameter	36 In	to 13	Includes digger, boom and mounting hardware.	hour	\$1.80
8063	Auger, Truck Mntd	Max. Auger Size	24 In	to 100	Guardrail post driver.	hour	\$30.00
8070	Automobile			to 130	Transporting people.	mile	\$0.45
8071	Automobile			to 130	Transporting cargo.	hour	\$9.75
8072	Automobile, Police			to 250	Patrolling.	mile	\$0.55
8073	Automobile, Police			to 250	Stationary with engine running.	hour	\$14.35
8110	Barge, Deck	Size	120'x30'x7.25'			hour	\$25.50
8111	Barge, Deck	Size	120'x45'x7'			hour	\$39.50
8112	Barge, Deck	Size	140'x45'x7'			hour	\$53.00
8113	Barge, Deck	Size	150'x45'x9'			hour	\$62.00
8115	Barge, Hopper	Size	200'x35'x12'		Open	hour	\$46.50
8116	Barge, Hopper	Size	200'x35'x12'		Closed	hour	\$54.00
8050	Board, Arrow			to 8	Trailer Mounted.	hour	\$3.10
8051	Board, Message			to 5	Trailer Mounted.	hour	\$8.55
8133	Boat, Push	Size	45'x21'x6'	to 435	Flat hull.	hour	\$160.00
8134	Boat, Push	Size	54'x21'x6'	to 525	Flat hull.	hour	\$182.00
8135	Boat, Push	Size	58'x24'x7.5'	to 705	Flat hull.	hour	\$226.00
8136	Boat, Push	Size	64'x25'x8'	to 870	Flat hull.	hour	\$270.00
8130	Boat, Row				Heavy duty.	hour	\$0.85
8131	Boat, Runabout	Size	13'x5'	to 50	Outboard.	hour	\$14.45
8132	Boat, Tender	Size	14'x7'	to 100	Inboard with 360 degree drive.	hour	\$27.00

8120	Boat, Tow	Size	55'x20'x5'	to 870	Steel.	hour	\$204.00
8121	Boat, Tow	Size	60'x21'x5'	to 1050	Steel.	hour	\$339.00
8122	Boat, Tow	Size	70'x30'x7.5'	to 1350	Steel.	hour	\$480.00
8123	Boat, Tow	Size	120'x34'x8'	to 2000	Steel.	hour	\$693.00
8140	Boat, Tug	Length	16 Ft	to 100		hour	\$31.00
8141	Boat, Tug	Length	18 Ft	to 175		hour	\$48.00
8142	Boat, Tug	Length	26 Ft	to 250		hour	\$63.00
8143	Boat, Tug	Length	40 Ft	to 380		hour	\$140.00
8144	Boat, Tug	Length	51 Ft	to 700		hour	\$207.00
8419	Breaker, Pavement, Hand-held	Weight	25-90 Lbs			hour	\$0.70
8420	Breaker, Pavement			to 70		hour	\$29.50
8421	Breaker, Pavement			to 105		hour	\$39.50
8422	Breaker, Pavement			to 137		hour	\$52.00
8150	Broom, Pavement	Broom Length	72 In	to 20		hour	\$9.35
8151	Broom, Pavement	Broom Length	84 In	to 45		hour	\$13.95
8152	Broom, Pavement	Broom Length	96 In	to 100		hour	\$18.80
8153	Broom, Pavement, Mntd	Broom Length	72 In	to 18		hour	\$6.10
8154	Broom, Pavement, Pull	Broom Length	84 In	to 20		hour	\$7.60
8270	Bucket, Clamshell	Capacity	1.0 CY		Includes teeth.	hour	\$4.10
8271	Bucket, Clamshell	Capacity	2.5 CY		Includes teeth.	hour	\$7.25
8272	Bucket, Clamshell	Capacity	5.0 CY		Includes teeth.	hour	\$12.00
8273	Bucket, Clamshell	Capacity	7.5 CY		Includes teeth.	hour	\$16.40
8275	Bucket, Dragline	Capacity	2.0 CY			hour	\$3.30
8276	Bucket, Dragline	Capacity	5.0 CY			hour	\$6.95
8277	Bucket, Dragline	Capacity	10 CY			hour	\$11.55
8278	Bucket, Dragline	Capacity	14 CY			hour	\$13.50
8180	Bus			to 150		hour	\$14.75
8181	Bus			to 210		hour	\$22.30
8182	Bus			to 300		hour	\$30.50

8190	Chain Saw	Bar Length	16 In			hour	\$1.55
8191	Chain Saw	Bar Length	25 In			hour	\$3.10
8192	Chain Saw, Pole	Bar Size	18 In			hour	\$1.65
8200	Chipper, Brush	Chipping Capacity	6 In	to 35	Trailer Mounted.	hour	\$12.80
8201	Chipper, Brush	Chipping Capacity	12 In	to 65	Trailer Mounted.	hour	\$17.70
8202	Chipper, Brush	Chipping Capacity	16 In	to 100	Trailer Mounted.	hour	\$23.00
8203	Chipper, Brush	Chipping Capacity	18 In	to 125	Trailer Mounted.	hour	\$29.00
8204	Chipper, Brush	Chipping Capacity	18 In	to 200	Trailer Mounted.	hour	\$42.50
8205	Chipper, Brush	Chipping Capacity	19 In	to 300	Trailer Mounted.	hour	\$59.00
8206	Chipper, Brush	Chipping Capacity	19 In	to 450	Trailer Mounted.	hour	\$86.00
8207	Chipper, Brush			to 650	Trailer Mounted.	hour	\$130.00
8210	Clamshell & Dragline			to 100	Bucket not included in rate.	hour	\$71.00
8211	Clamshell & Dragline			to 155	Bucket not included in rate.	hour	\$95.00
8212	Clamshell & Dragline			to 235	Bucket not included in rate.	hour	\$131.00
8213	Clamshell & Dragline			to 350	Bucket not included in rate.	hour	\$178.00
8214	Clamshell & Dragline			to 530	Bucket not included in rate.	hour	\$250.00
8215	Clamshell & Dragline			to 800	Bucket not included in rate.	hour	\$343.00
8712	Cleaner, Sewer/Catch Basin	Hopper Capacity	5 CY		Truck Mounted.	hour	\$18.80
8713	Cleaner, Sewer/Catch Basin	Hopper Capacity	14 CY		Truck Mounted.	hour	\$23.30
8220	Compactor			to 10		hour	\$8.70
8221	Compactor			to 45		hour	\$15.30
8222	Compactor			to 75		hour	\$22.70
8223	Compactor			to 95		hour	\$28.00
8224	Compactor			to 150		hour	\$43.50
8225	Compactor			to 235		hour	\$73.00
8226	Compactor			to 335		hour	\$119.00
8227	Compactor			to 535		hour	\$234.00
8228	Compactor, towed			to 15		hour	\$15.00

8229	Compactor, towed			to 50		hour	\$39.00
8230	Compactor, towed			to 100		hour	\$65.00
8500	Crane	Max. Lift Capacity	8 MT	to 80		hour	\$30.50
8501	Crane	Max. Lift Capacity	15 MT	to 150		hour	\$44.00
8502	Crane	Max. Lift Capacity	27 MT	to 200		hour	\$66.00
8503	Crane	Max. Lift Capacity	45 MT	to 300		hour	\$98.00
8504	Crane	Max. Lift Capacity	70 MT	to 350		hour	\$143.00
8505	Crane	Max. Lift Capacity	110 MT	to 450		hour	\$208.00
8496	Crane, Truck Mntd	Max. Lift Capacity	17600 Lbs			hour	\$22.50
8497	Crane, Truck Mntd	Max. Lift Capacity	33000 Lbs			hour	\$34.00
8498	Crane, Truck Mntd	Max. Lift Capacity	60000 Lbs			hour	\$55.00
8499	Crane, Truck Mntd	Max. Lift Capacity	120000 Lbs			hour	\$98.00
8195	Cutter, Brush	Cutter Size	8 ft	to 150			\$76.00
8196	Cutter, Brush	Cutter Size	8 ft	to 190			\$86.00
8197	Cutter, Brush	Cutter Size	10 ft	to 245			\$96.00
8670	Derrick, Hydraulic Digger	Max. Boom Length	55 Ft		Includes hydraulic pole alignment attachment.	hour	\$32.50
8671	Derrick, Hydraulic Digger	Max. Boom Length	75 Ft		Includes hydraulic pole alignment attachment.	hour	\$34.50
8672	Derrick, Hydraulic Digger	Max. Boom Length	95 Ft		Includes hydraulic pole alignment attachment.	hour	\$36.50
8580	Distributor, Asphalt	Tank Capacity	500 Gal		Truck Mounted. Includes burners, insulated tank, and circulating spray bar.	hour	\$10.50
8581	Distributor, Asphalt	Tank Capacity	1000 Gal		Truck Mounted. Includes burners, insulated tank, and circulating spray bar.	hour	\$15.60
8582	Distributor, Asphalt	Tank Capacity	4000 Gal		Truck Mounted. Includes burners, insulated tank, and circulating spray bar.	hour	\$19.10
8250	Dozer, Crawler			to 65		hour	\$31.00
8251	Dozer, Crawler			to 105		hour	\$40.00
8252	Dozer, Crawler			to 160		hour	\$55.00
8253	Dozer, Crawler			to 245		hour	\$79.00

8254	Dozer, Crawler			to 375		hour	\$124.00
8255	Dozer, Crawler			to 565		hour	\$200.00
8256	Dozer, Crawler			to 850		hour	\$344.00
8260	Dozer, Wheel			to 260		hour	\$55.00
8261	Dozer, Wheel			to 335		hour	\$68.00
8262	Dozer, Wheel			to 445		hour	\$86.00
8263	Dozer, Wheel			to 615		hour	\$126.00
8280	Excavator, Hydraulic	Bucket Capacity	0.5 CY	to 45	Crawler, Truck & Wheel. Includes bucket.	hour	\$21.90
8281	Excavator, Hydraulic	Bucket Capacity	1.0 CY	to 90	Crawler, Truck & Wheel. Includes bucket.	hour	\$37.50
8282	Excavator, Hydraulic	Bucket Capacity	1.5 CY	to 160	Crawler, Truck & Wheel. Includes bucket.	hour	\$64.00
8283	Excavator, Hydraulic	Bucket Capacity	2.5 CY	to 265	Crawler, Truck & Wheel. Includes bucket.	hour	\$104.00
8284	Excavator, Hydraulic	Bucket Capacity	4.5 CY	to 420	Crawler, Truck & Wheel. Includes bucket.	hour	\$163.00
8285	Excavator, Hydraulic	Bucket Capacity	7.5 CY	to 650	Crawler, Truck & Wheel. Includes bucket.	hour	\$255.00
8286	Excavator, Hydraulic	Bucket Capacity	12 CY	to 1000	Crawler, Truck & Wheel. Includes bucket.	hour	\$404.00
8240	Feeder, Grizzly			to 35		hour	\$19.20
8241	Feeder, Grizzly			to 55		hour	\$29.00
8242	Feeder, Grizzly			to 75		hour	\$45.50
8300	Fork Lift	Capacity	6000 Lbs	to 60		hour	\$9.90
8301	Fork Lift	Capacity	12000 Lbs	to 90		hour	\$14.45
8302	Fork Lift	Capacity	18000 Lbs	to 140		hour	\$23.90
8303	Fork Lift	Capacity	50000 Lbs	to 215		hour	\$42.50
8310	Generator	Prime Output	5.5 KW	to 10		hour	\$3.60
8311	Generator	Prime Output	16 KW	to 25		hour	\$8.45
8312	Generator	Prime Output	43 KW	to 65		hour	\$18.10
8313	Generator	Prime Output	85 KW	to 125		hour	\$28.50
8314	Generator	Prime Output	140 KW	to 200		hour	\$40.50
8315	Generator	Prime Output	210 KW	to 300		hour	\$59.00
8316	Generator	Prime Output	280 KW	to 400		hour	\$76.00
8317	Generator	Prime Output	350 KW	to		hour	\$94.00

				500		
8318	Generator	Prime Output	530 KW	to 750		hour \$137.00
8319	Generator	Prime Output	710 KW	to 1000		hour \$179.00
8320	Generator	Prime Output	1100 KW	to 1500		hour \$274.00
8321	Generator	Prime Output	1500 KW	to 2000		hour \$369.00
8322	Generator	Prime Output	1900 KW	to 2500		hour \$457.00
8323	Generator	Prime Output	2400 KW	to 3000		hour \$547.00
8755	Golf Cart	Capacity	2 person			hour \$2.55
8330	Graders	Moldboard Size	8 Ft	to 50	Includes Rigid and Articulate equipment.	hour \$23.90
8331	Graders	Moldboard Size	10 Ft	to 100	Includes Rigid and Articulate equipment.	hour \$32.00
8332	Graders	Moldboard Size	12 Ft	to 150	Includes Rigid and Articulate equipment.	hour \$43.00
8333	Graders	Moldboard Size	14 Ft	to 225	Includes Rigid and Articulate equipment.	hour \$60.00
8350	Hose, Discharge	Diameter	3 In		Per 25 foot length. Includes couplings.	hour \$0.15
8351	Hose, Discharge	Diameter	4 In		Per 25 foot length. Includes couplings.	hour \$0.20
8352	Hose, Discharge	Diameter	6 In		Per 25 foot length. Includes couplings.	hour \$0.35
8353	Hose, Discharge	Diameter	8 In		Per 25 foot length. Includes couplings.	hour \$0.55
8354	Hose, Discharge	Diameter	12 In		Per 25 foot length. Includes couplings.	hour \$1.15
8355	Hose, Discharge	Diameter	16 In		Per 25 foot length. Includes couplings.	hour \$1.90
8356	Hose, Suction	Diameter	3 In		Per 25 foot length. Includes couplings.	hour \$0.20
8357	Hose, Suction	Diameter	4 In		Per 25 foot length. Includes couplings.	hour \$0.30
8358	Hose, Suction	Diameter	6 In		Per 25 foot length. Includes couplings.	hour \$0.50
8359	Hose, Suction	Diameter	8 In		Per 25 foot length. Includes couplings.	hour \$0.85
8360	Hose, Suction	Diameter	12 In		Per 25 foot length. Includes couplings.	hour \$1.80
8361	Hose, Suction	Diameter	16 In		Per 25 foot length. Includes couplings.	hour \$3.20
8517	Jackhammer (Dry)	Weight Class	25-45 Lbs			hour \$1.10
8518	Jackhammer (Wet)	Weight Class	30-55 Lbs			hour \$1.20
8380	Loader, Crawler	Bucket Capacity	0.5 CY	to 32	Includes bucket.	hour \$13.90
8381	Loader, Crawler	Bucket Capacity	1 CY	to 60	Includes bucket.	hour \$23.50

8382	Loader, Crawler	Bucket Capacity	2 CY	to 118	Includes bucket.	hour	\$46.50
8383	Loader, Crawler	Bucket Capacity	3 CY	to 178	Includes bucket.	hour	\$73.00
8384	Loader, Crawler	Bucket Capacity	4 CY	to 238	Includes bucket.	hour	\$101.00
8385	Loader, Crawler	Bucket Capacity	5 CY	to 300	Includes bucket.	hour	\$135.00
8540	Loader, Skid-Steer	Operating Capacity	1000 Lbs	to 35		hour	\$12.50
8541	Loader, Skid-Steer	Operating Capacity	2000 Lbs	to 65		hour	\$17.40
8542	Loader, Skid-Steer	Operating Capacity	3000 Lbs	to 85		hour	\$20.10
8543	Loader, Skid-Steer	Operating Capacity	4000 Lbs	to 94		hour	\$21.00
8401	Loader, Tractor, Wheel			to 81		hour	\$17.80
8390	Loader, Wheel	Bucket Capacity	0.5 CY	to 38		hour	\$13.25
8391	Loader, Wheel	Bucket Capacity	1 CY	to 60		hour	\$17.10
8392	Loader, Wheel	Bucket Capacity	2 CY	to 105		hour	\$25.50
8393	Loader, Wheel	Bucket Capacity	3 CY	to 152		hour	\$34.00
8394	Loader, Wheel	Bucket Capacity	4 CY	to 200		hour	\$43.50
8395	Loader, Wheel	Bucket Capacity	5 CY	to 250		hour	\$53.00
8396	Loader, Wheel	Bucket Capacity	6 CY	to 305		hour	\$65.00
8397	Loader, Wheel	Bucket Capacity	7 CY	to 360		hour	\$79.00
8398	Loader, Wheel	Bucket Capacity	8 CY	to 415		hour	\$92.00
8399	Loader, Wheel	Bucket Capacity	9 CY	to 470		hour	\$105.00
8400	Loader, Wheel	Bucket Capacity	10 CY	to 530		hour	\$122.00
8570	Loader-Backhoe, Wheel	Loader Bucket Capacity	0.5 CY	to 40	Loader and Backhoe Buckets included.	hour	\$12.25
8571	Loader-Backhoe, Wheel	Loader Bucket Capacity	1 CY	to 70	Loader and Backhoe Buckets included.	hour	\$19.70
8572	Loader-Backhoe, Wheel	Loader Bucket Capacity	1.5 CY	to 95	Loader and Backhoe Buckets included.	hour	\$28.50
8573	Loader-Backhoe, Wheel	Loader Bucket Capacity	1.75 CY	to 115	Loader and Backhoe Buckets included.	hour	\$36.50
8410	Mixer, Concrete Portable	Batching Capacity	10 Cft			hour	\$2.90
8411	Mixer, Concrete Portable	Batching Capacity	16 Cft			hour	\$4.25

8412	Mixer, Concrete, Trailer Mntd	Batching Capacity	11 Cft	to 10		hour	\$9.35
8413	Mixer, Concrete, Trailer Mntd	Batching Capacity	16 Cft	to 25		hour	\$14.70
8075	Motorcycle, Police					mile	\$0.40
8633	Mulcher, Trailer Mntd	Working Capacity	7 TPH	to 35		hour	\$10.10
8634	Mulcher, Trailer Mntd	Working Capacity	10 TPH	to 55		hour	\$15.00
8635	Mulcher, Trailer Mntd	Working Capacity	20 TPH	to 120		hour	\$22.60
8430	Paver, Asphalt			to 50	Includes wheel and crawler equipment.	hour	\$41.50
8431	Paver, Asphalt			to 75	Includes wheel and crawler equipment.	hour	\$63.00
8432	Paver, Asphalt			to 125	Includes wheel and crawler equipment.	hour	\$97.00
8433	Paver, Asphalt			to 175	Includes wheel and crawler equipment.	hour	\$125.00
8434	Paver, Asphalt			to 250	Includes wheel and crawler equipment.	hour	\$151.00
8436	Pick-up, Asphalt			to 110			\$57.00
8437	Pick-up, Asphalt			to 150			\$82.00
8438	Pick-up, Asphalt			to 200			\$103.00
8439	Pick-up, Asphalt			to 275			\$145.00
8660	Plow, Cable	Plow Depth	18 in	to 30			\$9.50
8661	Plow, Cable	Plow Depth	36 in	to 65			\$19.30
8662	Plow, Cable	Plow Depth	48 in	to 110			\$30.50
8450	Plow, Grader Mntd	Width	to 10 Ft			hour	\$18.60
8451	Plow, Grader Mntd	Width	to 14 Ft			hour	\$25.00
8452	Plow, Truck Mntd	Width	to 15 Ft			hour	\$14.05
8453	Plow, Truck Mntd	Width	to 15 Ft		With leveling wing.	hour	\$20.40
8470	Pump			to 3	Hoses not included.	hour	\$2.70
8471	Pump			to 6	Hoses not included.	hour	\$3.70
8472	Pump			to 10	Hoses not included.	hour	\$5.05
8473	Pump			to 15	Hoses not included.	hour	\$6.00
8474	Pump			to 25	Hoses not included.	hour	\$8.60
8475	Pump			to 40	Hoses not included.	hour	\$11.25
8476	Pump			to 60	Hoses not included.	hour	\$16.70
8477	Pump			to 95	Hoses not included.	hour	\$24.60
8478	Pump			to 140	Hoses not included.	hour	\$26.50
8479	Pump			to	Hoses not included.	hour	\$31.50

				200		
8463	Pump Extender	Length	20 Ft			hour \$1.25
8460	Pump, W/O Power	Pump Size	6 In			hour \$2.30
8461	Pump, W/O Power	Pump Size	12 In			hour \$3.00
8462	Pump, W/O Power	Pump Size	24 In			hour \$7.15
8510	Saw, Concrete	Blade Diameter	14 In	to 14		hour \$5.35
8511	Saw, Concrete	Blade Diameter	26 In	to 35		hour \$12.60
8512	Saw, Concrete	Blade Diameter	48 In	to 65		hour \$22.10
8513	Saw, Rock			to 65		hour \$29.00
8514	Saw, Rock			to 90		hour \$38.00
8515	Saw, Rock			to 120		hour \$52.00
8520	Scraper	Scraper Capacity	11 CY	to 175		hour \$83.00
8521	Scraper	Scraper Capacity	16 CY	to 250		hour \$109.00
8522	Scraper	Scraper Capacity	23 CY	to 365		hour \$143.00
8523	Scraper	Scraper Capacity	34 CY	to 475		hour \$173.00
8524	Scraper	Scraper Capacity	44 CY	to 600		hour \$208.00
8560	Snow Blower	Capacity	2,000 Tph	to 400		hour \$140.00
8561	Snow Blower	Capacity	2,500 Tph	to 500		hour \$157.00
8562	Snow Blower	Capacity	3,500 Tph	to 600		hour \$180.00
8550	Snow Blower, Truck Mntd	Capacity	600 Tph	to 75		hour \$38.50
8551	Snow Blower, Truck Mntd	Capacity	1100 Tph	to 150		hour \$60.00
8552	Snow Blower, Truck Mntd	Capacity	1600 Tph	to 250		hour \$90.00
8553	Snow Blower, Truck Mntd	Capacity	2500 Tph	to 400		hour \$128.00
8558	Snow Thrower, Walk Behind	Cutting Width	25 In	to 5		hour \$12.80
8559	Snow Thrower, Walk Behind	Cutting Width	60 In	to 15		hour \$16.30
8630	Sprayer, Seed	Working Capacity	750 Gal	to 30	Trailer & truck mounted.	hour \$10.70
8631	Sprayer, Seed	Working Capacity	1250 Gal	to 50	Trailer & truck mounted.	hour \$13.45
8632	Sprayer, Seed	Working Capacity	3500 Gal	to 115	Trailer & truck mounted.	hour \$22.40
8458	Spreader, Chemical	Capacity	5 CY	to 4	Trailer & truck mounted.	hour \$4.10
8423	Spreader, Chip	Spread Hopper	12.5 Ft	to		hour \$50.00

		Width		152		
8424	Spreader, Chip	Spread Hopper Width	16.5 Ft	to 215		hour \$66.00
8425	Spreader, Chip, Mntd	Hopper Size	8 Ft	to 8	Trailer & truck mounted.	hour \$3.65
8455	Spreader, Sand	Mounting	Tailgate, Chassis			hour \$4.05
8456	Spreader, Sand	Mounting	Dump Body			hour \$5.65
8457	Spreader, Sand	Mounting	Truck (10yd)			hour \$7.90
8440	Striper	Paint Capacity	40 Gal	to 22		hour \$12.90
8441	Striper	Paint Capacity	90 Gal	to 60		hour \$19.10
8442	Striper	Paint Capacity	120 Gal	to 122		hour \$38.00
8445	Striper, Truck Mntd	Paint Capacity	120 Gal	to 460		hour \$69.00
8446	Striper, Walk-behind	Paint Capacity	12 Gal			hour \$3.25
8157	Sweeper, Pavement			to 110		hour \$47.00
8158	Sweeper, Pavement			to 150		hour \$56.00
8159	Sweeper, Pavement			to 200		hour \$62.00
8590	Trailer, Dump	Capacity	20 CY		Does not include Prime Mover.	hour \$17.40
8591	Trailer, Dump	Capacity	30 CY		Does not include Prime Mover.	hour \$26.00
8592	Trailer, Dump	Capacity	40 CY		Does not include Prime Mover.	hour \$35.00
8600	Trailer, Equipment	Capacity	30 Tons			hour \$9.90
8601	Trailer, Equipment	Capacity	40 Tons			hour \$11.45
8602	Trailer, Equipment	Capacity	60 Tons			hour \$13.70
8603	Trailer, Equipment	Capacity	120 Tons			hour \$18.30
8640	Trailer, Office	Trailer Size	8' x 24'			hour \$1.60
8641	Trailer, Office	Trailer Size	8' x 32'			hour \$1.90
8642	Trailer, Office	Trailer Size	10' x 32'			hour \$2.30
8610	Trailer, Water	Tank Capacity	4000 Gal		Includes a centrifugal pump with sump and a rear spraybar.	hour \$10.65
8611	Trailer, Water	Tank Capacity	6000 Gal		Includes a centrifugal pump with sump and a rear spraybar.	hour \$12.40
8612	Trailer, Water	Tank Capacity	10000 Gal		Includes a centrifugal pump with sump and a rear spraybar.	hour \$15.40
8613	Trailer, Water	Tank Capacity	14000 Gal		Includes a centrifugal pump with sump and a rear spraybar.	hour \$18.70
8650	Trencher			to 35	Walk-behind, Crawler & Wheel Mounted. Chain and Wheel.	hour \$14.70
8651	Trencher			to 85	Walk-behind, Crawler & Wheel Mounted. Chain and Wheel.	hour \$32.50
8652	Trencher			to 115	Walk-behind, Crawler & Wheel Mounted. Chain and Wheel.	hour \$41.50
8653	Trencher			to	Walk-behind, Crawler & Wheel	hour \$61.00

				175	Mounted. Chain and Wheel.	
8290	Trowel, Concrete	Diameter	90 In	to 25		hour \$11.70
8291	Trowel, Concrete	Diameter	100 In	to 38		hour \$17.90
8810	Truck, Bucket				Add Flatbed Truck to Truck Mounted Aerial Lift.	
8811	Truck, Cleaning				Add Flatbed Truck to Sewer Cleaner.	
8680	Truck, Concrete Mixer	Mixer Capacity	10 CY	to 255		hour \$70.00
8681	Truck, Concrete Mixer	Mixer Capacity	13 CY	to 300		hour \$81.00
8720	Truck, Dump	Struck Capacity	8 CY	to 210		hour \$25.50
8721	Truck, Dump	Struck Capacity	10 CY	to 235		hour \$28.00
8722	Truck, Dump	Struck Capacity	12 CY	to 255		hour \$31.00
8723	Truck, Dump	Struck Capacity	18 CY	to 330		hour \$46.50
8724	Truck, Dump	Struck Capacity	28 CY	to 400		hour \$77.00
8725	Truck, Dump	Struck Capacity	40 CY	to 460		hour \$85.00
8726	Truck, Dump	Struck Capacity	50 CY	to 620		hour \$108.00
8690	Truck, Fire	Pump Capacity	1000 GPM			hour \$53.00
8691	Truck, Fire	Pump Capacity	1250 GPM			hour \$56.00
8692	Truck, Fire	Pump Capacity	1500 GPM			hour \$71.00
8693	Truck, Fire	Pump Capacity	2000 GPM			hour \$77.00
8700	Truck, Flatbed	Maximum Gvw	15000 Lbs	to 150		hour \$16.40
8701	Truck, Flatbed	Maximum Gvw	25000 Lbs	to 180		hour \$20.20
8702	Truck, Flatbed	Maximum Gvw	30000 Lbs	to 215		hour \$26.50
8703	Truck, Flatbed	Maximum Gvw	45000 Lbs	to 250		hour \$29.50
8704	Truck, Flatbed	Maximum Gvw	50000 Lbs	to 300		hour \$38.00
8705	Truck, Flatbed			to 375		hour \$46.00
8706	Truck, Flatbed			to 450		hour \$53.00
8730	Truck, Garbage	Capacity	25 CY	to 255		hour \$41.50
8731	Truck, Garbage	Capacity	32 CY	to 325		hour \$50.00
8812	Truck, Knuckle Boom				Add Flatbed Truck to Truck Mounted Crane.	

8813	Truck, Ladder				Add Flatbed Truck to Truck Mounted Aerial Lift.		
8814	Truck, Line				Add Flatbed Truck to Hydraulic Digger Derrick.		
8800	Truck, Pickup			to 130	When transporting people.	mile	\$0.45
8801	Truck, Pickup			to 130		hour	\$9.75
8802	Truck, Pickup			to 180		hour	\$13.35
8803	Truck, Pickup			to 230		hour	\$16.50
8804	Truck, Pickup			to 280		hour	\$19.90
8790	Truck, Tractor			to 210		hour	\$29.50
8791	Truck, Tractor			to 265		hour	\$36.50
8792	Truck, Tractor			to 310		hour	\$42.00
8793	Truck, Tractor			to 350		hour	\$44.50
8780	Truck, Water	Tank Capacity	2500 Gal	to 175	Include pump and rear spray system.	hour	\$27.50
8781	Truck, Water	Tank Capacity	4000 Gal	to 250	Include pump and rear spray system.	hour	\$39.00
8620	Tub Grinder			to 400		hour	\$78.00
8621	Tub Grinder			to 500		hour	\$97.00
8622	Tub Grinder			to 600		hour	\$110.00
8623	Tub Grinder			to 700		hour	\$125.00
8624	Tub Grinder			to 800		hour	\$144.00
8625	Tub Grinder			to 900		hour	\$156.00
8626	Tub Grinder			to 1000		hour	\$170.00
8753	Vehicle, Recreational			to 10		hour	\$2.75
8750	Vehicle, Small			to 30		hour	\$5.25
8760	Vibrator, Concrete			to 4		hour	\$1.00
8761	Vibrator, Concrete			to 8		hour	\$2.75
8770	Welder, Portable			to 16	Includes ground cable and lead cable.	hour	\$4.90
8771	Welder, Portable			to 34	Includes ground cable and lead cable.	hour	\$10.25
8772	Welder, Portable			to 50	Includes ground cable and lead	hour	\$14.75

8773	Welder, Portable	to 80 cable. Includes ground cable and lead cable.	hour \$21.60
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Request for CDBG Budget Modification COMMUNITY DEVELOPMENT

Grant Recipient:	Contract Number:
Address:	Preparer's Name and Phone Number:

Line Item Budget	Code	A Present Budget	B Change (+/-)	C Revised Budget
1. Planning	551020			
2. Engineering	551030			
3. Architect	551031			
4. Inspection	551032			
5. Housing Rehabilitation	551049			
6. Acquisition & Disposition	551050			
7. Clearance/Demolition	551070			
8. Utilities	551080			
9. Water System	551090			
10. Sewer System	551091			
11. Solid Waste	551100			
12. Ambulance	551161			
13. Fire Protection	551160			
14. Handicap Accessibility	551044			
15. Community Facility	551110			
16. Senior Citizens Center	551112			
17. Parks	551150			
18. Streets	551180			
19. Flood and Drainage	551190			
20. Other (Specify)	551210			
21. Subtotal (Lines 1-21)				
22. Direct Grantee Administration				
23. Public Facilities Administration				
24. Total Admin. (Lines 22 + 23)	551010			
25. Total CDBG Costs (Lines 21 + 24)				
26. Total Matching Funds	551230			
27. Grand Total (Lines 25 + 26)				

Signature of Authorized Official

Date

Project Description

Projected Completion Dates

Release of Funds:
Engineering:
Construction

**Request for CDBG Budget Modification
ECONOMIC DEVELOPMENT**

Grant Recipient:	Contract Number:
Address:	Preparer's Name and Phone Number:

Line Item Budget 101061	Code	A Present Budget	B Change (+/-)	C Revised Budget
1. Econ. Dev. - Facility Const. Loans	551200			
2. Econ. Dev. - Infrastructure Improv.	551201			
3. Econ. Dev. - Equip./Inventory Loans	551202			
4. Econ. Dev. - Commerc. Rehab. Loans	551203			
5. Econ Dev. - Industrial Rehab. Loans	551204			
6. Econ. Dev. - Other Loans	551205			
7. Econ. Dev. - Furniture and Fixtures	551206			
8. Econ. Dev. - Land & Building Loans	551207			
9. Econ. Dev. - Machinery & Equipment	551208			
10. Econ. Dev. - Inventory Loans	551209			
11. Econ. Dev. - Revolving Loan Fund	551460			
12. Econ. Dev. - Eng., Legal & Other Prof.	551241			
13. Total CDBG Project Cost				
14. CDBG Administration	551010			
15. Total CDBG Costs (Lines 13 + 14)				
16. Total Matching Funds	551230			
17. Grand Total (Lines 15 + 16)				

Signature of Authorized Official & Date

ODOC Use Only:

Verified By: _____

**OKLAHOMA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM**

**REQUIREMENT NO. 405
CONTRACTS**

Effective July 2007

I. INTRODUCTION

Once necessary services have been properly procured, it is time to develop the legal instruments necessary to establish contractual obligations and rights. This Requirement provides general guidance concerning the compliance aspects of contract administration. As with all contractual obligations, the Grant Recipient is advised to seek the advice of legal counsel regarding rights, duties, obligations and liabilities arising from these legal arrangements. ODOC will also provide general advice concerning contract administration. **[See Requirement 402 for additional guidance on required procedures for contracts.]**

II. GENERAL REQUIREMENTS

A. Contract Format: As a general rule, contracts will include the following provisions:

1. General Administrative Provisions, including effective date of contract, names and addresses of the parties to the contract, reference to the authority of the local unit of government to enter into the contract, conditions and terms for violation or breach of the contract and procedures for contract amendment;
2. Scope of Services, including a detailed description of the work to be performed and/or products to be delivered, the schedule for performance and specification of materials;
3. Method of Compensation, including fee or payment schedules, retainage, rates and maximum amounts payable;
4. Special Conditions, including provisions mandated by State and Federal law.

B. Contract Provisions: There are essentially two issues, which are critical to ensure compliance with the CDBG Program and upon which ODOC will focus its review:

1. Consistency of the contract with the requirements of the contract agreement between ODOC and the Grant Recipient. This is particularly true of those terms and conditions involving scope of project, implementation schedules and

method and amount of payments. The contract agreement between ODOC and the Grant Recipient is the "master" contract with which all subsequent contracts between the Grant Recipient and any construction contractors must be consistent and with which they must comply; and

2. Inclusion of specific provisions required by State and Federal law. These provisions are dependent on a combination of:
 - a. Whether the contract is for construction or non-construction, i.e., professional services such as administration, accounting, legal, etc. [**24 CFR 85.36(1)**];
 - b. The dollar value of the contract; and
 - c. Statutory mandates.

III.

SPECIFIC CONTRACT REQUIREMENTS

- A. Non-Construction Contracts: The Grant Recipient should *carefully* review the citations noted in Attachment 1 to this Requirement to determine which provisions will be required in any non-construction contract utilized during the course of the project. [**See Requirement 408 for affirmative action, Section 504 and Section 3 requirements. See Attachment 2 for specific required non-construction contract language.**]
- B. Construction Contracts:
 1. The construction contract will include all items included in the bid package as well as the standard terms and conditions, construction contractor certifications and bond and insurance forms. As this is a legal document, the Grant Recipient is strongly advised to consult legal counsel and obtain the attorney's signed letter certifying that (s)he has reviewed the documents. [**See sample letter at Attachment 5.**] Remember: Neither the cost-plus-a-percentage nor percentage-of-construction cost method of contracting is allowed.
 2. Depending on the amount of the contract, various contract clauses must be utilized in CDBG project contracts. Most of the specific clauses included in this chapter are required only if the project is in excess of \$10,000. A matrix has been compiled to assist in selecting the most appropriate package of contract clauses. The Grant Recipient must determine the specific CDBG Program statutory requirements with which they must comply. [**See page 2 of Attachment 1.**]

3. The Grant Recipient should be concerned with both the body of the contract as well as the compliance requirements which are frequently included as exhibits to the base contract. Review the following for inclusion in the contract text:
 - a. Parties to the agreement;
 - b. Project location;
 - c. Scope of services;
 - d. Financial commitments;
 - e. Starting and ending dates;
 - f. Performance schedule and milestones;
 - g. Contract representatives:
 - (1) Grant Recipient;
 - (2) Construction contractor;
 - (3) Subcontractor(s).
 - h. Conflict of interest;
 - i. Reporting requirements;
 - j. Suspension clause;
 - k. Incorporation of attached requirements [**Requirement 408, Affirmative Action, Section 504 and Section 3 requirements.**]
 - l. Signatures.
4. Additional areas that are required by the Federal government and must be incorporated in the contract are included in Attachment 4. Those which require specific language and which must be inserted verbatim into the contract are noted. These paragraphs advise construction contractors that they must comply with specific Federal laws pertaining to the environment, civil rights, labor and other laws attached to the CDBG legislation.
5. **Note:** ODOC will review the contract only to ensure compliance with CDBG and other Federal requirements. This review will occur during a scheduled monitoring or technical assistance visit. It is the Grant Recipient's responsibility to ensure that all State and local contract requirements are complied with. While ODOC will provide

assistance to Grant Recipients, including sample contracts, ODOC accepts no responsibility for errors or omissions in any contracts between the Grant Recipient and any construction contractor.

IV. BONDING

A. Bonds are negotiable instruments required from construction contractors as a form of insurance. State law requires that, for project contracts over \$50,000, construction contractors must secure a maintenance bond, a performance bond and a payment bond from surety companies. **[61 O.S. 1992 §113]** These surety bonds are then turned over to the Grant Recipient to protect against situations such as:

1. Construction contractor bidding low and then, prior to contract execution, requesting a price adjustment due to "unforeseen" events;
2. Work not completed as specified and/or the construction contractor refusing to finish the work without a change order or price escalation;
3. Laborers or subcontractors not being paid for work and suing the Grant Recipient to recover their loss; or
4. Payment of liquidated damages arising from labor standards violations.

B. The law also requires that construction contractors provide public liability and workers' compensation insurance during construction in reasonable amounts.

V. NOTICE OF CONTRACT AWARD

The Notice of Contract Award is a formal method whereby the Grant Recipient reports the execution of contracts and subcontracts to ODOC. **[Attachment 6]**

In the Grant Recipient Information section of the Notice of Award includes type of trade, business ownership, racial, ethnic, minority and Section 3 status. Please submit this form to ODOC within three (3) days of execution by all parties.

VI. SUBRECIPIENT INTERLOCAL AGREEMENTS

A. It is not uncommon for Grant Recipients to carry out project activities through a subrecipient. A subrecipient is defined as a public or private non-profit agency, authority or organization or other eligible entity provided CDBG funds to carry out eligible activities on behalf of the Grant Recipient, rather than directly and immediately by the Grant Recipient. **["Other eligible entity" is defined in §74-1002, et. Seq., of Title I.]** A typical example might include a rural water district

developing new or expanded water service to the City/Town/County residents. **[Attachment 8]**

- B. The most likely scenario under which a Grant Recipient would opt to utilize a subrecipient is when it (the Grant Recipient) wishes to support certain eligible activities that are either being carried out or are the primary responsibility of some agency outside the Grant Recipient. In effect, the Grant Recipient's goals coincide with the subrecipient's and it usually makes more sense to utilize the capacities of an existing organization rather than create the apparatus necessary to carry out project activities.
- C. When is an entity not a subrecipient? An organization or individual is not considered a subrecipient if the assistance is:
1. For the purpose of housing rehabilitation;
 2. For the purpose of relocation payments and assistance when displaced;
 3. For a for-profit business in a special economic development project; or
 4. Passed through an agency of the grant recipient, i.e. public authority and becomes the responsibility of the designated public agency of the Grant Recipient.
- D. The Grant Recipient has some latitude in selecting the subrecipient to undertake activities on its behalf. In most cases, the Grant Recipient simply designates a non-profit agency to carry out the activities.
- E. It is crucial to stress the importance of the Grant Recipient/ subrecipient relationship. The Grant Recipient does not reduce its responsibilities by utilizing a subrecipient to carry out project activities. In fact, many activities cannot be undertaken by anyone but the Grant Recipient (such as environmental findings and requesting funds from ODOC). Further, all CDBG requirements are applicable to subrecipients in terms of how they carry out project activities (procurement, financial management, labor compliance, etc.).
- F. In order to protect the Grant Recipient and to ensure the subrecipient's compliance with all relevant requirements, the relationship between the two entities must be formally defined through an agreement or contract. Such an agreement's purposes are to clearly establish the terms and conditions under which the CDBG funding is provided and establish a legal basis for action if those terms and conditions are not met. This agreement must contain the following provisions:

1. Scope of Work in sufficient detail to provide a sound basis for evaluating performance in schedule and budget;
2. Records and Reporting specifying the records that must be maintained and reports that must be submitted in order for the Grant Recipient to meet its own record-keeping and reporting responsibilities;
3. Administrative Requirements specifically requiring compliance with all applicable uniform administrative mandates such as A-110, A-122 and A-133.
4. Program Requirements specifying the conditions for convenience and cause;
5. Reversion of Assets stipulating that, upon expiration of the agreement, the subrecipient must transfer to the Grant Recipient any CDBG funds on hand and any accounts receivable. **[Consistent with 24 CFR 85.44]** This must also include provisions designed to ensure that any real property acquired or improved, in whole or in part, with CDBG funds in excess of \$25,000 is either:
 - a. Used to meet one of the three national objectives for at least five (5) years after the expiration of the agreement or longer if stipulated by the Grant Recipient; or
 - b. Disposed of in a manner that results in the Grant Recipient's being reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to non-CDBG expenditures. (Reimbursement is not required after five years.)
6. Cessation of the Subrecipient providing remedies and procedures in the event the subrecipient ceases to exist;
7. Standard Provisions required of all contracts (such as equal opportunity, Section 3, Section 504, labor, etc.). **[See Section III, p. 405-2]**

VII. ATTACHMENTS

1. Required Provisions in Non-Construction Contracts
Required Provisions in Construction Contracts
Required Contract Provisions
2. Federal Equal Opportunity and Non-Discrimination Provisions (Non-Construction Contracts)
3. Clean Air and Water Provisions
4. Federal Labor Standards Provisions (Construction Contracts) P.1-4
Federal Equal Opportunity and Non-Discrimination Provisions P.5-10
5. Attorney's Certificate of Approval of Contract and Bonds (Sample)
6. Sample Construction Contract Documents for CDBG-Funded Projects
7. Sample Contract for Administrative Services
8. Interlocal Cooperation Agreement

Required Provisions in Non-Construction Contracts

Contract Provision	Citation	< \$2,500	\$2,500 - \$10,000	\$10,000 - \$25,000	\$25,000-\$100,000	> \$100,000
1. Sanctions and penalties	24 CFR 85.36(I)(1)	•	•	•	√	√
2. Termination for cause/convenience	24 CFR 85.36(I)(2)			√	√	√
3. Reporting requirements	24 CFR 85.36(I)(7)	√	√	√	√	√
4. Patent rights	24 CFR 85.36(I)(8)	√	√	√	√	√
5. Copyrights	24 CFR 85.36(I)(9)	√	√	√	√	√
6. Access to records	24 CFR 85.36(I)(10)	√	√	√	√	√
7. Records retention	24 CFR 85.36(I)(11)	√	√	√	√	√
8. Payments & allowable costs	24 CFR 85.21(a)(11)	√	√	√	√	√
9. Environmental compliance	24 CFR 85.36(I)(12)					√
10. Energy efficiency	24 CFR 85.36(I)(13)	■	■	■	■	■
11. Equal Opportunity	41 CFR 1.4(a)			√	√	√
12. Disabled non-discrimination	41 CFR 741-4(a)			√	√	√
13. Disabled/Vietnam Era Veterans	41 CFR 60-250.4			√	√	√
14. Contract work hours/Safety Standards	24 CFR 85.36(I)(6)		☐	☐	☐	☐

- √ Must be included
- Applies only to new building construction, additions or major structural alteration due to change in use or occupancy
- Only if small purchase procurement method **not** used
- ☐ Only if contract involves employment of laborers and/or mechanics

NOTE!!

An engineering or architectural contract that includes on-site inspection services is subject to many of the same provisions as construction contracts. See Attachment 2 for specific citations and provisions that apply to construction-related contracts.

Required Provisions in Construction Contracts

Contract Provision	Citation	< \$2,000	\$2,000 - \$10,000	\$10,000- \$25,000	\$25,000-\$100,000	> \$100,000
1. Sanctions and penalties	24 CFR 85.36(i)(1)	√	√	√	√	√
2. Termination for cause/convenience	24 CFR 85.36(i)(2)			√	√	√
3. Reporting requirements	24 CFR 85.36(i)(7)	√	√	√	√	√
4. Patent rights	24 CFR 85.36(i)(8)	√	√	√	√	√
5. Copyrights	24 CFR 85.36(i)(9)	√	√	√	√	√
6. Access to records	24 CFR 85.36(i)(10)	√	√	√	√	√
7. Records retention	24 CFR 85.36(i)(11)	√	√	√	√	√
8. Payments & allowable costs	24 CFR 85.21	√	√	√	√	√
9. Environmental compliance	24 CFR 85.36(i)(12)					√
10. Energy efficiency	24 CFR 85.36(i)(13)	■	■	■	■	■
11. Equal Employment Opportunity	41 CFR 60-1.4(c)			√	√	√
12. Affirmative Action	41 CFR 60-4.3			√	√	√
13. Disabled non-discrimination	41 CFR 60-741.4(a)			√	√	√
14. Disabled/Vietnam Era Veterans	41 CFR 60-250.4			√	√	√
15. Contract work hours/Safety Standards	24 CFR 85.36(i)(6)		√	√	√	√
16. Prevailing wage rates	24 CFR 85.36(i)(5)		√	√	√	√
17. Anti-Kickback	24 CFR 85.36(i)(4)	√	√	√	√	√
18. Women/Minority Owned Business	24 CFR 85.36(e)(2)(vi)	●	●	●	●	●
19. Performance/Payment Bond	24 CFR 85.36(h)(2)-3)				√	√
20. Contract Opportunities/Employment/Training	24 CFR 135				☼	√
21. Others Imposed by the Grant Agreement		◆	◆	◆	◆	◆

- √ Must be included
 ■ Applies only to new building construction, additions or major structural alteration due to change in use or occupancy.
 ☼ Some provisions are exempt
 ☐ Recommended, not required
 ● Required of prime construction contractor if subcontracts are let
 ◆ As appropriate
 □ Not applicable

Required Contract Provisions

All contracts and subcontracts must include the following provisions:

1. Administrative, contractual or legal remedies in instances where construction contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. *Language in your contract agreement with ODOC can serve as an example for meeting this requirement. In any event, consult with your attorney for exact language consistent with local ordinances.*
 2. Termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement. The contract 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 construction contractor and/or municipality/county. *Language in your contract agreement with ODOC can serve as an example for meeting this requirement. In any event, consult with your attorney for exact language consistent with local ordinances.*
 3. Notice of ODOC requirements and regulations pertaining to reporting.
 4. Notice of ODOC requirements and regulations pertaining to patent rights with respect to any discovery or invention that arises or is developed in the course of or under such contract.
 5. Notice of ODOC requirements and regulations pertaining to copyrights and rights in data.
 6. Access by the Contractor, the subrecipient, ODOC, HUD, the Comptroller General of the United States or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.
 7. Retention of all required records for three years after construction Contractor or subrecipient makes final payment and all other pending matters are closed.
 8. Payments made by Contractor or subrecipient will be such that the payments meet immediate needs, if reimbursement is not the method of payment.
 9. 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 (P.L. 94-163). *This provision is applicable to new building construction, additions or major alteration due to a change in use or occupancy.*
 10. ODOC may require additional specific requirements which Contractors or subrecipients must impose on their contracts. *Refer to the contract agreement.*
-

All contracts that exceed a specified dollar threshold must include the following provisions:

11. Contracts over \$100,000 must include a provision of compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act [42 USC 1857 (h)], Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR 15) prohibiting the use of facilities included on the EPA List of Violating Facilities. *See Attachment 4 for the required language.*
12. Contracts of more than \$10,000 must include a provision prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin. *See Attachment 2 (Non-Construction) or Attachment 4 (Construction) for required language.*
13. Contracts of more than \$10,000 must include a provision which prohibits the construction contractor from discriminating against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant is qualified. *See Attachment 2 (Non-Construction) or Attachment 4 (Construction) for required language.*
14. Contracts of more than \$10,000 must include a provision which binds the construction contractor and any subcontractors to make a good faith effort to meet specified goals for minority and female participation in each trade utilized in the project. *See Attachment 6 for required language.*

15. Contracts of more than \$10,000 must include a provision which requires construction contractors to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era. *See Attachment 6 for required language.*
16. Contracts of more than \$2,000, *which will employ laborers and/or mechanics*, must include a provision that requires construction contractors to:
 - Compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the workweek; and
 - Ensure that no laborer or mechanic is 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.

All construction contracts are required to include the following provisions:

17. All contracts must include a provision that prohibits any coercion on the part of an employer to illegally force an employee to return any portion of his/her wages back to the employer. *See Attachment 4 for required language.*
18. All prime construction contractors which let any subcontracts are required to include a provision mandating affirmative steps to assure that minority firms, women's business enterprises and labor surplus area firms are used whenever possible. *See Attachment 4 for required language.*

All construction contracts that exceed a specified dollar threshold must include the following provisions:

19. Contracts of more than \$2,000 must contain a provision which requires that all trades and crafts be paid at a rate of pay at least equal to the prevailing rate of pay for such trades and crafts in the area. *See Attachment 4 for required language.*
20. Any contract of more than \$25,000 is *required* to execute a performance bond, a payment bond for 100% of the contract price and a maintenance bond.
21. Contracts of more than \$100,000 must contain a provision which requires the construction contractor to provide, to the greatest extent feasible, training and employment opportunities to lower-income residents of project areas and the award of contracts to small businesses located within the project area or owned in substantial part by project area residents. *See Attachment 4 for required language.*

Engineering/Architectural Design Contracts

While not specifically required, the Contractor is advised by ODOC to include the following provisions in any design contract:

- The design specifications of any structure to be constructed or rehabilitated must comply with the Architectural Barriers Act of 1973, as amended;
- A requirement that the specifications include a prohibition against the use of lead-based paint as mandated by Section 401(b) of the Lead-Based Paint Poisoning Prevention Act and consistent with the requirements of 24 CFR 35, Subpart B.

Federal Equal Opportunity and Non-Discrimination Provisions (Non-Construction contracts)

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer, advising the labor union or workers' representatives of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for non-compliance, *provided however*, that in the event a contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

(a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

(b) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(c) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment and the rights of applicants and employees.

(e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of section 503

of the Rehabilitation Act of 1973 and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

(f) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to section 503 of the Act so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

(a) The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: Employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

(b) The contractor agrees to list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, at an appropriate local office of the State employment service system wherein the opening occurs.

(c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding non-discrimination in employment.

(d) The reports required by paragraph (b) of this clause shall include but not be limited to periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location: (1) The number of individuals hired during the reporting period; (2) The number of non-disabled veterans of the Vietnam era hired; (3) The number of disabled veterans of the Vietnam era hired; and (4) The total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract. During this time these reports and related documentation shall be made available upon request for examination by any authorized representative of the contracting officer of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.

(e) Whenever the contractor becomes contractually bound to the listing provisions of this clause it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the contractor is contractually bound to these provisions and has so advised the State system there is no need to advise the State system of subsequent contracts. The contractor may advise the State system when it is no longer bound by this contract clause.

(f) This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

(g) The provisions of paragraphs (b), (c), (d) and (e) of this clause do not apply to openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(h) As used in this clause: (1) "All employment openings" includes all positions except executive and top management, those positions that will be filled from within the contractor's organization and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration and part-time employment.

Compliance Programs may direct to enforce such provisions, including action for non-compliance.

(i) "Appropriate office of the State employment service system" means the local office of the federal/State/national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico and the Virgin Islands.

(j) "Positions that will be filled from within the contractor's organization" means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries and the parent companies) and includes any openings which the contractor proposes to fill from regularly-established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

(k) "Openings which the contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the contractor proposes to fill from union halls which is part of the customary and traditional hiring relationship which exists between the contractor and representatives of his employees.

(l) The contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(j) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment and the rights of applicants and employees.

(l) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(m) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract

Clean Air and Water Provisions

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will certify that any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency pursuant to 40 CFR 15.20.
- (2) The contractor agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1958c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) The contractor agrees that, as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.
- (4) The contractor agrees that it will include or cause to be included the criteria and requirements in Paragraphs (1) through (4) of this section in every non-exempt subcontract and require every subcontractor to take such action as the Government may direct as a means of enforcing such provisions.

Federal Labor Standards Provisions (Construction Contracts)

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1.(i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR Part 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator or an authorized representative will approve, modify or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator or an authorized representative will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set

aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project). Such records shall contain the name, address and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees and the ratios and wage rates prescribed in the

applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii)(a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract but, if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying or transcription by authorized representative of HUD or its designee or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action

as may be necessary to cause the suspension of any further payment, advance or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

4.(1) Apprentices and Trainees. Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered or otherwise employed as stated above shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training or a State Apprenticeship Agency recognized by the Bureau withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor,

Employment and Training Administration. The ratio of trainees to Journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may, by appropriate instructions, require and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor or the employees or their representatives.

10.(i) Certification of Eligibility. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12 (a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part "Whoever, for the purpose of...influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings or Testimony by Employees. No laborer or mechanic to whom the wage, salary or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek, whichever is greater.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a

contract shall not be subject to the general disputes

territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

Federal Equal Opportunity and Non-Discrimination Provisions

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or natural origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers's representatives of the contractors' commitments under section 202 of Executive Order 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order

as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for non-compliance: *Provided however*, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:

a. "Covered area "means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and,

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to

comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to

community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and

Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensure that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and

failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall be at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement,

contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

(a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(c) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(f) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

(a) The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: Employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees to list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, at an appropriate local office of the State employment service system wherein the opening occurs.

(c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding non-discrimination in employment.

(d) The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of non-disabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any

authorized representative of the contracting officer of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.

(e) Whenever the contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The contractor may advise the State system when it is no longer bound by this contract clause.

(f) This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(g) The provisions of paragraphs (b), (c), (d), and (e) of this clause do not apply to openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(h) As used in this clause: (1) "All employment openings" includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

(2) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

(3) "Positions that will be filled from within the contractor's organization" means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

(4) "Openings which the contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the contractor and representatives of his employees.

(i) The contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(j) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notice shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.

(l) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(m) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

SECTION 3 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1968, AS AMENDED

1. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and order of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

3. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in

conspicuous places available to employees and applicants for employment or training.

4. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

ATTORNEY'S CERTIFICATE OF APPROVAL OF CONTRACT AND BONDS

I, the undersigned _____, the fully authorized and acting legal representative of _____ Name of Contractor _____, _____ County, Oklahoma, do hereby certify as follows:

I have examined the construction contract between the construction contractor, _____ Name of Construction Contractor _____, and the above-named entity and the surety bonds given by the construction contractor in connection with the performance of said contract and the manner of execution of the contract and surety bonds and I am of the opinion that each of the aforesaid agreement has been duly executed by the proper parties thereto, acting through their duly authorized representatives, that said representatives have full power and authority to execute said agreements on behalf of the respective parties named therein and that the foregoing contract and surety bonds constitute valid and legally binding obligations upon the parties executing the same in accordance with the terms, conditions and provisions thereof.

Dated the _____ day of _____, 19_____.

Attorney

_____ County, Oklahoma



SAMPLE
CONSTRUCTION CONTRACT DOCUMENTS FOR CDBG-FUNDED PROJECTS

- 1. Advertisement for Bids _____
- 2. Information for Bidders _____
- 3. Bid Proposal _____
- 4. Bid Schedule _____
- 5. Business Relationships Affidavit _____
- 6. Non-Collusion Affidavit _____
- 7. Payroll Affidavit _____
- 8. Claim for Invoice Affidavit _____
- 9. Bid Bond _____
- 10. Notice of Award _____
- 11. Contract _____
- 12. General Conditions _____
- 13. Supplemental General Conditions _____
- 14. Performance Bond _____
- 15. Statutory Bond - Use of Trusts, Authorities, RWD's _____
- 16. Maintenance Bond _____
- 17. Insurance Requirements _____
- 18. Federal Wage Rates _____
- 19. Federal Labor Standards _____
- 20. Equal Opportunity Provisions _____
- 21. State of Oklahoma Hold Harmless Clause _____
- 22. Certification of Compliance with Air and Water Acts _____
- 22. Special Conditions Pertaining to Hazards, Safety
Standards and Accident Prevention _____
- 24. Certificate of Approval of Contracts and Bonds _____
- 25. Exhibit C (Notification of Contract Award to
US Department of Labor) _____
- 26. Release of Claimants _____
- 27. Section 3 Plan _____

ADVERTISEMENT FOR BIDS

Owner _____

Address _____

Telephone _____

Separate SEALED BIDS for the construction of _____

will be received by _____
at the office of _____ until _____ a.m./p.m.,
CST/DST, on the _____ day of _____, _____, and then at said
office publicly opened and read aloud.

All bids must include assurances that the following provisions will be
complied with:

1. Federal Labor Standards Provisions, US Department of Labor , 29 CFR 5;
2. Section 3 of the Housing and Urban Development Act of 1974, as amended; 12 U.S.C. 1701U, which requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in substantial part by persons residing in the area of the project;
3. Section 109 of the Housing and Community Development Act of 1974, which assures that no person shall, on the grounds of race, color, natural origin or sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination;
4. Certification of Non-Segregated Facilities, which assures the bidder does not maintain or provide any segregated facilities;
5. Equal Opportunity Provisions - Executive Order 11246, as amended, which assures non-discrimination;
6. Minority Business Enterprise and Women Business Enterprise provisions which encourage minority-owned business and women-owned businesses to bid on the project;
7. Assurances that surety companies executing bonds appear on the Treasury Department's list and are authorized to transact business in the State where the project is located.

The Contract documents may be examined at the following locations:

Copies of the contract documents may be obtained at the office of _____
_____, located at _____,
upon payment of \$_____ for each set. Any bidder or non-bidder,
upon returning the contract documents promptly and in good condition,
will be refunded \$_____.

Clerk

Date

INFORMATION FOR BIDDERS

Bids will be received by _____
 (herein called the "Owner") at _____
 until _____ a.m./p.m., CST/CDST, on the _____ day of _____,
 _____, and then at said office publicly opened and read aloud.

Each bid must be submitted in a sealed envelope addressed to _____
 _____ at _____.
 Each sealed envelope containing a bid must be plainly marked on the
 outside as a "Bid for _____"
 and the envelope should bear on the outside the bidder's name, address
 and license number, if applicable, and the name of the project for which
 the bid is submitted. If forwarded by mail, the sealed envelope
 containing the bid must be enclosed in another envelope addressed to the
 Owner at _____.

All bids must be made on the required bid form. All blank spaces
 for bid prices must be filled in, in ink or typewritten, and the bid form
 must be fully completed and executed when submitted. Only one copy of
 the bid form is required.

The Owner may waive any informalities or minor defects or reject any
 and all bids. Any bid may be withdrawn prior to the above-scheduled time
 for the opening of bids or authorized postponement thereof. Any bid
 received after the time and date specified shall not be considered. No
 bidder may withdraw a bid within 60 days after the actual date of the
 opening thereof. Should there be reasons why the contract cannot be
 awarded within the specified period, the time may be extended by mutual
 agreement between the Owner and the bidders.

Bidders must satisfy themselves on the accuracy of the estimated
 quantities in the Bid Schedule by examination of the site and a review of
 the drawings and specifications, including addenda. After bids have been
 submitted, no bidder shall assert that there was a misunderstanding
 concerning the quantities of work or of the nature of the work to be
 done.

Prior to bidding, the Owner shall provide bidders with all inform-
 ation that is pertinent to and delineates and describes the land owned
 and rights-of-way acquired or to be acquired.

The contract documents contain the provisions required for the
 construction of the project. Information obtained from an officer, agent
 or employee of the Owner or any other person shall not affect the risks
 or obligations assumed by the contractor or relieve the contractor from
 fulfilling any of the conditions of this contract.

Each bid must be accompanied by a bid bond payable to the Owner for
 five percent of the total amount of the bid. As soon as the bid prices
 have been compared, the Owner will return the bonds of all except the

three lowest responsible bidders. When the agreement is executed, the bonds of the two remaining unsuccessful bidders will be returned. The bid bond of the successful bidder will be retained until the payment the payment bond and performance bond and/or statutory bond have been executed and approved, after which it will be returned. A certified check may be used in lieu of the bid bond.

A performance bond and a payment/statutory bond, each in the amount of 100 percent of the contract price and each with a corporate surety approved by the Owner, will be required for the faithful performance of the contract.

Attorneys-in-fact who sign bid bonds are payment bonds and performance bonds must file with each bond a certified copy of their Power of Attorney bearing the effective date.

The party to whom the contract is awarded will be required to execute the agreement and obtain the performance bond and statutory bond within ten (10) calendar days from the date when Notice of Award is delivered to the bidder. The Notice of Award shall be accompanied by the necessary agreement and bond forms. In case of failure of the bidder to execute the agreement, the Owner may consider the bidder in default, in which case the bid bond accompanying the proposal shall become the property of the Owner.

The Owner, within ten (10) days of receipt of acceptable performance bond, statutory bond and agreement signed by the party to whom the agreement was awarded, shall sign the agreement and return to such party an executed duplicate of the agreement. Should the Owner not execute the agreement within such period, the bidder may, by written notice, withdraw the signed agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the Owner.

The Notice to Proceed shall be issued within ten (10) days of the execution of the agreement by the Owner. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the Owner and contractor. If the Notice to Proceed has not been issued within the ten-day period or within the period mutually agreed upon, the contractor may terminate the agreement without further liability on the part of either party.

The Owner may make such investigations as deemed necessary to determine the ability of the bidder to perform the work and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by or investigation of such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the agreement and to complete the work contemplated therein.

A condition or qualified bid will not be accepted.

Award will be made to the lowest responsible bidder.

All applicable laws, ordinances and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout.

Each bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the contract documents. The failure or omission of any bidder to do any of the foregoing shall in no way relieve any bidder from any obligation with respect to its bid.

Further, the bidder agrees to abide by the requirements under Executive Order No. 11246, as amended, including, specifically, the provisions of the Equal Opportunity Clause set forth in the Supplemental General Conditions.

When alternate bids are taken, they will be listed in numerical order with the highest priority being number one, second priority being number two, etc.

When alternates are used, the low bidders will be selected by the lowest and best bid, considering all bids, which include the selected alternate bids.

The alternates will be listed in consecutive priority order to remain within the funds available for the project.

The low bidder shall supply the names and addresses of major material suppliers and subcontractors when required to do so by the Owner.

Inspection trips for prospective bidders will leave from the office of the _____ at _____.

The engineer is _____.
Address _____.

SPECIAL NOTE TO BIDDERS:

As a part of the bid on this project, the successful bidder will be required to meet all requirements of the Underground Facilities Damage Prevention Act when engaged in work within the public right-of-way in the same manner as in private right-of-way.

BID PROPOSAL

Proposal of _____
(hereinafter called "Bidder"), organized and existing under the laws of
the State of _____, doing business as _____
_____, to _____
(hereinafter called "Owner").

In compliance with your Advertisement for Bids, Bidder hereby
proposes to perform all work for the construction of _____

in strict accordance with the contract documents within the time set
forth therein and at the prices stated below.

By submission of this bid, each Bidder certifies, and in the case of
a joint bid each party certifies as to its own organization, that this
bid has been arrived at independently, without consultation, commun-
ication or agreement as to any matter relating to this bid, with any
other Bidder or with any competitor.

Bidder hereby agrees to commence work under this contract within ten
(10) days of the date to be specified in the Notice to Proceed and to
fully complete the project within _____ consecutive calendar days
thereafter. Bidder further agrees to pay as liquidated damages the sum
of \$_____ for each consecutive calendar day thereafter as
provided in Section 15 of the General Conditions.

No Bidder may withdraw a bid within 60 days after the actual opening
thereof. Each bid must be accompanied by a bid bond payable to Owner for
5% of the amount bid.

Bidder acknowledges receipt of the following addenda: _____
_____.

Bidder agrees to perform all the work described in the contract
documents for the following unit prices or lump sum.

NOTE: Bids shall include sales tax and all other applicable taxes and
fees.

*Insert "a corporation", "a partnership" or "an individual", as
applicable.

BID SCHEDULE

NO.	ITEM	UNIT	UNIT PRICE	AMOUNT	TOTAL PRICE

Respectfully submitted,

Signature

Firm Name

Title

Address

Employer I.D.> No.

Address

[(SEAL) if bid is by a corporation]

Telephone No.

ATTEST:

Secretary/Witness

Date

BUSINESS RELATIONSHIPS AFFIDAVIT

STATE OF Oklahoma)
)
) ss.
COUNTY OF _____)

_____, of lawful age, being first duly sworn upon oath, states that (s)he is the agent authorized by the Bidder to submit the attached bid. Affiant further states that the nature of any partnership, joint venture or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with the architect, engineer or other party to the project is as follows:

Affiant further states that any such business relationship presently in effect or which existed within one (1) year prior to the date of this statement between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project is as follows:

Affiant further states that the names of all persons having any such business relationships and the positions they hold with their respective companies or firms are as follows:

(if none of the business relationships hereinabove mentioned exist, Affiant should so state.)

Affiant

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

My Commission Expires:

NOTE: This form is to be submitted with the bid.

NON-COLLUSION AFFIDAVIT

STATE OF OKLAHOMA)
) ss.
COUNTY OF _____)

_____, of lawful age, being first duly sworn upon oath, states that (s)he is the agent authorized by the Bidder to submit the attached bid. Affiant further states that the Bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding or with any State official or employee as to quantity, quality or price in the prospective contract or any other terms of said prospective contract or in any discussions between bidders and any State official concerning exchange of money or other thing of value for special consideration in the letting of a contract.

Affiant

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

My Commission Expires:

NOTE: This form is to be submitted with the bid.

PAYROLL AFFIDAVIT

STATE OF OKLAHOMA)
)
COUNTY OF _____) SS.

_____, of lawful age, being first duly sworn upon oath, states that (s)he is the agent authorized by the Bidder to submit the attached bid. Affiant further states that (s)he has submitted the required payroll information to the Wage and Hour Division of the Employment Standards Administration of the United States Department of Labor.

Affiant

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

My Commission Expires:

NOTE: This form is to be submitted with the bid.

CLAIM OR INVOICE AFFIDAVIT

STATE OF OKLAHOMA)
) ss.
COUNTY OF _____)

The undersigned __ (engineer or supervisory official) __, of lawful age, being first duly sworn upon oath, states that this __ invoice, claim or contract) __ is true and correct. Affiant further states that the __ (work, services or materials) __, as shown by this invoice or claim, have been __ (completed or supplied) __ in accordance with the plans, specifications, orders or requests furnished to the Affiant. Affiant further states that (s)he has not paid, given or donated or agree to pay, give or donate, either directly or indirectly, to any elected official, officer or employee of the State of Oklahoma any money or any other thing of value to obtain payment or the award of this contract.

Affiant (Engineer or other Supervisory Official)

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

My Commission Expires:

BID BOND

We, the undersigned, _____,
as Principal, and _____, as
Surety, are hereby held and firmly bound unto _____
_____, as Owner, in the penal sum of _____
_____ for the payment of which, well and truly to be made,
hereby jointly and severally bind ourselves, our successors and our
assigns.

Signed this _____ day of _____, _____.

The condition of the above obligation is such that, whereas the
Principal has submitted to _____ a
certain bid, attached hereto and hereby made a part hereof, to enter into
a contract, in writing, for the _____

_____;

NOW, THEREFORE, if said bid shall be rejected or if said bid shall
be accepted and the Principal shall execute and deliver a contract in the
form of the contract attached hereto (properly completed in accordance
with said bid) and shall furnish a bond for faithful performance of said
contract and for the payment of all persons performing labor or
furnishing materials in connection therewith and shall in all other
respects perform the agreement created by the acceptance of said bid,
then this obligation shall be void; otherwise, the same shall remain in
force and effect, it being expressly understood and agreed that the
liability of the Surety for any and all claims hereunder shall, in no
event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bonds shall in no way be impaired or affected by any extension of the time within which the Owner may accept such bid and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers the day and year first set forth above.

Principal

Surety

By: _____

ATTEST: (if by corporation)

Types Name & Title

Corporate Seal

NOTICE OF CONTRACT AWARD

A. Contractor Information:

TO: _____ CDBG Contract No. _____
 _____ Project Description: _____

 Phone #: _____ FEI #: _____

B. Acceptance of Bid:

The Owner has considered the bid submitted by you for the described work in response to the Advertisement for Bids dated _____, and in the Information for Bidders, and opened on _____, 200__ (date). You are hereby notified that your bid has been accepted for bid items in the amount of \$_____. If you fail to execute said agreement and furnish applicable bonds and insurance within ten (10) days from the date of this notice, said Owner will be entitled to consider all your rights arising out of the Owner’s acceptance of your bid as abandoned and as a forfeiture of your bid bond. The Owner will be entitled to such other rights as may be granted by law. You are required to return an acknowledged copy of this Notice of Award to the Owner.

Dated this _____ day of _____, _____.

Owner: _____

By: _____

Typed Name & Title: _____

C. Contractor Eligibility

Receipt of this Notice of Contract Award is hereby acknowledged by _____ this _____ day of _____, 200__, and I hereby certify that this firm does not appear on the List of Parties excluded from Federal Procurement and Non-Procurement Programs i.e., the list of Debarred Contractors.

By: _____ Title: _____ Date: _____

(<http://epls.arnet.gov>)

D. Contractor Information:

1. Type of Trade: ___ Construction ___ Education/Training ___ Other (includes Admin. & Engineering)
2. Business Ownership: ___ Black or African Americans; ___ Asians, Hispanics, or Latinos; ___ American Indian or Alaskan Natives; ___ Native Hawaiian or Other Pacific Islanders; ___ Whites.
3. Minority/Women Owned Business: Yes ___ No ___
4. Section 3 Contractor: Yes ___ No ___

Notice of Award Instructions

- Section A. Contractor Information: Enter the name, address and phone number of the construction contractor. Enter the CDBG Contract Number, the Project Description, and the contractor's FEI (Federal Employer Identification) Number. If the contractor does not have an FEI Number, enter the Social Security Number.
- Section B. Acceptance of Bid: Enter the date of the bid opening and the amount of the contractor's bid. Enter the date of the Award. Enter the name of the CDBG grantee on the line beside "Owner". Obtain the signature of the Chief Executive Official (CEO) the of the CDBG grantee on the line beside "By". Type the Name and Title of the CDBG grantee and the CEO.
- Section C. Contractor Eligibility: The construction contractor must complete this Section with the company's name and date of his/her receipt of the Award. The construction contractor must sign at the end of this Section certifying that the company is not on the Federal debarred list and is eligible to work on the project. Review of the contractor's eligibility on the worldwide web at <http://epls.arnet.gov>
- Section D: Contractor Information:
1. Type of Trade: Check beside appropriate trade for contractor.
 2. Business Ownership: Check beside the appropriate race/ethnicity of the contractor.
 3. Check yes or no for minority/women-owned business. (A minority/women-owned business enterprise is defined as a business with at least 51% ownership by women and/or minorities).
 4. Section 3 Contractor: Contracts of more than \$100,000 require the construction contractor to provide, to the greatest extent feasible, training and employment opportunities to lower-income residents of the project area and award contracts to small businesses within the project area or owned in substantial part by project area residents. If the contractor is able to provide such employment/contracts, check "Yes" and, if not, check "No". Such contractor shall also complete the Section 3 Plan, Page 405-105 in the CDBG Contractors Implementation Manual.

C O N T R A C T

This contract, made and entered into by and between _____, as Party of the First Part, hereinafter designated as Contractor, and _____, as Party of the Second Part, hereinafter designated as the Owner, to-wit:

WHEREAS, the Contractor is the lowest and best bidder for:

for the total bid price, as accepted, of _____ Dollars, (\$_____);

NOW, THEREFORE, the Contractor, for the consideration herein named, hereby agrees to do and complete the work above mentioned in accordance with the plans adopted and approved by the Owner and on file in the office of the _____, which plans and specifications are made a part of this contract by reference as if attached hereto or written in detail herein.

It is further agreed that the Contractor will commence said work within _____ days from the date of the Work Order and perform same vigorously and continuously and complete the same on or before _____.

It is further agreed that payment for the aforesaid work or material will be made under the terms of the Contractor's bid, as accepted, as provided in the specifications and that, upon final completion of this contract work, the Contractor will receive the full compensation payment according to the schedule of prices as contained in his bid, as accepted, and that, upon receipt by the Contractor of final claim, the same shall be paid in full for all claims of every kind and description the Contractor may have arising out of this contract.

The Notice to Bidders, the Instructions to Bidders, the Special and General Provisions of specifications and the Contractor's Bid Proposal, each of said instruments on file in the office of the _____, are hereby referred to and, by reference thereto, are made a part of this contract as if fully written in detail or attached hereto.

IN WITNESS WHEREOF, the Parties of the First and Second Parts have hereunto set their hands and seals the _____ day of _____, ____.

SEAL

Contractor

ATTEST:

By: _____

By: _____

Typed Name & Title

Typed Name & Title

SEAL

Owner

ATTEST:

By: _____

By: _____

Typed Name & Title

Typed Name & Title

GENERAL CONDITIONS

- | | |
|---|--|
| 1. Definitions | 17. Subsurface Conditions |
| 2. Additional Instructions &
Detail Drawings | 18. Suspension of Work,
Termination & Delay |
| 3. Scheduled, Reports and Records | 19. Payments to Contractor |
| 4. Drawings and Specifications | 20. Acceptance of Final
Payment as Release |
| 5. Shop Drawings | 21. Insurance |
| 6. Materials, Services & Facilities | 22. Contract Security |
| 7. Inspection & Testing | 23. Assignments |
| 8. Substitutions | 24. Indemnification |
| 9. Patents | 25. Separate Contracts |
| 10. Surveys, Permits, Regulations | 26. Subcontracting |
| 11. Protection of Work, Property,
Persons | 27. Engineer's Authority |
| 12. Supervision by Contractor | 28. Land and Rights-of-Way |
| 13. Changes in the Work | 29. Guaranty |
| 14. Changes in Contract Price | 30. Arbitration |
| 15. Time Completion & Liquidated Damages | 31. Taxes |
| 16. Correction of Work | |

1. DEFINITIONS: Wherever used in the contract documents, the following terms shall have the meanings indicated and shall be applicable to both the singular and plural thereof:
- a. Addenda: Written or graphic instruments issued prior to the execution of the agreement which modify or interpret the contract documents, drawings and specifications by additions, deletions, clarifications or corrections.
 - b. Bid: The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the work to be performed.
 - c. Bidder: Any person, firm or corporation submitting a bid for the work.
 - d. Bonds: Bid, performance, payment (statutory) and maintenance bonds and other instruments of security furnished by the Contractor and the Contractor's surety in accordance with the contract documents.
 - e. Change Order: A written order to the Contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents or authorizing an adjustment in the contract price or contract time.
 - f. Contract Documents: The contract, including Advertisement for Bids, Information for Bidders, Bid, Bid Bond, Agreement, Payment (Statutory) Bond, Performance Bond, Notice of Award, Notice to Proceed, Change Order, Drawings, Specifications and Addenda.

- g. Contract Price: The total monies payable to the Contractor under the terms and conditions of the contract documents.
- h. Contract Time: The number of calendar days stated in the contract documents for the completion of the work.
- i. Contractor: The person, firm or corporation with whom the Owner has executed the agreement.
- j. Drawings: The parts of the contract documents which show the characteristics and scope of the work to be performed and which have been prepared or approved by the engineer.
- k. Engineer: The person, firm or corporation named as such in the contract documents.
- l. Field Order: A written order effecting a change in the work not involving an adjustment in the contract price or an extension of the contract time, issued by the engineer to the Contractor during construction.
- m. Notice to Proceed: Written communication issued by the Owner to the Contractor authorizing him/her to proceed with the work and establishing the date for commencement of the work.
- n. Notice of Award: The written notice by Owner to the apparent successful bidder stating that, upon compliance by the apparent successful bidder with the conditions enumerated therein within the time specified, Owner will sign and deliver the agreement.
- o. Owner: A public or quasi-public body or authority, corporation, association, partnership or individual for whom the work is to be performed.
- p. Project: The undertaking to be performed as provided in the contract documents.
- q. Resident Project Representative: The authorized representative of the Owner who is assigned to the project site or any part thereof.
- r. Shop Drawings: All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor which illustrate how specific portions of the work shall be fabricated or installed.
- s. Specifications: A part of the contract documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

- t. Subcontractor: An individual, firm or corporation having a direct contract with Contractor or with any other subcontractor for the performance of a part of the work at the site.
- u. Substantial Completion: That date certified by the engineer when the construction of the project or a specified part thereof is sufficiently completed, in accordance with the contract documents, to allow the project or specified part to be utilized for the purposes for which it is intended.
- v. Supplemental General Conditions: Modifications to General Conditions required by a Federal agency for participation in the project and approved by the agency in writing prior to being included in the contract documents or such requirements that may be imposed by applicable State laws.
- w. Supplier: Any person or organization who supplies materials or equipment for the work, including that fabricated to a special design, but who does not perform labor at the site.
- x. Work: All labor necessary to produce the construction required by the contract documents and all materials and equipment incorporated or to be incorporated in the project.
- y. Written Notice: Any notice in writing to any party to the agreement regarding any part of this agreement. Said written notice shall be considered delivered and the service thereof completed when posted by certified or registered mail to said party at their last given address or delivered in person to said party or their authorized representative at the project site.

2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS:

- a. The Contractor may be furnished additional instructions and detail drawings by the engineer as necessary to carry out the work required by the contract documents.
- b. The additional drawings and instructions thus supplied will become a part of the contract documents. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

3. SCHEDULES, REPORTS AND RECORDS:

- a. The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data, where applicable, as are required by the contract documents for the work to be performed.
- b. Prior to the first partial payment estimate, the Contractor shall submit construction progress schedules showing the order

in which the Contractor proposes to carry on the work, including dates at which the various parts of the work will be started, estimated date of completion of each part and, as applicable:

- (1) The dates at which special detail drawings will be required; and
 - (2) Respective dates for submission of shop drawings, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.
- c. The Contractor shall also submit a schedule of payments the Contractor anticipates will be earned during the course of the work.

4. DRAWINGS AND SPECIFICATIONS:

- a. The drawings and specifications are tools to be used by the Contractor to enable the Contractor to furnish all labor, materials, tools, equipment and transportation necessary for the proper performance of the work in accordance with the contract documents and all incidental work necessary to complete the project in an acceptable manner, ready for use, occupancy or operation by the Owner.
- b. In case of conflict between the drawings and the specifications, the specifications shall govern. Figure dimensions and drawings shall govern over scale dimensions and detail drawings shall govern over general drawings.
- c. Any discrepancies found between the drawings and specifications and site conditions or any inconsistencies or ambiguities in the drawings or specifications shall be immediately reported, in writing, to the engineer, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Contractor after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.

5. SHOP DRAWINGS:

- a. The Contractor shall provide shop drawings as may be necessary for the performance of the work as required by the contract documents. The engineer shall promptly review all shop drawings. The engineer's approval of any shop drawing shall not release the Contractor from responsibility for deviations from the contract documents. The approval of any shop drawing that substantially deviates from the requirement of the contract documents shall be evidenced by a change order.
- b. When submitted for the engineer's review, shop drawings shall bear the Contractor's certification that he has reviewed,

checked and approved the shop drawings and that they are in conformance with the requirements of the contract documents.

6. MATERIALS, SERVICES AND FACILITIES:

- a. It is understood that, except as otherwise specifically stated in the contract documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature and all other services and facilities of any nature whatsoever necessary to execute, complete and deliver the work within the specified time.
- b. Materials and equipment shall be so stored as to preserve their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located to facilitate prompt inspection.
- c. Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- d. Materials, supplies and equipment shall be in accordance with samples submitted by the Contractor and approved by the engineer.
- e. Materials, supplies or equipment to be incorporated into the work shall be purchased by the Contractor or the subcontractor free and clear of chattel mortgages, conditional sales contracts or other agreements by which an interest is retained by the seller.

7. INSPECTION AND TESTING:

- a. All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards as required and defined in the contract documents.
- b. The Owner shall provide all inspection and testing services not required by the contract documents.
- c. The Contractor shall provide, at the Contractor's expense, the testing and inspection services required by the contract documents.
- d. If the contract documents, laws, ordinance, rules, regulations or orders of any public authority having jurisdiction require any specific work to be inspected, tested or approved by someone other than the Contractor, the Contractor will give the engineer timely notice of readiness. The Contractor will then furnish the engineer the required certificates of inspection, testing or approval.

- e. Inspections, tests or approvals by the engineer or others shall not relieve the Contractor from the obligation to perform the work in accordance with the requirements of the contract documents.
 - f. The engineer and the engineer's representatives will at all times have access to the work. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records. The Contractor will provide proper facilities for such access and observation of the work and for any inspection or testing thereof.
 - g. If any work is covered contrary to the written instructions of the engineer, it must, if requested by the engineer, be uncovered for the engineer's observation and the covering replaced at the Contractor's expense.
 - h. If the engineer considers it necessary or advisable that covered work be inspected or tested by others, the Contractor, at the engineer's request, will uncover, expose or otherwise make available for observation, inspection or testing, as the engineer may require, that portion of the work in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such work is defective, the Contractor will bear all expenses of such uncovering, exposing, observing, inspecting and testing and of satisfactory reconstruction. If, however, such work is not found to be defective, the Contractor will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to such uncovering, exposing, observing, inspecting, testing and reconstruction and an appropriate change order shall be issued.
8. **SUBSTITUTIONS:** Whenever a material, article or piece of equipment is identified on the drawings or specifications by referenced to brand name or catalog number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The Contractor may recommend the substitution of a material, article or piece of equipment of equal substance and function for those referred to in the contract documents by reference to brand name or catalog number and if, in the opinion of the engineer, such material, article or piece of equipment is of equal substances and function to that specified, the engineer may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the contract price and the contract documents shall be appropriately modified by change order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the project will result. Incidental changes or extra

component parts required to accommodate the substitute will be made by the Contractor without a change in the contract price or contract time.

9. The Contractor shall pay all applicable royalties and license fees and shall defend all suits or claims for infringement of any patent rights and save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for any such loss when a particular process, design or product of a particular manufacturer or manufacturers is specified; however, if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, the Contractor shall be responsible for such loss unless the Contractor promptly gives such information to the engineer.

10. SURVEYS, PERMITS, REGULATIONS:

- a. The Owner shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the work, together with a suitable number of benchmarks adjacent to the work as shown in the contract documents. From the information provided by the Owner, unless otherwise specified in the contract documents, the Contractor shall develop and make all detail surveys needed for construction, such as slope stakes, batter boards, stakes for pipe locations and other working points, lines, elevations and cut sheets.
- b. The Contractor shall carefully preserve benchmarks, reference points and stakes and, in case of willful or careless destruction, shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.
- c. Permits and licenses of a temporary nature necessary for the performance of the work shall be secured and paid for by the Contractor unless otherwise stated in the Supplemental General Conditions. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the contract documents are at variance therewith, the Contractor shall promptly notify the engineer in writing and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. PROTECTION OF WORK, PROPERTY AND PERSONS:

- a. The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and program in connection with the work. The Contractor will take all necessary precautions for the safety of and will provide the necessary

protection to prevent damage, injury or loss to all employees on the work and other persons who may be affected thereby and for the protection of all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

- b. The Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Contractor will erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protection. The Contractor will notify owners of adjacent utilities when performance of the work may affect them. The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor or any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except damage or loss attributable to the fault of the contract documents or to the acts or omissions of the Owner or the engineer or anyone employed by either them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.
 - c. In emergencies affecting the safety of persons or the work or property at the site or adjacent thereto, the Contractor, without special instructions or authorization from the engineer or Owner, shall act to prevent the threatened damage, injury or loss. The Contractor will give the engineer prompt written notice of any significant changes in the work or deviations from the contract documents caused thereby and a change order shall thereupon be issued covering the changes and deviations involved.
12. SUPERVISION BY CONTRACTOR: The Contractor will supervise and direct the work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.
13. CHANGES IN THE WORK:
- a. The Owner may, at any time, as the need arises, order changes within the scope of the work without invalidating the

agreement. If such changes increase or decrease the amount due under the contract documents or in the time required for performance of the work, an equitable adjustment shall be authorized by change order.

- b. The engineer may also, at any time, by issuing a field order, make changes in the details of the work. The Contractor shall proceed with the performance of any changes in the work so ordered by the engineer unless the Contractor believes that such field order entitles the Contractor to a change in contract price or time, or both, in which event, the Contractor shall give the engineer written notice thereof within seven (7) days after the receipt of the ordered change. Thereafter, the Contractor shall document the basis for the change in contract price or time within thirty (30) days. The Contractor shall not execute such changes pending the receipt of an executed change order or further instruction from the Owner.
14. CHANGES IN CONTRACT PRICE: The contract price may be changed only by a change order. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below:
- a. Unit prices previously approved;
 - b. An agreed lump sum.
15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES:
- a. The date of beginning and the time for completion of the work are essential conditions of the contract documents and the work embraced shall be commenced on a date specified in the Notice to Proceed.
 - b. The Contractor will proceed with the work at such rate of progress as to ensue full completion within the contract time. It is expressly understood and agreed by and between the Contractor and the Owner that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.
 - c. If the Contractor shall fail to complete the work within the contract time or extension of time granted by the Owner, then the Contractor will pay to the Owner the amount for liquidated damages as specified in the bid for each calendar day the Contractor shall be in default after the time stipulated in the contract documents.

- d. The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following and the Contractor has promptly given written notice of such delay to the Owner or engineer:
 - (1) Any preference, priority or allocation order duly issued by the Owner;
 - (2) Unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts or the Owner, acts of another contractor in the performance of a contract with the Owner, fires, flood, epidemics, quarantine, restrictions, strikes, freight embargoes and abnormal and unforeseeable weather; and
 - (3) Any delays of subcontractors occasioned by any of the causes specified in paragraphs 15d(1) and 15d(2) of this article.

16. CORRECTION WORK:

- a. The Contractor shall promptly remove from the premises all work rejected by the engineer for failure to comply with the contract documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the work in accordance with the contract documents without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damages by such removal or replacement.
- b. All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected work within ten (10) days after receipt of written notice, the Owner may remove such work and store the materials at the expense of the Contractor.

17. SUBSURFACE CONDITIONS:

- a. The Contractor shall promptly, before such conditions are disturbed except in the event of an emergency, notify the Owner by written notice of:
 - (1) Subsurface or latent physical conditions at the site differing materially from those indicated in the contract documents; or
 - (2) Unknown physical conditions at the site of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inherent in the work the character provided for in the contract documents.

- b. The Owner shall promptly investigate the conditions and, if it is found that such conditions do so materially differ and cause an increase or decrease, an adjustment shall be made and the contract documents shall be modified by a change order. Any claim of the Contractor for adjustment hereunder shall not be allowed unless the required written notice has been given and provided that the Owner may, if the Owner determines the facts so justify, consider and adjust any claims asserted before the date of final payment.

18. SUSPENSION OF WORK, TERMINATION AND DELAY:

- a. The Owner may suspend the work or any portion thereof for a period of not more than ninety (90) days or until such further time as agreed upon by the Contractor in a written notice to the Contractor and the engineer fixing the date on which work shall be resumed. The Contractor will resume that work on the date so fixed. The Contractor will be allowed an increase in the contract price or an extension of the contract time, or both, for any costs and/or delays incurred which are directly attributable to any suspension.

- b. If any of the following conditions occur:

- (1) The Contractor is adjudged bankrupt or insolvent or makes a general assignment for the benefit of its creditors;
- (2) A trustee or receiver is appointed for the Contractor or for any of its property;
- (3) Contractor files a petition to take advantage of any debtor's act or to reorganize under bankruptcy of applicable laws;
- (4) The Contractor repeatedly fails to supply sufficiently skilled workmen or suitable materials or equipment;
- (5) The Contractor repeatedly fails to make prompt payments to subcontractors or for labor, materials or equipment;
- (6) The Contractor disregards laws, ordinance, rules, regulations or orders of any public body having jurisdiction over the work;
- (7) The Contractor disregards the authority of the engineer or otherwise violates any provision of the contract documents;

then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and its surety a minimum of ten (10) days from delivery of a written notice, terminate the services of the Contractor and take possession of the project and of all materials, equipment, tools,

construction equipment and machinery thereon owned by the Contractor and finish the work by whatever method the Owner may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the engineer and incorporated in a change order.

- c. Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter occur. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the contract documents.
- d. After ten (10) days from the deliver of a written notice to the Contractor and the engineer, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the contract. In such case, the Contractor shall be paid for all work executed and any expense sustained plus a reasonable profit.
- e. If, through no act or fault of the Contractor, the work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority or the engineer fails to act on any request for payment within thirty (30) days after it is submitted or the Owner fails to pay the Contractor substantially the sum approved by the engineer or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, after ten (10) days from delivery of a written notice to the Owner and the engineer, terminate the contract and recover from the Owner payment for all work executed and all expenses sustained. In addition to and in lieu of terminating the contract, if the engineer has failed to act on a request for payment or if the Owner has failed to make payment as aforesaid, the Contractor may, upon ten (10) days written notice to the Owner and engineer, stop the work until paid all amounts then due, in which event and upon resumption of the work, change orders shall be issued to adjust the contract price or extend the contract time, or both, to compensate for the costs and delays attributable to the stoppage of the work.
- f. If the performance of all or any portion of the work is suspended, delayed or interrupted as a result of a failure by the Owner or engineer to act within the time specified in the contract documents or if no time is specified, within a reasonable time, an adjustment in the contract price or an

extension of the contract time, or both, shall be made by change order to compensate the Contractor for the costs and delays unnecessarily caused by the failure of the Owner or engineer.

19. PAYMENT TO CONTRACTOR:

- a. At least ten (10) days before each progress payment falls due (but not more often than once a month), the Contractor will submit to the engineer a partial payment estimate filled out and signed by the Contractor, covering the work performed during the period covered by the partial payment estimate and supported by such data as the engineer may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by supporting data, satisfactory to the Owner, which will establish the Owner's title to the material and equipment and protect the Owner's interest therein, including applicable insurance. The engineer will, within ten (10) days after the receipt of each partial payment estimate, either indicate approval of payment in writing and present the partial payment estimate to the Owner or return the partial payment estimate to the Contractor indicating in writing the reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. The Owner will, within ten (10) days of presentation of an approved partial payment estimate, pay the Contractor a progress payment on the basis of the approved partial payment estimate less the retainage. The retainage shall be an amount equal to 10% of said estimate until 50% of the work has been completed. At 50% completion, further partial payments shall be made in full to the Contractor and no additional amounts may be retained unless the engineer certifies that the job is not proceeding satisfactorily and amounts previously retained shall not be paid to the Contractor. At 50% completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained; however, in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the work, any amount retained may be paid to the Contractor. When the work has been substantially completed except for work which cannot be completed because of weather conditions, lack of materials or other reasons which, in the judgment of the Owner, are valid reasons for non-completion, the Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed.
- b. The request for payment may also include an allowance for the cost of major materials and equipment suitably stored either at or near the site.

- c. Prior to substantial completion, the Owner, with the approval of the engineer and with the concurrence of the Contractor, may use any completed or substantially completed portions of the work. Such use shall not constitute an acceptance of such portions of the work.
- d. The Owner shall have the right to enter the premises for the purpose of doing work not covered by the contract documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the work or the restoration of any damaged work except such as may be caused by agents or employees of the Owner.
- e. Upon completion and acceptance of the work, the engineer shall issue a certificate attached to the final payment request that the work has been accepted under the conditions of the contract documents. The entire balance found to be due to the Contractor, including the retained percentages, except such sums as may be lawfully retained by the Owner, shall be paid to the Contractor within thirty (30) days of completion and acceptance of the work.
- f. The Contractor will indemnify and save the Owner or the Owner's agents harmless from all claims growing out of the lawful demand of subcontractors, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts therefor, equipment, tools and supplies incurred in the furtherance of the performance of the work. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged or waived. If the Contractor fails to do so, the Owner may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the Contractor shall be resumed in accordance with the terms of the contract documents. In no event shall these provisions be construed to impose any obligations upon the Owner to either the Contractor, the Contractor's surety or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Owner shall be considered as a payment made under the contract documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.
- g. If the Owner failed to make payment within thirty (30) days after approval by the engineer, in addition to other remedies available to the Contractor, there shall be added to each such payment interest at the maximum legal rate commencing on the

first day after said payment is due and continuing until the payment is received by the Contractor.

20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE: Acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others, relating or arising out of this work. Any payment, however, final or otherwise, shall not release the Contractor or its sureties from any obligations under the contract documents or the performance of the payment bonds.
21. INSURANCE:
 - a. The Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the Contractor's execution of the work, whether such execution be by the Contractor, any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.
 - (1) Claims under Workers' Compensation, disability benefit and other similar employee benefit acts;
 - (2) Claims for damages because of bodily injury, occupational sickness or disease or death of employees;
 - (3) Claims for damages because of bodily injury, sickness or disease or death of any person other than employees;
 - (4) Claims for damages covered by the usual personal injury liability coverage which are sustained by:
 - (a) Any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor; or
 - (b) Any other person;
 - (5) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.
 - b. Certificates of insurance acceptable to Owner shall be filed with the Owner prior to commencement of work. These certificates shall contain a provision that coverages afforded under the policies will not be cancelled unless at least fifteen-(15) days' prior written notice has been given to the Owner.

- c. The Contractor shall procure and maintain, at the Contractor's own expense, during the contract time, liability insurance as hereinafter specified:
- (1) Contractor's general public liability and property damage insurance, including vehicle coverage, issued to the Contractor and protecting the Contractor from all claims for personal injury, including death, and all claims for destruction of or damage to property arising out of or in connection with any operations under the contract documents, whether such operations be by the Contractor or by any subcontractor employed by the Contractor. Insurance shall be written with a limit of liability of not less than \$500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident, and a limit of liability of not less than \$500,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$200,00 for all property damage sustained by any one person in any one accident and a limit of liability not less than \$200,000 aggregate for any such damage sustained by two or more persons in any one accident.
 - (2) The Contractor shall acquire and maintain, if applicable, fire and extended coverage insurance upon the project to the full insurable value thereof for the benefit of the Owner, the Contractor and the subcontractors, as their interest may appear. This provision shall in no way release the Contractor or the Contractor's surety from obligations under the contract documents to fully complete the project.
- d. The Contractor shall procure and maintain, at the Contractor's own expense, during the contract time, in accordance with the provisions of the laws of the State in which the work is performed, Workers' Compensation insurance, including occupational disease provisions, for all of the Contractor's employees at the site of the project and, in case any work is sublet, the Contractor shall require such subcontractor similarly to provide Workers' Compensation insurance, including occupational disease provisions, for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Workers' Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate and suitable insurance for the protection of its employees not otherwise protected.

- e. The contractor shall secure, if applicable, "all risk" type Builder's risk insurance for work to be performed. Unless specifically authorized by the Owner, the amount of such insurance shall not be less than the contract price totaled in the bid. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft and smoke during the contract time and until the work is accepted by the Owner. The policy shall name as the insured the Contractor and the Owner.

22. CONTRACT SECURITY:

- a. The Contractor shall, within ten (10) days after the receipt of the Notice of Award, furnish the Owner with a performance bond and a payment (statutory) bond in penal sums equal to the amount of the contract price, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements of the contract documents and upon the prompt payment by the Contractor to all persons supplying labor and materials in the performance of the work required by the contract documents. Such bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the State in which the work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds", as published in Treasury Department Circular Number 570. The expense of these bonds shall be borne by the Contractor. If, at any time, a surety on any such bond is declared bankrupt or loses its right to do business in the State in which the work is to be performed or is removed from the list of Surety Companies Acceptable on Federal Bonds, Contractor shall, within ten (10) days after notice from the Owner, substitute another bond and surety, both of which must be acceptable to Owner. The premiums on such bond shall be paid by the Contractor. No further payment shall be deemed due nor made until the new surety or sureties shall have furnished an acceptable bond to the Owner.

23. ASSIGNMENTS: Neither the Contractor nor the Owner shall sell, transfer, assign or otherwise dispose of the contract or any portion thereof or of any right, title or interest therein or any obligations thereunder without written consent of the other party.

24. INDEMNIFICATION:

- a. The Contractor will indemnify and hold harmless the Owner and the engineer and their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work, provided that any such claims, damages, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom, which is caused in whole

or in part by any negligent or willful act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

- b. In any and all claims against the Owner or the engineer or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under the Workers' Compensation Act, disability benefits acts or other employee benefits acts.
- c. The obligation of the Contractor under this paragraph shall not extend to the liability of the engineer, its agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications.

25. SEPARATE CONTRACTS:

- a. The Owner reserves the right to let other contracts in connection with this project. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the work with theirs. If the proper execution or results of any part of the Contractor's work depends upon the work of any other contractor, the Contractor shall inspect and promptly report to the engineer any defects in such work that render it unsuitable for such proper execution and results.
- b. The Owner may perform additional work related to the project or the Owner may let other contracts containing provisions similar to these. The Contractor will afford the other contractors who are parties to such contracts (or the Owner, if the Owner is performing the additional work) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work and shall properly connect and coordinate the work with theirs.
- c. If the performance of additional work by other contractors or the Owner is not noted in the contract documents prior to the execution of the contract, written notice thereof shall be given to the Contractor prior to starting any such additional work. If the Contractor believes the performance of such additional work by the Owner or other involves it in additional expense or entitles it to an extension of the contract time, the Contractor may make a claim therefor as provided in Sections 14 and 15.

26. SUBCONTRACTING:

- a. The Contractor may utilize the services of specialty subcontracts on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.
- b. The Contractor shall not award work to subcontractor(s) in excess of fifty (50) percent of the contract price or in excess of fifty (50) percent of the labor and equipment required to install the project without prior written approval of the Owner.
- c. The Contractor shall be as fully responsible to the Owner for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them as the Contractor is for the acts and omissions of persons directly employed by the Contractor.
- d. the Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power regarding termination of any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- e. Nothing contained in this contract shall create any contractual relationship between any subcontractor and the Owner.

27. ENGINEER'S AUTHORITY:

- a. The engineer shall act as the Owner's representative during the construction period, shall decide questions which may arise as to quality and acceptability of materials furnished and work performed and shall interpret the intent of the contract documents in a fair and unbiased manner. The engineer will make visits to the site and determine if the work is proceeding in accordance with the contract documents.
- b. The Contractor will be held strictly to the intent of the contract documents in regard to the quality of materials, workmanship and execution of the work. Inspections may be made at the factory or fabrication plant of the source of material supply.
- c. The engineer will not be responsible for the construction means, controls, techniques, sequences, procedures or construction safety.

- d. The engineer shall promptly make decisions relative to interpretation of the contract documents.
28. LAND AND RIGHTS-OF-WAY:
- a. Prior to issuance of the Notice to Proceed, the Owner shall obtain all land and right-of-way necessary for the carrying out and completion of the work to be performed pursuant to the contract documents, unless otherwise mutually agreed.
 - b. The Owner shall provide the Contractor with information that delineates and describes the lands owned and right-of-way acquired.
 - c. The Contractor shall provide, at its own expense and without liability to the Owner, any additional land and access thereto that the Contractor may desire for temporary construction facilities or for storage of materials.
29. GUARANTEE: The Contractor shall guarantee all materials and equipment furnished and work performed for a period of one (1) year from the date of substantial completion. The Contractor warrants and guarantees for a period of one (1) year from the date of substantial completion of the system that the completed system is free from all defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects, including the repairs of any damage to other parts of the system resulting from such defects. The Owner will give notice of observed defects with reasonable promptness. In the event the Contractor should fail to make such corrections, the Owner may do so and charge the Contractor the costs thereby incurred. The performance bond shall remain in full force and effect throughout the guarantee period.
30. ARBITRATION BY MUTUAL AGREEMENT:
- a. All claims, disputes and other matters in question arising out of or relating to the contract documents or the breach thereof, except for claims which have been waived by making an acceptance of final payment as provided in Section 20, may be decided by arbitration if the parties mutually agree. Any agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final and judgment may be rendered upon it in any court having jurisdiction thereof.
 - b. Notice of the request for arbitration shall be filed in writing with the other party to the contract documents and a copy shall be filed with the engineer. Request for arbitration shall in no event be made on any claim, dispute or other matter in question that would be barred by the applicable statute of limitations.

- c. The Contractor will carry on the work and maintain the progress schedule during any arbitration proceedings unless otherwise mutually agreed in writing.
31. TAXES: The Contractor will pay all sales, consumer, use and other similar taxes required by the laws of the place where the work is performed.

SUPPLEMENTAL GENERAL CONDITIONS

The provisions of the Supplemental General Conditions as described herein change, amend or supplement the General Conditions and shall supersede any conflicting provisions of this contract. All provisions of the General Conditions which are not changed, amended or supplemented remain in force.

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| 1. Contract Approval | 12. State Energy Policy |
| 2. Contract Change Orders | 13. Equal Opportunity |
| 3. Partial Payment Estimates | 14. Non-Resident Contractor
Registration |
| 4. Conflict of Interest | 15. Payment for Materials
Stored on Site |
| 5. Protection of Lives & Property | 16. Change order Approval |
| 6. Remedies | 17. Final Inspection |
| 7. Gratuities | 18. Partial Occupancy & Use |
| 8. Audit & Access to Records | 19. Permits Requiring Time
Schedule |
| 9. Small Minority & Women's Businesses | 20. Clean Up Release |
| 10. Anti-Kickback | |
| 11. Violating Facilities | |

1. CONTRACT APPROVAL:

- a. The Owner and the Contractor will furnish the Owner's attorney such evidence as is required to enable the Owner's attorney to complete and execute "Certificate of Owner's Attorney" (Section 14).
- b. When a performance bond and payment bond are provided, the United States, acting through HUD, will be named as co-obligee in these bonds unless prohibited by State law. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State where the project is located.
- c. This contract is expected to be funded in part with funds from HUD. Neither the United States nor any of its departments, agencies or employees is or will be a party to this contract or any subcontract.

2. CONTRACT CHANGE ORDERS:

- a. All changes affecting the project's construction cost or modifications of the terms or conditions of the contract must be authorized by means of a written contract change order that is mutually agreed to by the Owner and the Contractor. The contract change order will include extra work, work for which quantities have been altered from those shown on the bidding schedule and decreases or increases in the quantities of installed units which are different than those shown in the bidding schedule because of final measurements. All changes

must be recorded on a contract change order before they can be included in a partial payment estimate.

- b. A "Contract Change Order" shall be used to record contract changes.
- c. When the contract sum is in whole or in part based on unit prices, the Owner reserves the right to increase or decrease a unit price quantity as may be deemed reasonable or necessary in order to complete the work.

3. PARTIAL PAYMENT ESTIMATES:

- a. "Partial Payment Estimates" shall be used when estimating periodic payments due the Contractor.
- b. The Owner may, after consultation with the architect/engineer, withhold or, on account of subsequently discovered evidence, nullify, in whole or in part, any approved partial payment estimate to such extent as may be necessary to protect the Owner from loss on account of:
 - (1) Defective work not remedied;
 - (2) Claims filed;
 - (3) Failure of Contractor to make payments properly to subcontractors or suppliers;
 - (4) A reasonable doubt that the work can be completed for the balance then unpaid;
 - (5) Damage to another contractor;
 - (6) Performance of work in violation of the terms of the contract documents.
- c. Where work on unit price items is substantially complete but lacks testing, clean-up and/or corrections, amounts shall be deducted from unit prices in partial payment estimates to amply cover such testing, cleanup and/or corrections.
- d. When the items in 3.b. and 3.c. are cured, payment shall be made for amounts withheld because of them.
- e. Payments will not be made that would deplete the retainage or place in escrow any funds required for retainage or invest the retainage for the benefit of the contract.

4. CONFLICT OF INTEREST:

- a. Unacceptable Bidders:

- (1) No engineer or architect (individual or firm, including persons they employ) who has prepared plans and specifications will be considered an acceptable bidder. Any firm or corporation in which such engineer or architect (including persons they employ) is an officer or an employee or holds or controls a substantial interest will not be considered an acceptable bidder.
 - (2) Contracts or purchases by the Contractor shall not be awarded or made to a supplier or manufacturer if the engineer or architect (firm or individual) who prepared the plans and specifications has a corporate or financial affiliation with the supplier or manufacturer. Bids will not be awarded to firms or corporations owned or controlled wholly or in part by a member of the governing body of the Owner or to an individual who is such a member.
- b. None of the Owner's officers, employees or agents shall engage in the award or administration of this contract if a conflict of interest, real or apparent would be involved. Such a conflict would arise when the employee, officer or agent, any member of his immediate family, his partner or an organization which employs him or is about to employ him, or any of the above, has a financial or other interest in the Contractor. None of the Owner's officers, employees or agents shall solicit or accept gratuities, favors or anything of monetary value from the Contractor or subcontractor.
5. PROTECTION OF LIVES AND PROPERTY:
- a. In order to protect the lives and health of its employees under the contract, the Contractor shall comply with all pertinent provisions of the Occupational Safety and Health Administration (OSHA) and any State safety and health agency requirements.
 - b. The Contractor alone shall be responsible for the safety, efficiency and adequacy of its plant, appurtenances and methods and for any damage which may result from their failure or their improper construction, maintenance or operation.
6. REMEDIES: Unless otherwise provided in this contract, all claims, counterclaims, disputes and other matters in question between the Owner and the Contractor arising out of or relating to this contract or the breach thereof will be decided by arbitration, if the parties mutually agree, or in a court of competent jurisdiction with the State in which the Owner is located.
- a. The arbitration provisions of this section may be initiated by either party to this contract by filing with the other party and the engineer/architect a written request for arbitration.

- b. Each party to this contract will appoint one arbitrator and the two arbitrators will select the third arbitrator.
 - c. The arbitrators will select a hearing location as close to the Owner's locale as possible.
 - d. The procedure for conducting the hearing will follow the Construction Industry Arbitration Rules of the American Arbitration Association.
7. GRATUITIES:
- a. If the Owner finds, after a notice and hearing, that the Contractor or any of the Contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the Owner in an attempt to secure this contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, the Owner may, by written notice to the Contractor, terminate this contract. The Owner may also pursue other rights and remedies that the Law or this contract provides. However, the existence of the facts on which the Owner bases such findings shall be an issue and may be reviewed in proceedings under the remedies clause of this contract.
 - b. In the event this contract is terminated as provided in paragraph 7.a., the Owner may pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, the Owner may pursue exemplary damages in an amount determined by the Owner, which shall be not less than three nor more than ten times the cost the Contractor incurs in providing any gratuities to any such officer or employee.
8. AUDIT AND ACCESS TO RECORDS: For all negotiated contracts except those of \$10,000 or less, HUD, the Comptroller General, the Owner or any of their duly-authorized representatives shall have access to any books, documents, papers and records of the Contractor which are pertinent to the contract for the purpose of making audits, examination, excerpts and transcriptions. The Contractor shall maintain all required records for three years after final payment is made and all other pending matters are closed.
9. SMALL, MINORITY AND WOMEN'S BUSINESSES: If the Contractor intends to let any subcontracts for a portion of the work, the Contractor shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction and services. Affirmative steps shall consist of:

- a. Including qualified small, minority and women's businesses on solicitation lists;
 - b. Assuring that small, minority and women's businesses on solicited whenever they are potential sources;
 - c. Dividing total requirements when economically feasible;
 - d. Establishing delivery schedules where the requirements of the work permit, which will encourage participation by small, minority and women's businesses.
 - e. Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce;
 - f. Requiring each party to a subcontract to take the affirmative steps of this section; and
 - g. Contractors are encouraged to procure goods and services from labor surplus area firms.
10. ANTI-KICKBACK: The Contractor shall comply with the Copeland Anti-Kickback Act (18 USC §874) as supplemented in Department of Labor regulations 929 CFR 3). This Act provides that each Contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion or repair of public facilities to give up any part of the compensation to which they are otherwise entitled. The Owner shall report all suspected or reported violations to FmHA.
11. VIOLATING FACILITIES: Where this contract exceeds \$100,000, the Contractor shall comply with all applicable standards, orders or requirements issued under the Clean Water Act (33 USC §1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR 15), which prohibit the awarding of non-exempt Federal contracts, grants or loans to facilities included on the EPS's list of violating facilities. The Contractor will report violations to the EPA.
12. STATE ENERGY POLICY: The Contractor shall comply with the Energy Policy and Conservation Act (P.L. 94-163). Mandatory standards and policies relating to energy efficiency contained in the State Energy Conservation Plan shall be utilized.
13. EQUAL OPPORTUNITY REQUIREMENTS: For all contracts in excess of \$10,000, the Contractor shall comply with Executive Order 11246 entitled "Equal Employment Opportunity", as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR 60).
- a. The Contractor's compliance with Executive Order 11246 shall be based on its implementation of the Equal Opportunity

Clause, specific affirmative action obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications as set forth in 41 CFR 60-4, and its efforts to meet the goals established for the geographical area where the contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract and throughout each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hour performed.

- b. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Program within 10 working days of the award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract and the geographical area in which the contract is to be performed.
14. NON-RESIDENT CONTRACTOR REGISTRATION: Any non-resident Contractor doing business in the State of Oklahoma shall register with the Oklahoma Tax Commission, the Oklahoma Employment Security Commission, the State Industrial Court and the County Assessor of each county in which contract work will be performed. This must be done prior to commencing work under the contract.
15. PAYMENT FOR MATERIAL STORED ON SITE: The following items will be required if the Contractor requests payment for material stored on the site (see Paragraph 19.b. of the General Conditions):
- a. Invoices, approved and initialed by the consulting engineer and the Owner, showing the quantity, size, cost, etc., of the material;
 - b. Payment will be made only for material stored in a location approved by the Owner. The storage area must provide adequate protection from the elements and the material must be stored so it can be promptly inspected. Material strung throughout the job site will not be considered properly stored.
 - c. The ten percent retainer that applies to material installed will also apply to materials stored on the site;
 - d. When payment for material stored on the site is received, a paid invoice for that payment from the supplier must be

submitted to the Owner prior to the payment of the next partial pay estimate.

16. CHANGE ORDER APPROVAL: All change orders must be approved by the Owner.
17. FINAL INSPECTION: A final inspection will be made by the Owner before final payment is made. Final payment will not be made until the Owner certifies in writing that the construction has been completed as planned. If the Oklahoma State Department of Health has issued a permit and approved the plans and specifications on this project, they must concur in the final inspection.
18. PARTIAL OCCUPANCY AND USE: The Owner, upon advance written notification to the Contractor, shall have the right to occupy and use any completed or partially-completed portions of the project, regardless of the percentage of completion of the entire project, when such occupancy and use is to the Owner's best interest. Such partial occupancy and use shall be upon the following terms:
 - a. The engineer shall make an inspection of the portion or portions of the project concerned and report to the Owner his findings as to the acceptability and completeness of the work. The engineer's report shall include a list of items to be completed or corrected before final payment.
 - b. The Owner, upon acceptance of the engineer's report, shall give written notice to the Contractor of the Owner's intent to occupy and use said portions of the project. The Owner's notice shall include a copy of the engineer's report, shall clearly identify the portions of the project to be occupied and used and shall establish the date of said occupancy and use.
 - c. From the date thus established, the Owner shall assume all responsibilities for operation, maintenance and the furnishing of water, gas and electrical power for the portions of the project thus occupied and used. The Owner shall have the right to exclude the Contractor from those portions of the project but shall provide the Contractor with reasonable access to complete or correct necessary items of work.
 - d. The guarantee required by the General Conditions shall not begin until completion and final acceptance of the entire project except as to items of equipment specified, such as instrumentation, electrical and mechanical equipment, which are thus used by the Owner. For said equipment, the warranty shall start from the date established in the written notice from the Owner.
 - e. Occupancy or use of any space in the project shall not constitute acceptance of work not performed in accordance with the contract or relieve the Contractor of liability to perform

any work required by the contract but not completed at the time of said occupancy and use.

- f. The Contractor shall not be held responsible for fair wear and tear or damage resulting from said occupancy except to the extent such damage is covered by the warranty.
 - g. The partial occupancy and use of any portion or portions of the project by the Owner shall not constitute grounds for claims by the Contractor for release of any amounts retained from payments under the provisions of the contract. The retained amounts will not be due until completion of the entire project for final acceptance and final payment as set forth in the General Conditions.
19. PERMITS REQUIRING TIME SHHEDULE: The Contractor shall be responsible for contacting all Federal, State, County or railroad personnel required to be contacted and as set forth in any permits with respect to time schedule before commencing any work for which a permit is required.
20. CLEAN-UP RELEASE: The Contractor shall secure a cleanup release satisfactory to the Owner from any Federal, State, county or railroad agency after the work for which a permit has been obtained has been completed.

PERFORMANCE BOND

_____, as Principal,
 and _____, a
 corporation organized under the laws of the State of _____, as
 surety, are held and firmly bound unto _____
 _____, in the penal sum of _____
 _____ Dollars (\$_____), in lawful money
 of the United States of America, for the payment of which, well and truly
 to be made, we bind ourselves and each of us, our heirs, executors,
 administrators, trustees, successors and assigns, jointly and severally,
 firmly by these presents.

The condition of this obligation is such that, whereas said
 Principal entered into a written contract with _____
 _____, dated _____,
 for _____,
 all in compliance with the plans and specifications therefor, made a part
 of said contract and on file in the office of

 (Name and Address of Agency)

NOW, THEREFORE, if said Principal shall, in all particulars, well, truly
 and faithfully perform and abide by said contract and each and every
 covenant, condition and part thereof and shall fulfill all obligations
 resting upon said Principal by the terms of said contract and said
 specifications and if said Principal shall protect and save harmless said
 _____ from any pecuniary
 loss resulting from the breach of any of the items, covenants and
 conditions of said contract resting upon said Principal, then this
 obligation shall be null and void, otherwise to be and remain in full
 force and effect.

It is further expressly agreed and understood by the parties hereto
 that no changes or alterations in said contract and no deviations from
 the plan or mode of procedures herein fixed shall have the effect of

releasing the sureties, or any of them, from the obligations of this Bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly-authorized officers and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its Attorney-In-Fact, duly authorized to do so, the day and year set forth below.

Dated this _____ day of _____, _____.

PRINCIPAL:

By: _____

ATTEST:

SURETY:

By: _____
Attorney-In-Fact

STATUTORY BOND

No. _____

We, _____, as Principal, and _____, a corporation organized under the laws of the State of _____, as Surety, are held and firmly bound unto the State of Oklahoma in the amount of _____ Dollars (\$_____) for the payment of which we hereby bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Dated this ____ day of _____, _____.

WHEREAS, the said _____ did on _____ enter into a certain contract with _____ for the construction of _____;

AND WHEREAS, this bond is given in compliance with Oklahoma Statutes Annotated, 194, Title 61, Sections 1 and 2, as amended;

NOW, THEREFORE, the condition of the above obligation is such that, if the Principal shall pay all indebtedness incurred for labor, materials or rental of machinery or equipment furnished in the construction of said public building or in making said public improvements, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF we have hereunto set our hands and seals the day and year first above written.

By: _____
Bonding Company

ATTEST (If by corporation)

By: _____
Attorney

MAINTENANCE BOND
(Defect Bond)

_____, as Principal, and _____, a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Oklahoma, as Surety, are held and firmly bound unto _____, (City, Town or Trust Authority) in the penal sum of _____ Dollars (\$_____) in lawful money of the United States of America, said sum being equal to one hundred percent (100%) of the contract price, for payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, trustees, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that, whereas said Principal entered into a written contract with _____ (City, Town or Trust Authority) dated _____, _____, for _____

_____, all in compliance with the plans and specifications therefor, made a part of said contract and on file in the office of _____;

NOW, THEREFORE, if said Principal shall pay or cause to be paid to _____ all damage, loss and expense which may (City, Town or Trust Authority) result by reason of defective materials and/or workmanship in connection with said work occurring within a period of one (1) year from and after the acceptance of said project by _____, (City, Town or Trust Authority) then this obligation shall be null and void, otherwise to be and remain in full force and effect.

It is further expressly agreed and understood by the parties that no changes or alterations in said contract and no deviations from the plan or mode of procedures herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of this Bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly-authorized officers and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its Attorney-In-Fact, duly authorized so to do, the day and year set forth below.

DATED this _____ day of _____, _____.

PRINCIPAL:

By: _____

ATTEST:

SURETY:

By: _____

Attorney-In-Fact

INSURANCE REQUIREMENTS

Name of Insured: _____

Description of Work: _____

Location of Work: _____

<u>Kind of Insurance</u>	<u>Minimum Coverage</u>	<u>Expected Dates Coverage Needed</u>	
		<u>From</u>	<u>To</u>
Workers' Compensation	Legal Amount	_____	_____
General Public Liability and Property Damage, Including Vehicle Coverage:			
Bodily Injury - Each Person	\$500,000	_____	_____
Bodily Injury - Each Accident	\$500,000	_____	_____
Property Damage - Each Person	\$200,000	_____	_____
Property Damage - Aggregate Limit	\$200,000	_____	_____
Builder's Risk (If Required)	Full Coverage	_____	_____

Note: This covers all motor-driven vehicles such as cars, trucks, graders, etc.

In the event of any material change or cancellation of said policies, the company will give fifteen (15) days' written notice to _____, Owner.

Statements such as "will endeavor" and "but failure to notify Owner shall impose no obligation or liability of any kind upon the company" shall not be allowed.

Coverage shall be indicated by checking all boxes applicable. Insurance shall cover any hazards involved with the planned construction. Special coverage for blasting operations shall be listed separately on the certificates.

The Owner shall be listed as the certificate holder.

INSERT WAGE RATES HERE

Federal Labor Standards Provisions (Construction Contracts)

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1.(i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR Part 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator or an authorized representative will approve, modify or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator or an authorized representative will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met.

The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project). Such records shall contain the name, address and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee

programs, the registration of the apprentices and trainees and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii)(a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract but, if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying or transcription by authorized representative of HUD or its designee or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any

further payment, advance or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

4.(1) Apprentices and Trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered or otherwise employed as stated above shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training or a State Apprenticeship Agency recognized by the Bureau withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor,

Employment and Training Administration. The ratio of trainees to Journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may, by appropriate instructions, require and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes

clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor or the employees or their representatives.

10.(i) Certification of Eligibility. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12 (a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part "Whoever, for the purpose of...influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings or Testimony by Employees. No laborer or mechanic to whom the wage, salary or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek, whichever is greater.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor

responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

EQUAL OPPORTUNITY PROVISIONS

- I. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED (APPLICABLE TO FEDERALLY-ASSISTED CONSTRUCTION CONTRACTS AND RELATED SUBCONTRACTS \$10,000 AND UNDER):

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

- II. EXECUTIVE ORDER 11246 (CONTRACTS/SUBCONTRACTS ABOVE \$10,000):

- A. Section 202 - Equal Opportunity (EEO) Clause: During the performance of this contract, the Contractor agrees as follows:
1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or covered veteran status. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, disability or covered veteran status. Such action shall include but not be limited to the following: Employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
 2. The Contractor will, in all solicitations or advertisements for employment placed by or on behalf of the

Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, national origin, disability or covered veteran status.

3. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules and regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by ODOC and the Secretary of Labor for purposes of investigation and to ascertain compliance with such rules, regulations and orders.
6. In the event of the Contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended, in whole or in part, and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor or as otherwise provided by law.
7. The Contractor will include the provisions of the sentence immediately preceding paragraph II.A.1. and the provisions of paragraphs II.A.1.-7. In every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as ODOC may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event a Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by ODOC, the Contractor may request the United States to

enter into such litigation to protect the interest of the United States.

B. Notice of Requirement For Affirmative Action to Ensure EEO (Executive Order 11246) (Applicable to Contracts/Subcontracts Exceeding \$10,000):

1. The offeror's or bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. Goals and Timetables: Contractor must make good faith efforts to meet their AA goals for employment of minorities and women in the construction industry.
 - a. The goals and timetables for minority and female participation, expressed in percentage terms, for the Contractor's aggregate work force in each trade on all construction work in the covered area are as follows:

Goals for Minority Participation For Each Trade	Goals for Female Participation For Each Trade
6.9%	6.9%

- b. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the Contractor performs construction work in a geographic area located outside the covered area, it shall apply the goals established for such geographic area where the work is actually performed. With regard to this second area, the Contractor is also subject to the goals for both its Federally involved and non-Federally-involved construction.
 - c. The Contractor's compliance with the Executive Order and the regulations in 41 CFR 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and

female employment and training must be substantially uniform throughout the length of the contract and in each trade and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor, employer identification number of the subcontractor, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract and the geographical area in which the contract is to be performed.
4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is **(insert description of the geographical areas where the contract is to be performed, giving the State, County and City, if any)**.

C. Standard Federal EEO Construction Contract Specifications (Executive Order 11246):

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Forms 941;
 - d. "Minority" includes:

- (1) Black: All persons having origins in any of the black racial groups of Africa;
- (2) Asians: All persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent including Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam;
- (3) American Indian or Alaskan Natives: All persons having origins in any of the original peoples of North and South America (including Central America) and maintaining identifiable tribal affiliations through membership and participation or community identification;
- (4) Native Hawaiian or Other Pacific Islanders: All persons having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands;
- (5) Whites: All persons having origins in any of the original peoples of Europe, the Middle East or North Africa;
- (6) American Indian/Alaskan Native & White: All persons having origins in any of the original peoples of North and South America (including Central America) and maintaining identifiable tribal affiliations through membership and participation or community identification, and, having origins in any of the original peoples of Europe, the Middle East or North Africa;
- (7) Asian White: All persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent including Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam, and, having origins in any of the original peoples of Europe, the Middle East or North Africa;
- (8) Black/African American & White: All persons having origins in any of the black racial groups of Africa, and, having origins in any of the original peoples of Europe, the Middle East or North Africa;

- (9) American Indian/Alaskan Native & Black: All persons having origins in any of the original peoples of North and South America (including Central America) and maintaining identifiable tribal affiliations through membership and participation or community identification, and, having origins in any of the black racial groups of Africa;
- (10) Other Multi-Racial: Any other multi-racial groups not mentioned;
- (11) Hispanics or Latinos: All persons of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish cultures or origins, regardless of race.
- (12) Not Hispanics or Latinos: All persons not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish cultures or origins, regardless of race.
2. Whenever the Contractor or any subcontractor at any tier subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area, either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO Clause and under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to make good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs II.C.7.a.-p. of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment

and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing contracts in geographical areas where they do not have a Federal or Federally assisted construction contract shall apply the minority and the female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of the apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period and the Contractor must have made the commitment to employ the apprentices and the trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its efforts to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation or coercion at all sites and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such working environment, with specific attention to minority or female individuals working at such sites or in such facilities;

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organization's responses;
- c. Maintain a current file of the names, addresses and telephone number of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or a community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor or when the Contractor has other information that the Union referral process has impeded the Contractor's efforts to meet its obligation.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the U.S. Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under II.C.7.b. above;
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations by including it in any policy manual and collective bargaining agreement, by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Conduct at least an annual review of the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business;
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. No later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process;
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth on the site and in other areas of a Contractor's work force;
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR 60-3;
- l. Conduct at least an annual inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities through appropriate training, etc.
- m. Ensure that seniority practices, job classifications, work assignment and other personnel

- practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out;
- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes;
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations;
 - p. Conduct an annual review of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (II.C.7.a.-p.). The efforts of a contractor association, joint contractor-union, contractor-community or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under II.C.7.a.-p. of these specifications, provided the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's non-compliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minorities groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women, generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from government contract pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontractors, as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph II.C.7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records for each employee shall include at least the name; address; telephone number; construction trade; union affiliation, if any; employee identification number, where assigned; social security number; race; sex; status, e.g., mechanic, apprentice trainee, helper or laborer; dates of changes in status; hours worked per week in the indicated trade; rate of pay and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents, e.g., those under the Public Works

Employment Act of 1977 and the Community Development Block Grant Program.

III. CERTIFICATION OF NON-SEGREGATED FACILITIES (OVER \$10,000):

By submission of this bid, the bidder, offeror, applicant or subcontractor certifies that (s)he does not maintain or provide for his/her employees any segregated facility at any of his/her establishments and that (s)he does not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. (S)he certifies further that (s)he will not maintain or provide for employees any segregated facilities at any of his/her establishments and (s)he will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause of this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants or other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated on the basis of race, color or religion or are, in fact, segregated on the basis of race, color, religion or otherwise. (S)he further agrees that, except where (s)he has obtained identifiable certifications from proposed subcontractors for specific time periods, (s)he will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000, which are not exempt from the provisions of the Equal Opportunity Clause; that (she) will retain such certifications in his/her files; and that (s)he will forward the following notice to such proposed subcontractors, except where proposed subcontractors have submitted identical certifications for specific time periods.

IV. CIVIL RIGHTS ACTION OF 1964:

Under Title VI of the Civil Rights Act of 1967, no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance.

V. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974:

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

VI. "SECTION 3" COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES:

- A. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC §1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns located in or owned in substantial part by persons residing in the area of the project.
- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 134 and all applicable rules and orders of ODOC issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.
- C. The Contractor will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- D. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The Contractor will not subcontract with any subcontractor unless the subcontractor has first agreed to comply with the requirements of these regulations.
- E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135 and all applicable rules and orders of ODOC issued hereunder prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successor and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors or subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided and to such sanctions as are specified by 24 CFR 125.

VII. SECTION 504 DISABLED (IF \$2,500 OR OVER) - AFFIRMATIVE ACTION FOR DISABLED WORKERS

- A. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- B. The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notice in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment and protect the rights of those applicants and employees.
- E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973 and is committed to taking affirmative action to employ and advance in employment physically and mentally disabled individuals.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to Section 503 of the Act so such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provision, including action for non-compliance.

VIII. AGE DISCRIMINATION ACT OF 1975

No person in the United States shall be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance because of age.

- IX. SECTION 402, VETERANS OF THE VIETNAM ERA (IF \$10,000 OR OVER) - AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA
- A. The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam Era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam Era without discrimination based upon their disability or veteran status in all employment practices such as employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- B. The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed but excluding those of independently-operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The Contractor further agrees to provide such reports to such local office regarding employment opportunities as may be required.
- C. Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicant or any job applicant from any particular group of applicants and nothing herein is intended to relieve the Contractor from any requirements of Executive Orders or regulations regarding non-discrimination in employment.
- D. The reports required by paragraph B. of this clause shall include but not be limited to periodic reports which shall be filed at least quarterly with the appropriate local officer or, where the Contractor has more than one hiring location in a State, with the central office of that State employment service. For each hiring location, such reports shall indicate:
1. The number of individuals hired during the reporting period;

2. The number of non-disabled veterans of the Vietnam Era hired;
3. The number of disabled veterans of the Vietnam Era hired; and
4. The total number of disabled veterans hired.

The reports should include covered veterans hired for on-the-job training under 38 USC §1787. The Contractor shall submit a report within thirty (30) days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The Contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruit and placement.

- E. Whenever the Contractor becomes contractually bound to the listing provision of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.
- F. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands.
- G. The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- H. In the event of the Contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- I. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans

and veterans of the Vietnam Era for employment and to protect the rights of those applicants and employees.

- J. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other understanding that the Contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act and is committed to taking affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.

- K. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to the Act so such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

**STATE OF OKLAHOMA
HOLD HARMLESS CLAUSE**

Contractor shall, within limitations placed on such entities by State law, save harmless the State of Oklahoma, its agents, officers and employees from all claims and actions and all expenses defining same that are brought as a result of any injury or damage sustained by any person or property in consequence of any act or omission by the Contractor. Contractor shall, within limitations placed on such entities by State law, save harmless the State of Oklahoma, its agents, officer and employees from any claim or amount recovered as a result of infringement of patent, trademark or copyright or from any claim or amounts arising or recovered under Workers' Compensation law or any other law. In any agreement with any subcontractor or any agent for Contractor, Contractor will specify that such subcontractors or agents shall hold harmless the State of Oklahoma, its agents, officers and employees for all the hereinbefore-described expenses, claims action or amounts recovered.

CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(Applicable to Federally-assisted construction contracts and related subcontracts exceeding \$100,000.)

Compliance with Air and Water Acts

During the performance of this contract, the Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended (42 USC §§1857, et seq.), the Federal Water Pollution Control Act, as amended (33 USC §§1251, et seq.) and the regulations of the Environmental Protection Agency (EPA) with respect thereto at 40 CFR 15, as amended.

In addition to the foregoing requirements, all non-exempt contractors and subcontractors shall furnish to the Owner, the following:

1. A stipulation by the Contractor or subcontractors that any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the List of Violating Facilities issued by the EPA pursuant to 40 CFR 15.20.
2. Agreement by the Contractor comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC §1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC §1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in Section 114 and Section 308 and all regulations and guidelines issued thereunder.
3. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA list of Violating Facilities.
4. Agreement by the Contractor that he will include or cause to be included by the criteria and requirements in paragraphs 1-4 of this section in every non-exempt subcontract and will take such action as the government may direct as a means of enforcing such provisions.

**SPECIAL CONDITIONS PERTAINING TO
HAZARDS, SAFETY STANDARDS AND ACCIDENT PREVENTION**

1. Lead-Based Paint Hazards (Applicable to Contract for Construction or Rehabilitation of Residential Structures): The construction or rehabilitation of residential structures is subject to the U.S. Department of Housing and Urban Development Lead-Based Paint regulations, 24 CFR 35. The Contractor and subcontractors shall comply with the provisions for the elimination of lead-based paint hazards under Subpart B of said regulations. The owner will be responsible for the inspections and certifications required under Section 35.14(f) thereof.

2. Use of Explosives (Modify as Required):
 - a. When the use of explosives is necessary for the performance of the work, the Contractor shall observe all local, State and Federal laws in purchasing and handling explosives. The Contractor shall take all necessary precautions to protect completed work, neighboring property, waterlines or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

 - b. At least eight (8) hours before blasting is done, the Contractor shall notify all owners of public utility property of the intent to use explosives close to such property. Any supervision or direction of use of explosives by the engineer does not in any reduce the responsibility of the Contractor or his surety for damages that may be caused by such use.

(Use the address below for projects in Oklahoma)

To: Director, Office of Federal Contract Compliance Programs
U.S. Department of Federal Contract Compliance Programs
U.S. Department of Labor (DOL)
Washington, DC

We submit the following information relative to a construction contract in excess of \$10,000:

1. Contractor's Name: _____
Address: _____
Telephone Number: _____
Employer's Identification Number: _____

2. Contract for: \$ _____
Starting Date: _____ Completion Date: _____
Contract Number: _____ City: _____
DOL Region: VI

The Contractor is required to submit a completed copy of this page to the DOL upon issuance of the Notice to Proceed. Form CC-257 is to be completed upon request by the DOL.

FOR PROJECT IN OKLAHOMA, SEND TO:

Association Regional Administrator
USDL/OFCCP
555 Griffin Square Building
Room 506
Dallas, TX 75202
Telephone 214-767-4771

RELEASE OF CLAIMANTS

Date: _____

Project: _____

Dear Sir:

I hereby acknowledge receipt of _____ dollars (\$_____) in full payment of my contract dated _____ for improvement work which I did for you and which is described in my contract.

I certify that I have paid in full for all materials purchased and all labor employed in the performance of this contract and that there are no claims against me as an employer under this contract on account of injuries sustained by workmen employed by me thereunder. I hereby release you from any claims arising by virtue of this contract.

WARNING

The making of any false statement or misrepresentation herein may be a crime punishable under Title 18 USC §1001, which provides in part: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully..makes any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined no more than \$10,000 or imprisoned not more than five years, or both."

Sincerely,

Contractor

Section 3 Plan

*This form must be completed by all prime contractors and subcontractors with bid amounts over \$100,000 and must be submitted with the bid.

Bid Submitted from: _____ For: _____
Name of Business Project Being Bid Date

What is Section 3? Under Section 3 of the U.S. Department of Housing and Urban Development (HUD) Act of 1968; whenever financial assistance is given for housing or community development, to the greatest extent feasible, economic opportunities will be given to low income residents and businesses in that area. The project being bid has ODOC Community Development block Grant (CDBG) funding which is subject to Section 3 Requirements. Covered prime contractors and subcontractors are required to show a good faith effort to:

- A. Provide employment and training opportunities for Section 3 Residents.
B. Provide opportunities for Section 3 Businesses for supplies, services, and construction contracts needed to complete the project.

Definition of a Section 3 Resident: A Section 3 Resident is any lower income individual residing in the Section 3 Project Area.

Definition of Section 3 Project Area: For cities requesting bids, the Section 3 project area would be first consideration within city limits and second consideration within the county. For counties requesting bids, the Section 3 project area would be the county.

Definition of a Section 3 Business: A business that meets at least one of the following criteria: (1) Majority ownership held by Section 3 Residents or (2) at least thirty percent (30%) of the permanent full-time employees are Section 3 Residents or were within the first three (3) years of their employment with the business or three (3) more than twenty-five percent (25%) of the business' work is subcontracted to a business that meets either of the first two conditions.

Part I. Affirmative Action Plan for hiring and training Section 3 Residents:

- A. The total number of new hires I need for this project is _____.
B. Activities planned to meet Section 3 hiring objectives (check those applicable):
() Recruit through local advertising media (include phrase "equal opportunity employer" in ad).
() Recruit through signs placed at the project site.
() Recruit by contacting community service organizations serving the project site.
() Other.
C. The total number of my current employees I intend to use on this project is _____. The number of these who would be considered Section 3 Residents is _____.
D. The total number of trainees I intend to use on this project is _____. The number of these trainees that would be considered lower income project area residents is _____.

Part II. Affirmative Action Plan for contracting with Section 3 Businesses:

- A. I will award _____ contracts in connection with these project activities.
B. The total estimated dollar value of these contracts is \$ _____.
C. Of these contracts _____ will be awarded to Section 3 Businesses.
D. The total estimated dollar value of contracts awarded to Section 3 Businesses is \$ _____.

I certify to the greatest extent possible I will hire and train Section 3 Residents and will obtain services, supplies and construction subcontracts from Section 3 Businesses.

Signature (Prime Contractor or Subcontractor) Date

CONTRACT FOR ADMINISTRATIVE SERVICES

The _____, hereinafter referred to a _____,
(City/Town/County)
and _____, hereinafter referred to as Contractor,
(Name of Contractor)
for the consideration hereinafter set forth, agree as follows:

This contract shall become effective the _____ day of _____,
_____, and shall be in effect through the _____ day of _____,
_____.

I. SCOPE OF SERVICES

The Contractor agrees to perform administrative consulting services as specified in Administrative Responsibilities [**Attachment 2, Requirement 402**] of the CDBG Implementation Manual for the purpose of carryout out the following Community Development Block Grant (CDBG) project:

II. COMPENSATION AND METHOD OF PAYMENT

The _____ agrees to pay the Contractor, as compensation for administrative consulting services, a total sum not to exceed _____ Dollars (\$_____). The invoices must list the individual services that were provided, their percentage of completion, the fee requested (as defined in the Statement of Price submitted in the Contractor's proposal), and identify each staff member, where applicable, who provided the services. Reimbursement for each service listed shall not exceed the completion percentage of the service provided.

III. GENERAL TERMS AND CONDITIONS

A. Subcontract Notification Provision: None of the work and services covered by the contract may be subcontracted without the written consent of _____. In no event will any subcontract incur any obligation on the part of _____.

B. Modification: This contract is subject to such modification as may be required by Federal or State law or regulations. The work and services to be performed and the total contract amount may be modified only upon written agreement of both parties and approval by the Oklahoma Dept. of Commerce.

C. Interpretation, Remedies:

1. In the event the parties fail to agree on charges or interpretations of this contract, both parties may jointly agree, in writing, to utilize an outside arbitrator to make a final determination binding upon both parties.
 2. In the event of any disagreement between the Contractor and _____ relating to the work and services being performed and its conformity to the requirements of this contract, the decision of _____ shall prevail.
 3. Neither forbearance nor payment by _____ shall be construed to constitute a waiver of any remedies for any default or breach by the Contractor that exists then or occurs later.
- D. Severability Clause: If any provision under this contract or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this contract or its application that can be given effect without the invalid provision or application.
- E. Hold Harmless Clause: Contractor shall, within limitations place on such entities by State law, save harmless the State of Oklahoma, its agents, officer and employees and _____, its agents, officers and employees from all claims and actions and all expenses defending same that are brought as a result of any injury or damage sustained by any person or property in consequence of any act or omission by Contractor. Contract shall, within limitations placed on such entities by State law, save harmless the State of Oklahoma, its agents, officers and employees and _____, its agents, officers and employees from any claim or amount recovered as a result of infringement of patent, trademark or copyright or from any claims or amounts arising or recovered under Workers' Compensation law or any other law. In any agreement with any subcontractor or any agent for Contractor, Contractor will specify that such subcontractors or agents shall hold harmless the State of Oklahoma, its agents, officers and employees and _____, its agents, officers and employees for all the hereinbefore-described expenses, claims, actions or amounts recovered.
- F. Personnel:
1. The Contractor represents that (s)he has or will secure, at his/her own expense, all personnel required to perform the services under this contract. Such personnel shall not be employees of nor have any contractual relationship with _____.

2. The Contractor has full responsibility for payment of Workers' Compensation insurance, unemployment insurance, social security, State and Federal income tax and any other deductions required by law for its employees.
3. All of the services required hereunder will be performed by the Contractor or under his/her supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

G. Termination of Contract for Cause:

1. If, for any cause, the Contractor shall fail to fulfill in a timely and proper manner his/her obligations under this contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of this contract, _____ shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof at least _____ days before the effective date of such termination. In such event, the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.
2. Notwithstanding the above, the Contractor shall not be relieved of liability to _____ for damages sustained by _____ by virtue of any breach of the contract by the Contractor and _____ shall withhold any payments to the Contractor until such time as the exact amount of damages due _____ from the Contractor is determined.

H. Termination for the Convenience of _____:
_____ may terminate this contract at any time by giving at least _____ days' notice, in writing, to the Contractor. If the contract is terminated by _____ as provided herein, the Contractor will be paid for the services rendered and any allowable expenses incurred up to the termination date.

I. Conflict of Interest: No member of the governing body of _____, or any other officer, employee or agent of _____ who exercises any functions or responsibilities in connection with the planning and carrying out of the program shall have any personal financial interest, direct or indirect, in this agreement and the Contractor shall take appropriate steps to ensure compliance.

- J. Interest of Contractor and Employees: The Contractor covenants that (s)he presently has no interest and shall not acquire any interest, direct or indirect, in the project area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his/her services hereunder. The Contractor further covenants that in the performance of this agreement, no person having any such interest shall be employed.
- K. Reports and Information:
1. The Contractor, at such times and in such forms as _____ may require, shall furnish _____ with such periodic reports as it may request pertaining to the work or services undertaken pursuant to the contract, costs and obligations incurred or to be incurred in connection therewith and any other matters covered by this contract.
 2. The Contractor shall furnish _____ with narrative reports and financial reports related to the elements of this contract in the forms and at such times as may be required by _____ or Federal or State grantor agencies.
- L. Compliance with Local Laws: The Contractor shall comply with all applicable laws, ordinances and codes of the State and local governments and the Contractor shall save _____ harmless with respect to any damages arising from any tort done in performing any of the work under this contract.
- M. Copyright: No reports, maps or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the Contractor.
- N. Records and Audits: The Contractor shall assist _____ in obtaining and organizing all books, documents, papers, records and other materials involving all activities and transactions related to this contract. The Contractor shall also retain Contractor's own records relating to this contract for at least three (3) years from the date of submission of the final expenditure report by _____ or until all audit findings have been resolved, whichever is later. Contractor shall permit authorized representatives of the Oklahoma Dept. of Commerce, the U.S. Department of Housing and Urban Development, the Federal or State Department of Labor and the U.S. Comptroller General to have full access to and the right to fully examine all such materials.
- O. Anti-Kickback Regulations: The Contractor shall comply with all applicable anti-kickback regulations covered under Department of Labor Regulation 29 CFR 111.

- P. Equal Employment Opportunity: The Contractor shall comply with the following equal opportunity requirements as part of CDBG assurances:
1. Civil Rights Act of 1964, Title VI: Contractor shall comply with Title VI of the Civil Rights Acts of 1964, which provides that no person in the United States shall, on the grounds of race, religion, color or national origin, be excluded from participation in, be denied the benefits of or be otherwise subject to discrimination under any program or activity for which the applicant received Federal financial assistance.
 2. Housing and Community Development Act of 1974, Section 109: Contractor shall comply with Section 109 of the Housing and Community Development Act of 1974, which provides that no person in the United States shall, on the grounds of race, color, religion, 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 under the Act.
 3. Housing and Community Development Act of 1974, Section 3: Contractor shall comply with Section 3, which provides that, to the greatest extent feasible, training and employment opportunities shall be made available to lower-income residents of the unit of local government or metropolitan area (or non-metropolitan county) in which the project is located and that contracts be awarded to small businesses located within or owned in substantial part by residents of the same metropolitan area (or non-metropolitan county) as the project.
 4. Affirmative Action: Contractor shall take affirmative action steps to contract with small and minority-owned firms and women's business enterprises as a part of the requirements of 24 CFR 58.36 or 24 CFR 570, Subpart J. Affirmative action steps include but are not limited to the following:
 - a. Including qualified small, minority and women's business enterprises on solicitation lists;
 - b. Assuring that small, minority and women's business enterprises are solicited whenever they are potential sources;
 - c. When economically feasible, dividing total requirements into small tasks or quantities to permit maximum small, minority and women's business enterprise participation;

- d. Where the requirement permits, establishing delivery schedules that will encourage participation by small, minority and women's business enterprises;
- e. Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the U.S. Department of Commerce and the local minority business development center that assists with management and technical aspects and maintains a directory of minority contractors, suppliers and vendors;
- f. If any subcontracts are to be let, requiring the prime contractor to take the affirmative action steps in paragraphs a. through e. above.

Q. Age Discrimination Act of 1975: Contractor shall comply with the provisions of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services and benefits supported by Federal funds.

R. Rehabilitation Act of 1973, Section 504: Contractor shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in any programs or activities receiving Federal financial assistance.

Executed By: _____
 (Name of City/Town/County)

Executed by: _____
 Contractor

 Signature
 _____, Mayor

 Signature

Typed Name
 Date: _____

Date: _____

ATTEST:

 Signature

 Typed Name and Title
 (SEAL OF CITY/TOWN/COUNTY)

AFFIDAVIT

STATE OF OKLAHOMA)
)
 COUNTY OF _____)

ss:

On behalf of the offeror, I, _____, of lawful age and being first duly sworn upon oath, certify:

- A. That I am authorized to submit this proposal and to contract on behalf of the offeror;
- B. That neither I nor any member of my firm have paid, given or donated or agreed to pay, give or donate to the _____ (City/Town/County) or any officer or employee of _____ (City/Town/County) any money or other thing of value, including special consideration, either directly or indirectly, in seeking to procure this contract.
- C. That the prices quoted in this proposal have not been knowingly disclosed by the offeror prior to an award to any other offeror or potential offeror;
- D. That the prices in this proposal have been arrived at independently without consultation, communication or agreement for the purpose of restricting competition;
- E. That there has been no attempt by the offeror to discourage any potential offeror from submitting a proposal;
- F. That I have read and understand all the information in this Request for Proposal, including the information on the program to be administered;
- G. That the offeror and any individuals to be assigned to the work do not have a record of substandard work;
- H. That the offeror will, if awarded the contract, administer the contract in accordance with all applicable State and Federal rules and regulations.

Dated this ____ day of _____, _____.

(Offeror's Firm Name)

(Signature of Offerors Representative)

Subscribed and sworn to before me this ____ day of _____, ____.

My Commission Expires: _____

Notary Public

INTERLOCAL COOPERATION AGREEMENT

THIS AGREEMENT, entered into on the ____ day of _____, 200____, between the _____ and _____ of the State of Oklahoma.

**ARTICLE I
DURATION**

This Agreement will be in full force and binding upon the parties thereto upon the execution of the Agreement and shall continue in full force and effect for one (1) year with the option of being renewed on a yearly basis. However, any participating party may withdraw from this agreement at any time during the first year or any additional term of the Agreement as provided in the Section on Termination and Dissolution set out in Article VIII of the agreement.

**ARTICLE II
PURPOSE**

The parties hereto, through their respective governing bodies, hereby find and declare:

1. WHEREAS, the above-named parties need assistance in constructing water system improvements to serve _____.
2. WHEREAS, it is deemed feasible that this local assistance be obtained, and having been awarded a grant by the Oklahoma Department of Commerce for funding of a public facilities grant.
3. WHEREAS, the parties hereto are in agreement to cooperate and share in the grant funds received in order to obtain the needed assistance that they are unable to acquire individually.

NOW, THEREFORE, in consideration of the foregoing and in compliance with and pursuant to the provisions, terms and conditions of Title 74 O.S. 1991, Sections 1001, et seq., the parties agree to participate as hereinafter set forth.

**ARTICLE III
ORGANIZATION & RESPONSIBILITIES**

1. The Board of County Commissioners of _____ shall be the administrative body for administering the water improvements project serving the _____.
2. The _____ will be responsible for employing the engineer, administrative consultant and the construction company, subject to approval of the Board of County Commissioners, required by the application for the administration of the CDBG grant and shall provide the Board of County Commissioners with such data and information as may be required by the terms of the CDBG grant contract.
3. The _____ shall provide treated water to the _____ and the _____ upon completion of the water system constructed pursuant to this Agreement.

4. The _____ will be responsible for delivering the water supplied by this Agreement to its own customers.
5. The _____ shall be responsible for delivering the water supplied by the Agreement to its own customers at such time as the Town accepts delivery of water from the _____.

**ARTICLE IV
FINANCING**

1. The County has applied for and has been awarded a CDBG grant in the amount of _____ which shall be provided to apply toward the _____ (or what is applicable) of the aforesaid water system improvements.
2. The _____ has applied for and received a _____ commitment for the sum of _____ which shall be applied toward the _____ of the aforesaid water system improvements as set forth in the grant application.

**ARTICLE V
ADMINISTRATION**

The Board of County Commissioners, as the administrative agency for the CDBG grant, shall ensure that all parties to the Agreement comply with the rules and regulations issued by the Oklahoma Department of Commerce for the implementation of the grant project as set forth in the grant contract between the County and the Oklahoma Department of Commerce.

**ARTICLE VI
POWERS AND DUTIES OF THE PARTIES**

The Board of County Commissioners shall advise the other parties to this Agreement of those rules and regulations governing the project and shall file with the Oklahoma Department of Commerce such reports and documents required by the CDBG grant contract. The _____ shall provide to the Board of County Commissioners, as required, such data and information as may be necessary in the implementation of the construction of the water system improvements, such as documentation of construction cost, wage rates, construction company payrolls, etc.

**ARTICLE VII
ADDITIONAL PARTIES**

Upon unanimous approval of all parties, additional local government entities may be made part of this Agreement. Any new parties shall have the same rights and obligations under this Agreement as do the original parties.

**ARTICLE III
TERMINATION AND DISSOLUTION**

If participating parties wish to withdraw from this Agreement during the term of the Agreement, they may do so by notifying all other parties in writing at least thirty (30) days prior to their selected withdrawal date. The withdrawal from this Agreement shall be subject to the approval of the Board of County Commissioners and the State Attorney General's Office. However, the withdrawing party or parties shall not be relieved of any obligations, responsibility or liability imposed by other agreements executed in conjunction with this Interlocal Cooperation Agreement unless said other agreements are negotiated satisfactory to all parties concerned.

IN WITNESS WHEREOF, the said parties have caused this instrument to be executed by their respective officers, the day and year first above written.

_____	_____	_____
_____	_____	_____
_____	_____	_____

ATTEST:

OKLAHOMA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

REQUIREMENT NO. 406
LABOR STANDARDS & CONSTRUCTION MANAGEMENT

Effective July 2007

I. INTRODUCTION

The construction phase of a project is divided into two major components:

- A. The pre-construction conference and start of construction; and
- B. Monitoring construction progress, including labor compliance.

Each of these phases is subject to various State and Federal requirements, which will be discussed at greater length in this Requirement.

II. THE PRE-CONSTRUCTION CONFERENCE

- A. ODOC requires that every contractual relationship between the Grant Recipient and the construction contractor be initiated by a meeting to define the terms, conditions, deliverables and performance schedules that will govern the contract. This approach represents good management practice and reduces the likelihood of later conflicts caused by assumptions and misunderstandings between the construction contractor and the Grant Recipient.
- B. After contract award but before any work is performed, the Grant Recipient, the architect or engineer and any technical advisors to the Grant Recipient must hold a pre-construction conference with the construction contractor to explain contract requirements.
- C. The construction contractor should be notified in writing of the time and place for the conference. The invitation may also require the attendance of subcontractors expected to undertake major portions of the work. Documentation required from the construction contractor at the time of the meeting should be identified. Satisfaction of all bonding provisions may be required at this time.
- D. Prepare an agenda. Plan to utilize and distribute a Preconstruction Checklist [**Attachment 1**] as a guide to assure that all areas are properly addressed. A tape recorder may be used to record the meeting and/or a stenographer may be asked to prepare notes. It is the Grant Recipient's responsibility to clearly present the Federal statutory compliance

requirements as well as performance expectations. A copy of the minutes should be signed by the parties to the contract and placed in the files.

- E. ODOC recommends the following procedures as the minimum coverage of topics at the pre-construction conference:
1. Review the technical aspects of the project;
 2. Identify the laws applicable to the contract and establish the documentation, reporting and performance that will constitute compliance;
 3. Establish the Grant Recipient's obligations to monitor labor standards and the procedures that will be employed;
 4. Establish specific requirements for reporting between the construction contractor and the Grant Recipient;
 5. Accept bonds and securities for performance and payment of labor and materials;
 6. Review the contract provisions, including all attachments regarding labor standards, civil rights, job safety standards and environmental protection;
 7. Explain the objectives of Executive Order 11246 and require a copy of the construction contractor's Affirmative Action Plan and the specific affirmative action strategy to be employed on this contract.
 8. Provide the construction contractor with forms, job-site posters and other materials [**Copies are available from ODOC.**];
 9. Return the construction contractor's bid bonds;
 10. Provide for a record of the pre-construction conference to be prepared and subsequently signed by the parties to the agreement;
 11. Issue a notice to proceed to the construction contractor.

III. CHANGE ORDERS

- A. It is not uncommon for circumstances to require modifications to various construction contracts. Change orders are permitted provided the cumulative impact of all such change orders does not increase the original contract amount by more than 15%. Change orders or cumulative change orders which exceed 15% shall require re-advertising of bids on the incomplete portions of the contract. If the construction contract was bid on a unit price basis and the change order is based on the unit price basis, such change order will not be subject to

this requirement. [For more detailed guidance, see 61 O.S. 1995 §121.]

- B. The Grant Recipient must formally approve any change order and maintain written documentation as to the reasons for the change. All change orders must contain a unit price and total for each of the following items:
 - 1. All materials with cost per item;
 - 2. Itemization of all labor with number of hours per operation and cost per hour;
 - 3. Itemization of insurance cost, bond cost, social security, taxes, Workers' Compensation, employee fringe benefits and overhead costs; and
 - 4. Profit for the construction contractor.
- C. If the change order would cause any change in a budget line item, scope of project or change in beneficiaries, the Grant Recipient must request a contract modification from ODOC. The Grant Recipient may not approve such a change order until and unless ODOC approves a contract modification.

IV. CONSTRUCTION SUPERVISION, INSPECTIONS AND CONTRACT PAYMENTS

- A. One of the provisions of most design contracts (engineering and architectural) is for on-site supervision of construction in progress. [61 O.S. 1991 §123] It is the design professional's responsibility to ensure, on the grant recipient's behalf, that construction is carried out in conformance with all specifications. This person or firm must provide a sworn certification confirming that the amount requested is justified in terms of the work accomplished and that the work conforms to plans and specifications.
- B. The amount of funding requested by the Grant Recipient from ODOC must be net after retainage. Until the Contractor has completed 50% of the contract amount, this retainage may be as high as 10% per request. After this point, the retainage amount may be reduced to 5% provided the Grant Recipient has determined that satisfactory progress is being made and upon approval by the surety. [61 O.S. 1996 §113.1]

V. LABOR STANDARDS ADMINISTRATION

- A. Statutory Requirements: Grant Recipients should be aware of the major labor standards requirements for CDBG projects. The three principal laws and their terms are identified below.

1. Davis-Bacon Act:

To download the "Making Davis-Bacon Work" guidebook go to:
http://www.hudclips.org/sub_nonhud/html/pdfforms/4813-LR.pdf

a. Grant Recipients: All construction contracts in excess of \$2,000 awarded by Grant Recipients and subrecipients must include a provision for compliance with Davis-Bacon and associated USDOL regulations. The principal requirements are:

- (1) Grant Recipients must include a copy of the current prevailing wage rate determination in each Request For Bids (RFB);
- (2) Grant Recipients may only award contracts to eligible construction contractors and subcontractors that have accepted the wage rate determination and signed a certification to pay wages on that basis and comply with other labor standards;
- (3) Construction contractors must pay laborers the wage rate determined by the USDOL to be the prevailing rate in that labor market;
- (4) Construction contractors must pay wages at least once a week; and
- (5) Grant Recipients are required to report all suspected, reported or confirmed violations over \$100 to ODOC, who may investigate these alleged violations.

b. Subcontractors: To qualify as a subcontractor, the following criteria must be met:

- (1) Current liability insurance must be maintained;
- (2) Must have Federal Tax Identification number; and/or
- (3) Must be listed in the Yellow Pages of the telephone book.

If the subcontractor does not meet one or all of these criteria, he/she must be listed by the prime contractor as an employee of the contractor and must be paid the prevailing Davis-Bacon hourly rate for the work.

c. Owner/Operators:

- (1) Bonafide owner/operators of **trucks** who are independent contractors are excluded from DBRA/WCHSSA provisions concerning their own hours of work and rate(s) of pay. These truck "owner/operators" must be reported on weekly payrolls but the payrolls do not need to show the hours worked or the rates--only the notation "owner/operator". This policy does not pertain to owner/operators of other equipment such as backhoes, bulldozers, scrapers and cranes (power equipment).
- (2) Owner/operators of power equipment **may not** submit their own payrolls certifying to payment of their own wages but must be carried on the responsible contractor's or subcontractor's payroll and must be paid the prevailing Davis-Bacon hourly rate for the work.

d. Administrative/Clerical Provisions: People whose duties are primarily administrative, executive or clerical, e.g., supervisors, office staff and timekeepers, are not laborers or mechanics and are excluded from DBRA/WCHSSA. Foremen or supervisors who regularly spend more than 20% of their time performing construction work do not meet this exclusion and are covered as "laborers" and "mechanics" for labor standards purposes for the time spent performing construction work.

e. Two special classes of employees may be employed on projects of this type and be compensated at less than the Davis-Bacon prevailing wages. These classes are:

- (1) Apprentices, provided they are individually registered in a bona fide apprenticeship program in which the construction contractor participates and which is approved by the USDOL and that they also satisfy other conditions as specified in the labor standards contract provisions [**See Requirement 405, Attachment 4, Section 4(1).**];
- (2) Trainees, provided they are in a USDOL-approved training program and satisfy other conditions as specified in the labor standards contract provisions [**See Requirement 405, Attachment 4, Section (4)(1)(ii).**];

- f. Helpers are not recognized unless they are contained in the wage determination or a conformable rate has been approved by the USDOL. If and when these employee classes appear on the construction contractor's weekly payrolls, it is the construction contractor's responsibility to provide the documentation necessary to determine compliance with the Davis-Bacon wage rate determination.
2. Copeland Anti-Kickback Act [18 USC 874, 29 CFR 3]: Construction contractors are prevented, under the terms of this statute, from withholding any employee wages which are not prescribed by law, union agreement or without the employee's permission. The Grant Recipient must conduct confidential interviews with employees to assure compliance with the terms of this law and the construction contractor is required to maintain payroll records and to submit weekly certified payrolls documenting compliance. This requirement applies to all Federally-assisted contracts.
3. Contract Work Hours and Safety Standards Act [40 USC 327-330]: All construction contracts in excess of \$2,000 must comply with the following provisions of this law.
 - a. Construction contractors must compute the wages of each laborer and mechanic on the basis of a standard workweek of 40 hours.
 - b. Work in excess of 40 hrs/week is permitted provided compensation for the amount in excess of the standard is calculated at a rate not less than 1-1/2 times the basic rate of pay.
 - c. Construction contractors may not require any laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his/her health or safety as determined under construction, safety or health standards issued by the USDOL.
- B. Compliance Administration: Labor standards compliance begins with the issuance of a Notice to Proceed and is usually submitted as part of the bid or incorporated in the contract **[Attachment 2]**. To assure proper coverage when project activities are reviewed, the construction contractor must follow the requirements and administrative procedures listed below.
 1. Review Certified Payrolls and Compliance: For each weekly period covered by the CDBG construction contract,

copies of certified payrolls and an executed Statement of Compliance are required from all construction contractors and subcontractors and must be in the files. **[Attachment 3, Forms WH 347 & WH 348]** Payroll forms must be compared with wage determination for each class/craft to assure that wages are being paid as prescribed by law. The Statement of Compliance contains certifications that:

- a. The information covers the proper period and is complete and accurate;
- b. Each worker has been paid the proper wages and benefits and no "rebates" have been taken;
- c. Deductions are only those permitted by law and approved by the workers; and
- d. Payments to workers are consistent with the wage rate determination.

2. Visit the Work Site:

- a. The Grant Recipient must determine that the labor standards information is properly posted at the job site. The wage rates and job classifications must be posted and an Employee Federal Labor Law (Compliance 6) poster must be prominently displayed. ODOC will send the poster with the applicable wage determination.
- b. In addition to this technical review, the Grant Recipient should also identify the specific jobs being performed and identify the workers to be interviewed regarding wages and job duties.

3. Conduct Employee Interviews:

- a. EMPLOYEE INTERVIEWS ARE NO LONGER REQUIRED. However, if problems are suspected or complaints have been received, please conduct the interviews as follows:
- b. On-site interviews must be conducted of enough employees (at least 10% coverage) to provide a reasonable representation of the crafts and trades utilized on the project (interviewing at least one employee in each job classification). **[These interviews are strictly confidential. See Requirement 401 for instructions concerning the maintenance of confidential records.]** Interviews must be conducted at least once during the course of construction. Using the Record of Employee Interview **[Attachment 4]**, documentation must demonstrate that:

- (1) The payroll information is consistent with the wage rate determination; and
- (2) Employees are working in proper job classifications.

These interviews form the basis for determining whether any violations are occurring and facilitate subsequent follow-up by the Grant Recipient.

- c. Note: Talk to the job-site foreman to let him/her know who you are and what you're doing. Try to conduct interviews on break time but observe the employees at work to verify job classifications.

4. Deal With Violations:

- a. Violations less than \$1,000 which are not willful should be dealt with as follows:
 - (1) Require the construction contractor to prepare a supplemental payroll to make appropriate restitution to affected employees, retain a copy of the cancelled check in the Construction Labor File; and/or
 - (2) Assess liquidated damages for non-payment of overtime and require a separate supplemental payroll. The amount to be paid to the U.S. Government (HUD) is \$10 for each day the employee was eligible for overtime but not paid overtime at 1-1/2 times the approved rate.
 - (3) If construction contractors refuse to comply with these requirements, the Grant Recipient must withhold sufficient amounts from the construction contractor to make restitution. This amount is to be recorded and ODOC is to be notified immediately.

All wage restitutions/liquidated damages should be aggregated on the Final Wage Compliance Report. **[Attachment 5] and [Attachment 1, Requirement 410]**

- b. Serious violations, i.e., those representing underpayment greater than \$1,000, are to be reported immediately to ODOC. Technical assistance will be provided to assure proper resolution.
- C. Documentation: As with all other compliance areas, if there isn't a piece of paper to show for it, ODOC assumes it didn't get done, so document, document, document.

- D. Construction Wrap-up: When the construction has finally been completed, there are only a few (critical) items to take care of.
1. First, the construction contractor must submit a certification of project completion, along with the final request for payment.
 2. The Grant Recipient must confirm that all:
 - a. Weekly payrolls and statements of compliance have been received, checked and any discrepancies resolved;
 - b. Discrepancies identified during on-site interviews have been satisfactorily resolved;
 - c. Other required equal opportunity and labor standards have been satisfied;
 - d. Other contract requirements have been satisfied;
 - e. Files are complete; and
 - f. As-built plans have been filed.
 3. When all contract requirements have been satisfied, the Grant Recipient will issue an acceptance of work.
 4. The Grant Recipient then submits a Request for Payment to ODOC. The amount requested at this time should not include the current retainage (of up to 10% of the total contract). **[See 61 O.S. 1991 §113.1 for retainage limitations.]**
 5. Forty-five days after the acceptance and upon receipt of a Release of Claimants from the construction contractor, the Grant Recipient may request the amount of retainage from ODOC and subsequently release this amount to the construction contractor.

VI. SUMMARY

This Requirement has summarized the various State and Federal requirements pertaining to construction management and labor compliance. The Grant Recipient is ultimately responsible for knowing all of these requirements and for ensuring compliance with them.

VII. ATTACHMENTS

1. Pre-Construction Checklist
2. Notice to Proceed
3. Payroll (WH-347)
4. Fringe Benefit Determination
5. Record of Employee Interview
6. Final Wage Compliance Report
7. Construction Management Files

PRE-CONSTRUCTION CHECKLIST

Project Name:	CDBG Contract No.:
Location:	
Description of Work to be Performed:	
Construction Contractor:	Contract Amount: \$
Conference Date:	Location:
Participants:	Names: Titles:

- Items Covered: _____ Labor Standards
 _____ Grantee's Role and Responsibilities
 _____ Section 3 Contracting, Training and Employment Opportunities
 _____ Construction Contractor's Role and Responsibilities
 _____ Equal Opportunity
 _____ Reporting Requirements and Sanctions
 _____ Other

(Instructions on following pages.)

CHECKLIST FOR CONSTRUCTION CONTRACTORS

(MEETING LABOR STANDARDS COMPLIANCE REQUIREMENTS)

I. INTRODUCTION:

The following checklist has been prepared to assist construction contractors and subcontractors in meeting labor compliance responsibilities. All major administrative and procedural activities have been covered in the sequence in which they will occur as the construction project proceeds. Careful attention to and use of the checklist should result in a minimum number of problems with respect to labor compliance.

II. EXPLANATORY NOTES:

The word "employer", as used below, refers to the prime construction contractor, each subcontractor or each lower-tier subcontractor. Payrolls and other documentary evidence of compliance (marked "***") *must be sent to the Grant Recipient for review (all to be submitted through the prime construction contractor)*. The submission procedure is as follows:

- A. Each *lower-tier subcontractor*, after careful review, submits required documents to the respective subcontractor.
- B. Each *subcontractor*, after checking his/her own and those of each lower-tier subcontractor he/she may have, submits required documents to the prime construction contractor.
- C. The *prime construction contractor*, after reviewing all payrolls and other documentation, including his/her own, and correcting violations where necessary, submits all to the Grant Recipient.

All employers should check each of the following statements as being true. If any statement is not true, the construction contractor should contact the Grant Recipient for special guidance.

III. BEFORE CONSTRUCTION BEGINS, each employer has:

- A. Been found eligible to participate in any Federal or Federally-assisted project, i.e., not been debarred or otherwise made ineligible.
- B. Received appropriate contract provisions covering labor standards requirements.
- C. Reviewed and understands all labor standards contract provisions.
- D. Received the appropriate wage decision(s) as part of the contract.
- E. Requested through the Grant Recipient and received the minimum wage for each classification to be worked on the project which was not included on the wage decision by the additional classification process and before allowing any such trade(s) to work on the project.
- F. Requested and received certification of his/her apprentice program from the State's Bureau of Apprenticeship and Training (State BAT), (recognized by the U.S. Bureau of Apprenticeship and Training [USBAT]) and submitted a copy thereof to the Grant Recipient prior to employment on the project. Likewise, "trainee" program certification from USBAT, if applicable, must be submitted.

IV. AT CONSTRUCTION START, the construction contractor has:

- A. Received a Notice to Proceed from the Grant Recipient.
- B. Notified Contractor of construction start date in writing.
- C. Placed each of the following on a bulletin board prominently located on the project site which can be seen easily by the workers (and replaced if lost or unreadable anytime during construction):
 - √ Wage Decision
 - √ Notice to Employees

√ Safety and Health Protection on the Job (USDOL)

- ___ D. Before assigning each project worker to work, obtained the worker's name, best mailing address and Social Security Number (for payroll purposes).
- ___ E. Obtained a copy of each apprentice's certificate with the apprentice's registration number and his/her year of apprenticeship from the State BAT.
- F. Informed each worker of:
 - ___ 1. His/her work classification (journeyman or job title) as it will appear on the payroll;
 - ___ 2. His/her work duties;
 - ___ 3. The requirement on this project that he/she is either a journeyman, apprentice or laborer:
 - ___ If journeyman, he/she is to be paid journeyman's minimum wage rate or more;
 - ___ If apprentice, he/she is to be paid not less than the apprentice's rate for the trade based on his/her year of apprenticeship; or
 - ___ If laborer, he/she is to do laborer's work only - not use any tool or tools of the trade - and not perform any part of a journeyman's work - and is to be paid the laborer's minimum wage rate or more.
- ___ G. Been informed of the requirements that each laborer or mechanic who performs work on the project in more than one classification within the same workweek shall be classified and paid at the highest wage rate applicable to any of the work which he/she performs unless the following requirements are met:
 - ___ 1. Accurate daily time records are maintained. These records must show the time worked in each classification and must be signed by the workman.
 - ___ 2. The payroll shows the hours worked in each classification and the wage rate paid for each classification.
 - ___ 3. The payroll is signed by the workman or a signed copy of the daily time record is attached.
- ___ H. Has informed each worker of his/her hourly wages (not less than the minimum wage rate for this work as stated in the Wage Decision).
 - ___ 1. Time and a half for all work over 40 hours any workweek (see Contract Work Hours Safety Standards Act).
 - ___ 2. Fringe benefits, if any (see wage Decision for any required).
 - ___ 3. Deductions from his/her pay.
- ___ I. Has informed each worker that he/she is subject to being interviewed on the job by the Grant Recipient, ODOC, USDOL or other inspector to confirm that the employer is complying with all labor requirements.
- ___ J. Has informed each journeyman and each apprentice that a journeyman must be on the job at all times when an apprentice is working.

V. DURING CONSTRUCTION

A. Each Employer:

- ___ 1. Has not selected, assigned, paid different pay rates to, transferred, upgraded, demoted, laid off or dismissed any project worker because of race, color, religion, sex or national origin.
- ___ 2. Has employed all registered apprentices referred to him through normal channels up to the applicable ratio of apprentices to journeymen in each trade used by the employer.
- ___ 3. Will maintain basic employment records accessible to inspection by the Grant Recipient or ODOC representatives.
- ___ 4. Is complying with all health and safety standards.
- ___ 5. Has paid all workers weekly.
- ___ 6. Has submitted weekly payrolls on Form WH-347

Construction contractors who wish to purchase the forms are urged to enter their orders promptly. The Superintendent of Documents (Government Printing Office, Washington, D.C. 20402) takes six weeks to fill orders. *It is permissible for contractors to reproduce the forms if they wish.* Any alternative payroll form should be cleared with the grantee before the employer starts work on the project. A project printout by computer, for example, is acceptable, *provided* all data on the front and back of Payroll Form WH-347 is on or included with the payroll submitted to the grantee.

Some employers place all project workers on Payroll Form WH-347. The Contractor (owner) does not review any project workers on the payroll who perform work in any of the following job titles (which are exempt from labor requirements):

- ✓ Project superintendent
- ✓ Project engineer
- ✓ Owner-operator
- ✓ Supervisory foreman (less than 20% of time as a working foreman)
- ✓ Messenger
- ✓ Clerical workers (timekeepers, payroll clerks, bookkeepers, etc.)

B. Instructions for completing/reviewing the Front Page of Payroll Form WH-347

- ___ Name of Employer. The construction contractor or subcontractor.
- ___ Address. Street address/P.O. Box, City, State and Zip Code of employer.
- ___ Payroll Number. Each weekly payroll is numbered in sequential order (starting with Payroll No. "1").
- ___ If employer's workers perform no physical work on the project during workweek, he/she has submitted a "no work" letter for that workweek.
- ___ Payroll of employer's final workweek on the project (completion of his/her work) is marked "Final".
- ___ For Week Ending. The last date of the workweek.
- ___ Project and Location. Name of project and city in which located.
- ___ Columns 1 thru 9: Data entered on each line of this section of Form WH-347 represents information about a single worker in a separate job classification. When one worker performs more than one class of work during a workweek (*split classification*), the worker will have data reported on multiple lines (as many lines as he/she

worked separate classifications). Accurate daily time records signed by the employee must show the exact hours worked in each classification.

___ **Column 1:** Worker's Name as it appears on his/her paycheck.

- ✓ Worker's best mailing address and social security number is entered only on the first payroll on which his/her name appears;
- ✓ If the worker changes his/her residential address while working on the project, the new address is entered on the next applicable payroll;
- ✓ If any two or more workers have the same name, their social security numbers are included on the payroll to note their separate identification.

___ **Column 2:** Number of Withholding Exemptions: This is for employer's convenience; *filling this in is not required.*

___ **Column 3:** The Work Classification (job title) for the worker is included in the Wage Decision and denotes the work that worker actually performed.

___ *If the worker is an **apprentice**, enter the State BAT registration number and year of apprenticeship in this column the *first* time the apprentice's name appears on the payroll.*

___ *If the worker has performed *more than one class of work* during the workweek, such as carpenter and laborer, the division of work must be shown on separate lines of the payroll. Each class of work performed is noted in Column 3 on a separate line and the employee's name is repeated on that line in Column 1.*

NOTE

If the applicable classification is not included in the Wage Decision, construction contractor should call the Contractor immediately and request the appropriate classification through the Additional Classification Process

___ The payroll is signed by the workman in the related "blocks" or a signed copy of the daily time records is attached to the payroll

___ If the above is not done, the worker is paid at least the highest minimum wage rate of all of the classes of work performed for all hours worked.

The employer may not pay a "semi-journeyman" or semi-skilled laborer the average of journeyman's and laborer's rates. The actual hours each worker uses tools of the trade (journeyman) and each hour he/she does not use tools of the trade (laborers) must be recorded on separate lines in Column 3 of the payroll. *The employer may **not** pay the average of the two classes of work.*

The work classification of helper is not accepted unless included in the Wage Decision issued by the Secretary of Labor. Any employee listed as "helper" in the absence of such a classification in the Wage Decision must be paid the journeyman's rate for hours he/she uses the tools of the trade.

___ **Column 4:** Hours Worked, Each Day and Date, for the workweek.

Regular hours (**S** for "Straight" time) are entered for each classification for each employee. Overtime hours (**O**), if any, are reported separately from straight hours. Overtime is any time over 40 hours in any workweek.

- ___ **Column 5:** Total Hours worked during the workweek are reported (the sum of subcolumns in Column 4). Straight and overtime hours are recorded separately.
- ___ **Column 6:** Rate of Pay, not less than the minimum wage rate for the work classification (see Wage Decision).
- ___ *The Overtime Rate of Pay is not less than 1½ times the worker's basic (straight) hourly rate of pay.*
- ___ ***Apprentices.** If a copy of the apprentice's registration certificate from the State BAT has not been submitted to Grant Recipient by employer (through construction contractor), apprentice must be paid journeyman's rate.*
- ___ ***Piece Worker.** Piece work must be reported in Column 6 at an hourly rate, the gross pay for the workweek (work on the project) divided by the total number of hours worked on the project during the workweek.*
- ___ **Column 7:** Gross Amount Earned equals straight hours (Column 5) times straight rate of pay (Column 6) plus overtime hours, if any, (Column 5) times overtime rate of pay (Column 6).
- ___ **Column 8:** Each deduction is:
 - ___ √ Required by law;
 - ___ √ Voluntarily authorized by the worker in writing before the work week began; or
 - ___ √ Provided in a bargaining agreement.
- ___ **Column 9:** Net Wages stated are Column 7 minus total deductions shown in Column 8.

C. Instruction for completing/reviewing the Back of Payroll (Form WH-347)

- Each Employer has:
 - ___ √ Completed all blank spaces and understands the penalties for falsification;
 - ___ √ Checked Item 4 if fringe benefits are included in the Wage Decision for all workers:
 - ___ 4(a) If fringe benefits are paid to approved fund(s); or,
 - ___ 4(b) Paid directly to each affected worker each week, his/her paycheck representing at least the pay of the applicable minimum wage rate plus the amount of required fringe benefits.
 - ___ √ Manually signed the payroll in the "block" marked signature and stated his/her title;
- ___ The person who signed the payroll is the employer or an official of the employer who is legally authorized to act for the employer.

D. Weekly Payroll Review. Each employer has promptly:

- ___ Reviewed the weekly payroll for compliance with all labor requirements (using this checklist) and made necessary corrections.

- ___ Each lower-tier subcontractor has submitted his/her weekly payroll or "no work" letter to the respective subcontractor within 3 calendar days from the last date of the workweek.

- ___ Each subcontractor has received a payroll or "no work" letter from each of his/her lower-tier subcontractors, reviewed each and his/her own payroll, required necessary corrections and submitted all such payrolls to the construction contractor within 5 calendar days from the last date of the workweek.

- ___ Construction contractor has received a payroll or "no work" letter from each subcontractor and each lower-tier subcontractor, monitored each including his/her own payroll, required necessary corrections and collectively submitted them to the grantee within 7 work days of the last date of the respective workweek.

VI. AFTER PROJECT COMPLETION

- ___ Each employer will keep all weekly payrolls on the project for 3 years after the construction contractor's project completion date.

NOTICE TO PROCEED

Project Name: _____ Project Location: _____

Contract Number: _____ Construction Contract Number: _____

Type of Contract: _____ Amount of Contract: _____

You are hereby notified to commence work on the referenced contract on or before _____, 19____, and fully complete all work of said contract within _____ consecutive calendar days thereafter. Your completion date is therefore _____, 19____.

The contract provides for an assessment of the sum of \$ _____ as liquidated damages for each consecutive calendar day after the above-established contract completion date the work remains incomplete.

Dated this _____ day of _____, 19____.

By _____
Title _____

Acceptance of Notice

Receipt of the foregoing Notice to Proceed is hereby acknowledged this _____ day of _____, 19____.

By _____
Title _____

Fringe Benefit Determination

If an employee's fringe benefits are paid to a funded plan, the following criteria applies:

1. Contributions to funded plans must be made irrevocably and at least quarterly to a third party trust.
2. When the per hour contribution for benefits paid into a plan does not equal the total rate set forth in the wage determination, the difference must be paid to the employee in cash.
3. Employees excluded from funded plans must be paid fringe benefits in cash.
4. Vacation and sick leave plans are generally unfunded, paid from the contractor's own account, and require Department of Labor approval before a contractor takes credit toward meeting the fringe benefit obligation.

The following method must be used to determine if the amount contributed to the plan equals the amount required to be paid for fringe benefits per the appropriate Davis-Bacon Wage Decision.

METHOD: In determining the cash equivalent credit for fringe benefit payments, take the total amount that would be paid into the funded plan for a year and divide by 1820 hours.

EXAMPLE: Contractor pays \$50/month to a funded health insurance plan. Davis-Bacon Wage Rates require \$4/hour paid for fringe benefits.

FORMULA: $(\$50 \times 12)$ divided by 1820 = 33 cents as the cash equivalent.

RESULT: The contractor must pay \$3.67 to the employee in cash for fringe benefits and the remaining 33 cents to the funded plan. The contractor must note on the back of the payroll under (4)(a-c) how fringe benefits are paid and provide documentation for the funded plan as listed below.

Adequacy of fringe benefits will be determined by the DC based upon a review of the following information that you are requested to submit:

1. Description of the coverage that you provide those employees and the name, address and phone number of the third party trustee.
2. Signed authorization of those employees to accept those specific employer-paid contribution amounts considered bona fide fringe benefits.
3. Or the providers proof of payment into the plan, fund or program (i.e., monthly billing statement).

This adequacy is applicable for one (1) year from the date of review and applies only to HUD funded projects.

The above requested information must be submitted to:

**Oklahoma Department of Commerce
Office of Community Development
P.O. Box 26980
Oklahoma City, OK 73126-0980**

Record of Employee Interview

Contract Number:		Construction Contractor or Subcontractor (Employer)	
Project Name:			
1. Name of Employee:			
2. Home address and Zip Code			
3. Last Date You Worked on Project Before Today?		Number of Hours Worked on Project on that Date?	
4. Your Hourly Pay Rate:		\$	
5. Your Job Classification(s)? Apprentice		Yes	No
6. Your Duties:			
7. Tools or Equipment Used?			
8. Paid at Least Time and One-Half for All Hours Worked in Excess of 40 in a Week? <i>(If overtime premium pay is not required, enter "inapplicable.")</i>		Yes	No
9. Ever Threatened, Intimidated or Coerced into Giving up Any Part of Pay?		Yes	No
10. Duties Observed by Interviewer:		Yes	No
Classification Conform to			
11. Remarks (Continue on reverse if necessary)			
12. Signature of Interviewer:		Date of Interview:	
PAYROLL EXAMINATION			
13. Remarks (Continue on reverse if necessary)			
Wage Decision Number OK _____			
Wage Decision Rate \$ _____			
Do the payrolls and wage rate coincide with interview? Yes _____ No _____			
If No, explain:			
14. Signature of Payroll Examiner:		Date:	

Record of Employee Interview (Spanish)

Contract Number:		Construction Contractor or Subcontractor (Employer)	
Project Name:			
1. Nombre del empleado:			
2. Direccion y Codigo Postal			
3. Ultima fecha en que trabajo en el proyecto antes de hoy??		Numero de horas que trabajo On el proyecto en dicha fecha	
4. Su pago por hora:		\$	
5. Su clasificacion de trabajo		Si	No
6. Sus deberes o funciones:			
7. Herramientas o equipo usado			
8. Se le pago por lo menos tiempo y medio (1 ½) por todas horas trabajadas en exceso de 40 en una semana?		Si	No
9. Ha sido forzado, amenazado o intimidado a abandonar alguna Parte de us pago o sueldo?		Si	No
10. Duties Observed by Interviewer:			
Conform to Classification		Yes	No
11. Remarks (Continue on reverse if necessary)			
12. Signature of Interviewer:		Date of Interview:	
PAYROLL EXAMINATION			
13. Remarks (Continue on reverse if necessary)			
Wage Decision Number OK _____			
Wage Decision Rate \$ _____			
Do the payrolls and wage rate coincide with interview If no, explain:		YES	NO
14. Signature of Payroll Examiner:		Date:	

FINAL WAGE COMPLIANCE REPORT

Construction Contractor Name:	Contract Number:
Contact Person:	Telephone No.:
Project Name:	Project Location:
Construction Completion Date:	Contract Amount: \$
Prime Construction Contractor:	
Subcontractors	

1. Were any workers paid less than the specified Davis-Bacon rates that applied to this project?

- Yes No

2. If YES:

a. What was the total amount of restitution paid? \$ _____

b. What was the method of restitution?

- Paid by the construction contractor
 Paid by Grant Recipient with funds withheld from payment to the construction contractor

Firm	Affected Employees	Amount of Restitution Paid	Nature of Violations
------	--------------------	-------------------------------	----------------------

(Attach additional pages if necessary.)

3. Were any workers not paid the correct overtime payments? Yes No

If YES: Liquidated damages at the rate of \$10 for each calendar day for each worker must be calculated and the construction contractor notified of his liability, and

4. Provide information concerning the nature of the overtime violations. This should include:

a. Firm's Name, Address and Phone Number: _____

b. Date construction contractor was notified in writing of the amount of liquidated damages which could be assessed:

c. Date the construction contractor responded to the written notice: (must be within 30 days of the receipt of notification):

d. Did the construction contractor seek a reduction or waiver of the liquidated damages?

- Yes No e. If YES: Was the requested approved and for what
- Yes - Reduction. Yes - Waiver. No.

f. On what grounds was HUD's or USDOL's response based? _____

g. Total amount of Liquidated Damages paid: \$ _____

h. What was the method of payment of the Liquidated Damages?

- Paid by the construction contractor
- Paid by the Grant Recipient with funds withheld from payment to the construction contractor.

i. Did the construction contractor appeal the final decision to assess Liquidated Damages to the Wage Appeals Board?

- Yes No

j. Attach copies of all correspondence relative to any Liquidated Damages.

5. If appropriate, attach a recommendation of and justification for sanctions against the construction contractor.

Submitted by:

Signature

Date

Typed Name

Title

Construction Management Files

Bid Documents	Architect/Engineer Specifications Request for Wage Rate Determination Response to Request for Wage Rate Determination Bid Document Copy of Bid Advertisement Copies of any direct solicitations to women-owned and/or minority businesses Minutes of Bid Opening/Bid Tabulation Construction Contractor Debarment Letter to ODOC Verification of Construction Contractor Eligibility from ODOC Notice of Contract Award Documentation of Construction Contractor Procurement
Contract Documents	Contract Specifications Bonding/Insurance Preconstruction Conference Notification Preconstruction Conference Checklist Preconstruction Conference Minutes Construction Contractor's Certifications: Labor Standards and Prevailing Wage Requirements, Civil Rights, etc. Project Schedule Notice to Proceed
Construction/Labor Compliance	Change Orders (with documentation) Certified Weekly Payroll Reports Weekly Statements of Compliance Employee Interviews Contract/Labor Standards Violations and Resolutions Violations Investigation Records Monitoring Letter/Findings Resolution of Findings Final Inspection and Acceptance Release of Claimants

OKLAHOMA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

REQUIREMENT NO. 407
PROPERTY ACQUISITION & RELOCATION

Effective July 2007

I. PROPERTY ACQUISITION

- A. Many projects funded by CDBG involve some form of property acquisition. The acquisition may be temporary, such as a construction easement, or it may be permanent. Permanent property acquisition may range from "partial", such as securing an easement, to outright purchase and transfer of ownership. Whichever the case, there are very specific procedural requirements imposed on Grant Recipients when they must acquire private property in order to carry out their community development programs. The guiding principle in these procedures is the fundamental rights of property owners to receive "just compensation" when their property is needed or desired to achieve public purposes. **[Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 USC 4601, et seq.) 49 CFR 24, Subpart B] The Final Rule of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and updated Booklets that provide guidance on acquisition and relocation procedures are located at the end of this requirement.**
- B. These procedures may apply even if the property was acquired prior to submission of the grant application and even if CDBG funds are not involved in the actual acquisition costs. If the property was or is acquired with the express intent of using it for the activities for which CDBG funds are requested, that acquisition must have been and/or be conducted in conformance with the requirements spelled out in this Requirement. **[HUD Handbook 1378, Chapter 5]**
- C. Property acquisition procedures fall into two distinct areas: Voluntary and non-voluntary. In order to determine which procedures must be followed, the Grant Recipient must answer the following questions:
1. Does the entity which is carrying out project activities and which will be acquiring the property have the power of eminent domain?
 2. If the entity has the power of eminent domain, will it use this power, if necessary, to secure the property needed to carry out the project?

Answering "yes" to both these questions requires the Grant Recipient to follow the non-voluntary procedures.

D. The rest of this Requirement provides specific guidance for meeting the procedural requirements of these two methods of property acquisition.

E. Voluntary Acquisition:

1. In a voluntary acquisition, the Grant Recipient notifies the property owner of an interest in acquiring the property, with a clear statement that it cannot or will not condemn the property in order to obtain it for the project. **[Attachment 3]** The purpose of notification is to determine if the property owner is interested in negotiating the sale of the property. If the owner is not interested, the Grant Recipient must determine if the project can proceed at any alternative location. If it cannot, the project may not proceed further and the grant will be deobligated.

a. If the Grant Recipient opts to go the voluntary route in a site-specific project and fails to find a willing seller, it may not start over with the non-voluntary approach. This would amount to after-the-fact coercion against a property owner. If the property is crucial to the project, the Grant Recipient should think long and hard about the method used to acquire it.

b. If the project does not require a very specific parcel, i.e., it can be undertaken on any site within a given geographic area, the Grant Recipient sends a notice to a limited number of property owners in the area. The purpose of this notice is to determine if there are any owners who are actively interested in selling their property. If the Grant Recipient receives an expression of willingness from one or more owners, it should develop a priority list of such properties based on the characteristics (location, likely cost, etc.) which are most advantageous to it. **[Attachment 4]**

c. All notices must be personally served to owners and occupants or sent by registered first-class mail, return receipt requested.

2. Assuming there is at least one willing owner or that the site-specific property owner is willing to consider a voluntary transaction, the next step is to determine if there are any tenants involved, excluding the owner. If there are, the Grant Recipient must notify each tenant and advise him/her that it is considering acquiring the property on which they reside for the purposes of

carrying out a project. The notice must also alert all tenants that they will not be eligible for any relocation assistance if they move out at this time. **[Attachment 5 or 6]**

3. Following tenant notification, the Grant Recipient must make a preliminary estimate of property value and use. The purpose of this estimate is to determine if a formal appraisal will be necessary. An appraisal is not required if:

- a. The owner is donating the property and releases the Grant Recipient from its obligation to appraise the property; or

- b. The Grant Recipient determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data. When an appraisal is determined to be unnecessary, the Grant Recipient shall prepare a waiver valuation. A waiver valuation is the valuation process used and the product produced when the Grant Recipient determines that an appraisal is not required, pursuant to appraisal waiver provisions in 24 CFR 24.102©(2). The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation.

[When hiring an appraiser, refer to HUD Handbook 1378, Appendix 20: Agreement for Appraisal Services.]

4. If an appraisal is not required, skip to step 5. If an appraisal is required, the appraiser must notify the property owner of the date the appraisal is going to be conducted and invite the owner to accompany the appraiser. The Grant Recipient is responsible to ensure that the appraisals meet appraisal requirements as listed in 49 CFR 24.103(a). **[Attachment 7]**

5. When the appraisal and review appraisal, if applicable, have been conducted and fair market value established. **[Review appraisals are required in all non-voluntary acquisitions. See 49 CFR 24.104.]:**

- a. The Grant Recipient must submit a written offer to purchase the property. **[Attachment 8 (Insert Option A) The Fair Market Value (FMV) established by the Grant Recipient must be based on the appraised value. Other considerations may include the timing of the sale and length of time the property is off the market.]**

up for each parcel. **[Enclose the publication "When a Public Agency Acquires Your Property".]**

2. The next step is to determine if an appraisal is required.
3. After the specific parcel(s) and ownership have been confirmed and the need for an appraisal tentatively confirmed, the property owner is to be notified in writing of the Grant Recipient's intent to acquire the property. This notification specifically advises the property owner of his/her rights and gives him/her the option of waiving his/her right to fair compensation (donation) and/or his/her right to have an appraisal conducted, whether they are donating or not. **[Attachment 12]**
 - a. At this stage, if the property owner requests an appraisal, the Grant Recipient must conduct it, even if the estimated FMV is less than \$10,000. If the appraisal is neither required nor requested, skip to step 5.
 - b. If the property owner waives his/her right to an appraisal, a release to this effect must be executed.
4. If an appraisal is required or requested, the next step is to conduct the appraisal. The appraiser must advise the property owner of the date the appraisal will be conducted and invite the property owner to accompany the appraiser. The same steps are followed for the conduct of a second, or review, appraisal. **[Attachment 7]**
5. When the appraisal and review appraisal have been finished **[Review appraisals are required in all non-voluntary acquisitions. See 49 CFR 24.104.]**:
 - a. If the property owner had previously indicated a willingness to donate the property but requested an appraisal prior to doing so, a copy of the appraisal report must be provided to the owner. At this time, the waiver of rights release must be executed, if not done previously. Skip to step 8.
 - b. If the property owner had not indicated a willingness to donate the property, the Grant Recipient prepares a written statement basis for just compensation. The dollar value of this statement may not be less than the FMV established by the appraisal/ review appraisal.
 - c. Note: Donation of property most commonly occurs when the Grant Recipient is asking for easement rights. The property owner will usually be

receiving a new or improved service (water, sewer, etc.) in exchange for donating a partial use of his/her property to locate the service. The property owner may waive his/her right to an appraisal if they believe that the FMV is apt to be zero, i.e., the loss in value due to damage or partial interest is offset by the value of the improvements.

6. The Grant Recipient must submit an offer of just compensation with attached statement of basis. **[Attachment 8 (insert Option B)]**
7. If the property owner accepts the offer of just compensation, either immediately or after a period of successful negotiation, the Grant Recipient must prepare and submit a statement of settlement costs. **[Attachment 15]** This statement reflects the price agreed upon plus incidental costs associated with transfer of title, e.g., recording fees, transfer taxes, etc. If the Grant Recipient pays in excess of the FMV, this is called an administrative settlement and the file must contain a written justification of the excess costs. **[Attachment 15]** Unjustified payments in excess of the FMV may be disallowed at ODOC's discretion.
8. Submit a copy of the appraisal, review appraisal, basis of cost, offer of just compensation and summary of settlement costs to ODOC for review and approval. This must be done prior to or along with the acquisition cost request for payment if CDBG funds are to be used to cover these costs.
9. If the Grant Recipient and property owner are unable to negotiate a settlement, the Grant Recipient must decide which of two options to pursue:
 - a. A decision not to acquire the property. If this decision is made, the Grant Recipient must notify the property owner of this decision in writing **[Attachment 9]**; or
 - b. A decision to initiate condemnation proceedings.
10. Complete the acquisition by preparing and executing the appropriate legal documentation (contract for sale, deeds, etc.). If applicable, the property owner and/or tenant are provided a ninety-day (90-day) advance written notice to vacate and remove any personal belongings from the property acquired.
11. Note on Condemnations:

- a. Exercising the power of eminent domain by condemning private property for a public purpose is absolutely the final, last-ditch step in the acquisition process. It is a step which should be taken only after all other alternatives have been exhausted and the Grant Recipient determines that the property in question is so crucial to an important public purpose that no other alternative is possible.
- b. While ODOC recognizes that this action is sometimes inevitable, it is not bound by either the delays that might occur or the compensation the court determines. Grant Recipients should be mindful when proceeding with a condemnation that a prolonged legal fight may jeopardize the ability of the Grant Recipient to implement the project within the contract time period. Further, ODOC will not increase the grant award if the court decision exceeds the amount budgeted in the grant for acquisition and no other savings can be realized in other grant line items.

12. Points to Keep in Mind:

- a. If the acquisition of only a portion of a property would leave the owner with a remnant that was not economic (not large enough for any reasonable use), the Grant Recipient must offer to purchase this remnant along with the portion needed for the project.
- b. If the owner, in response to the offer, provides additional information that indicates the need for a new appraisal or if there has been a significant delay since the appraisal was conducted, an updated or new appraisal must be conducted and the acquiring Grant Recipient must re-establish its offer.
- c. The Grant Recipient or subrecipient (whichever is acquiring the property) must guard against both the existence and appearance of a conflict of interest in using CDBG funds to acquire property. Special measures must be taken if an officer or employee of the acquiring Grant Recipient sells property to the Grant Recipient.

G. Qualifications of Appraisers and Review Appraisers:

The Grant Recipient shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualification should be consistent with the scope of work for the assignment. The Grant Recipient shall review the experience, education, training, certification/licensing, designation(s), and other qualifications of appraisers and use only those determined to

be qualified. If a contract appraiser (fee), such appraiser shall be State licensed or certified in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (12.U.S.C. 3331 *et seq*).

The review appraiser is responsible for examining the analysis and presentation of data, assuring that all appraisal requirements are met, and that the appraisal meets the requirements as listed in 49 CFR 24.103(a). The review appraiser can accept the appraisal as recommended and that complies with all requirements. During the review, the review appraiser shall consult with the appraiser(s) to clarify report conclusions. If the review appraiser prepares an independent valuation it must meet 49 CFR 24103 appraisal requirements. The review appraiser must prepare a written report on the results of the review, and if appraisal is not accepted, such person must include the reason for not accepting.

In accordance with 49 CFR 24.102(n), appraisers, review appraisers, and waiver valuation preparers shall not have any interest in the property, shall not be subject to influence or coercion regarding the valuation, and may be authorized to act as negotiator where valuation role is for acquisition less than \$10,000.

II. RELOCATION

- A. If the property owner or tenant is forced to move, either temporarily or permanently, as a result of CDBG-funded activities, that person or household is considered to be displaced. A displaced person is entitled to certain services, including counseling, payments for relocation and, in certain circumstances, assistance in obtaining replacement housing. The provision of this assistance is never optional for the Grant Recipient or its subrecipient and the burden of proof for demonstrating compliance falls squarely on the Grant Recipient.
- B. The Grant Recipient must determine who might be affected if displaced, make reasonable efforts to provide the required assistance and document that the process has been followed. This is an involved and detailed process. For that reason, it will not be repeated in this Manual. A separate Handbook is available to Grant Recipients and will be provided by ODOC, upon request. **[HUD Handbook 1378, Tenant Assistance and Real Property Acquisition]**
- C. While the specific procedural and record-keeping requirements are detailed, the basic outline of the process is as follows:
 1. Determine which persons or households may have to be displaced and whether the displacement is permanent or temporary;
 2. Make certain that affected persons or households receive notice not to relocate (move) before they are eligible to

receive assistance and that they understand their rights for assistance;

3. Provide the assistance to which displaced persons or households are entitled, not more or less [**Under 49 CFR 24 (URA) and 24 CFR 570.104**];
 4. Keep outstanding, detailed records on every aspect of the process.
 5. Note: These requirements apply only to a non-voluntary property acquisition.
- D. Note: The single most common mistake made by Grant Recipients in the acquisition or relocation process is failure to provide required notices in a timely fashion, especially to tenants. Provide proper notices at the right times. Failure to do so exposes the Grant Recipient to legal challenges and additional expenses.

III. REPLACEMENT OF LOW- TO MODERATE-INCOME HOUSING UNITS

- A. Section 104(d) of the Housing and Community Development Act (the so-called "Barney Frank Amendment") imposes specific obligations on Grant Recipients with respect to the replacement of low- and moderate-income housing units and for the provision of relocation assistance to displaced low- and moderate-income families or persons. [**See 24 CFR 570.4488(c) and HUD Handbook 1378, Chapter 7.**]
- B. In brief, these special provisions are triggered when any CDBG-funded activity causes the conversion of low- to moderate-income housing (including vacant occupiable units) into [**24 CFR 570.488(c)**];
 1. Non-housing, i.e., demolition of housing units to make room available for some other purpose such as a shopping center or community center; or
 2. A smaller number of units, i.e., conversion of a multi-family unit to fewer units and/or to fewer net bedrooms; or
 3. Non-low- to moderate-income housing, i.e., upgrading a low-rent apartment building into an upscale condominium.
- C. In other words, any CDBG-funded activity which causes a reduction in the number of residential units/bedrooms available to and occupied by low- and moderate-income persons in the Grant Recipient's jurisdiction must be offset by an equal replacement of the lost units. In addition, displaced low- and moderate-income families are eligible to receive either the normal URA relocation assistance or, potentially, more

generous benefits available under HUD regulation. The choice of benefits is the displaced person's.

- D. Replacement housing must meet the following criteria **[Some exemptions from these criteria are possible.]**:
1. It must be located within the Grant Recipient's jurisdiction and, preferably, within the same neighborhood as the units replaced;
 2. The number of replacement bedrooms must at least equal the number removed **[Because the obligations under this provision of the law can be extremely technical, the Grant Recipient should contact ODOC for detailed guidance.]**;
 3. The replacement units must be in standard condition;
 4. Replacement units must be made available for occupancy within an approximate four-year time period; and
 5. Replacement units must remain affordable for 10 years from date of initial occupancy.

IV. RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN

- A. The Grant Recipient must prepare and adopt a Residential Anti-Displacement and Relocation Assistance Plan (Plan), regardless of whether displacement or relocation is or is not anticipated. Submission of the Plan is one of the contract conditions that must be cleared prior to release of funds by ODOC. The Grant Recipient will recall that it certified it would take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, non-profit organizations and farms) as a result of activities assisted with CDBG funds. **[See Requirement 401.]**
- B. The two major components of the Plan are requirements to:
1. Replace all occupied and vacant occupiable low- and moderate-income dwelling units that are demolished or converted to a use other than low- and moderate-income housing as a result of the CDBG-funded activity **[HUD Handbook 1378, 701]**; and
 2. Provide certain relocation assistance to any low- or moderate-income person displaced as a direct result of demolition or conversion to other use as a result of the CDBG-funded activity.
- C. The nature and extent of a given Plan are dependent on whether the Grant Recipient anticipates any kind of displacement. If the nature of the project is such that no demolition or conversion is expected, the Plan is essentially a

certification that required procedures for replacement and relocation assistance will be followed in the unlikely event that demolition or conversion occurs. **[A sample Plan can be found at Attachment 17.]**

- D. If the Grant Recipient knows from the beginning that displacement will occur as a result of project activities, the Plan must be very specific in terms of:
1. The nature of project activities (a description of the project);
 2. The location of units to be displaced (by size and number);
 3. The location of comparable replacement units (by size and number);
 4. The source(s) of funding and time schedule for providing the replacement units;
 5. The basis for concluding that replacement units qualify; and
 6. Other requirements of the regulations.
- E. If developments during project implementation cause unforeseen displacement, the Plan must be amended.

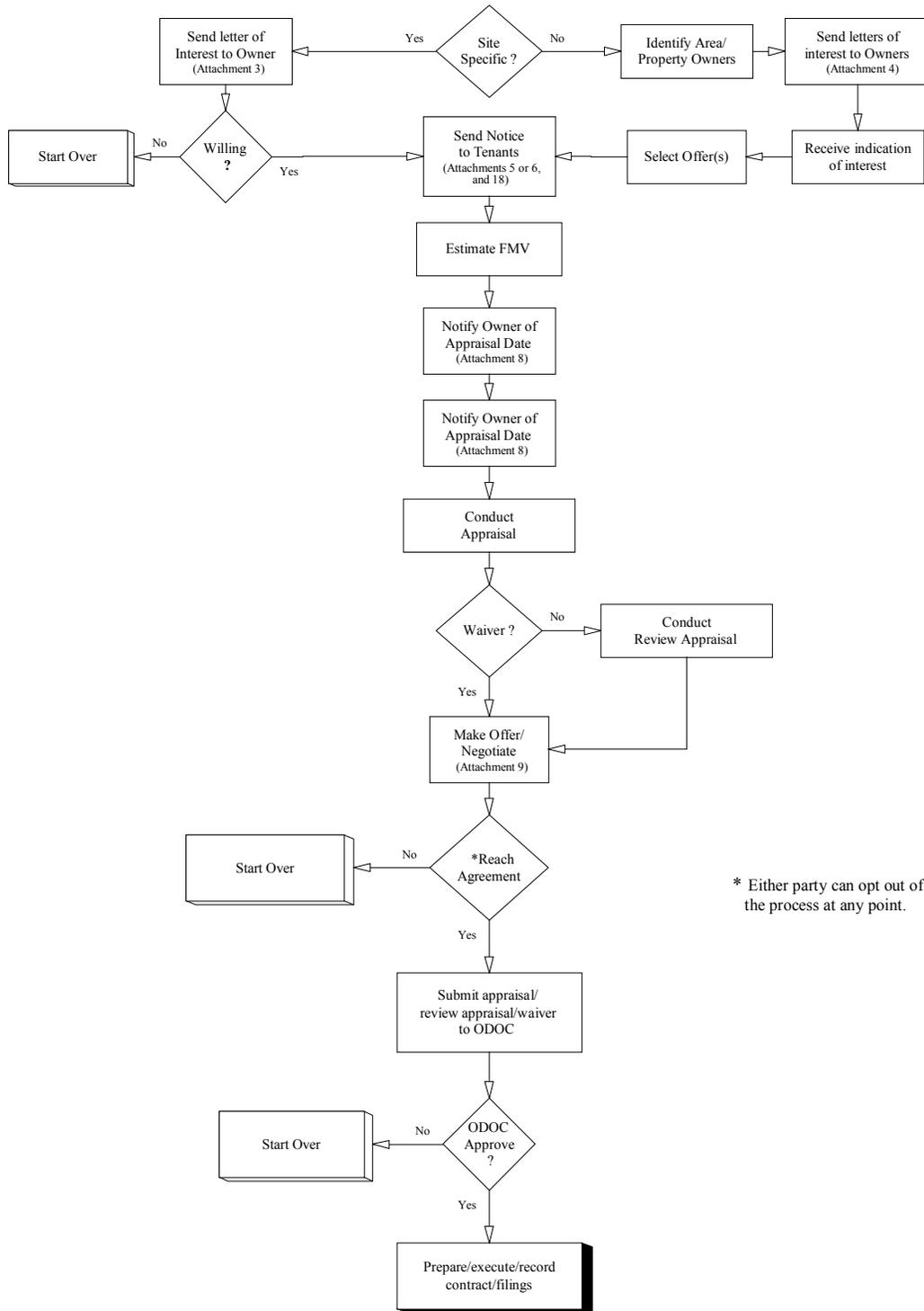
V. SUMMARY

- A. As mentioned at the outset of this Requirement, few issues have more legal or emotional impact than the rights of property owners and tenants. It is crucial that these rights be scrupulously protected and observed when undertaking any public project.
- B. Grant Recipients are strongly encouraged to seek out technical assistance from ODOC at the earliest stages of project implementation. Grant Recipients are also strongly encouraged to read the more detailed guidance referenced in this Requirement if they are undertaking any property acquisition or will displace any persons or households. Finally, the Grant Recipient must take great care to avoid the existence or appearance of coercion.

VI. ATTACHMENTS

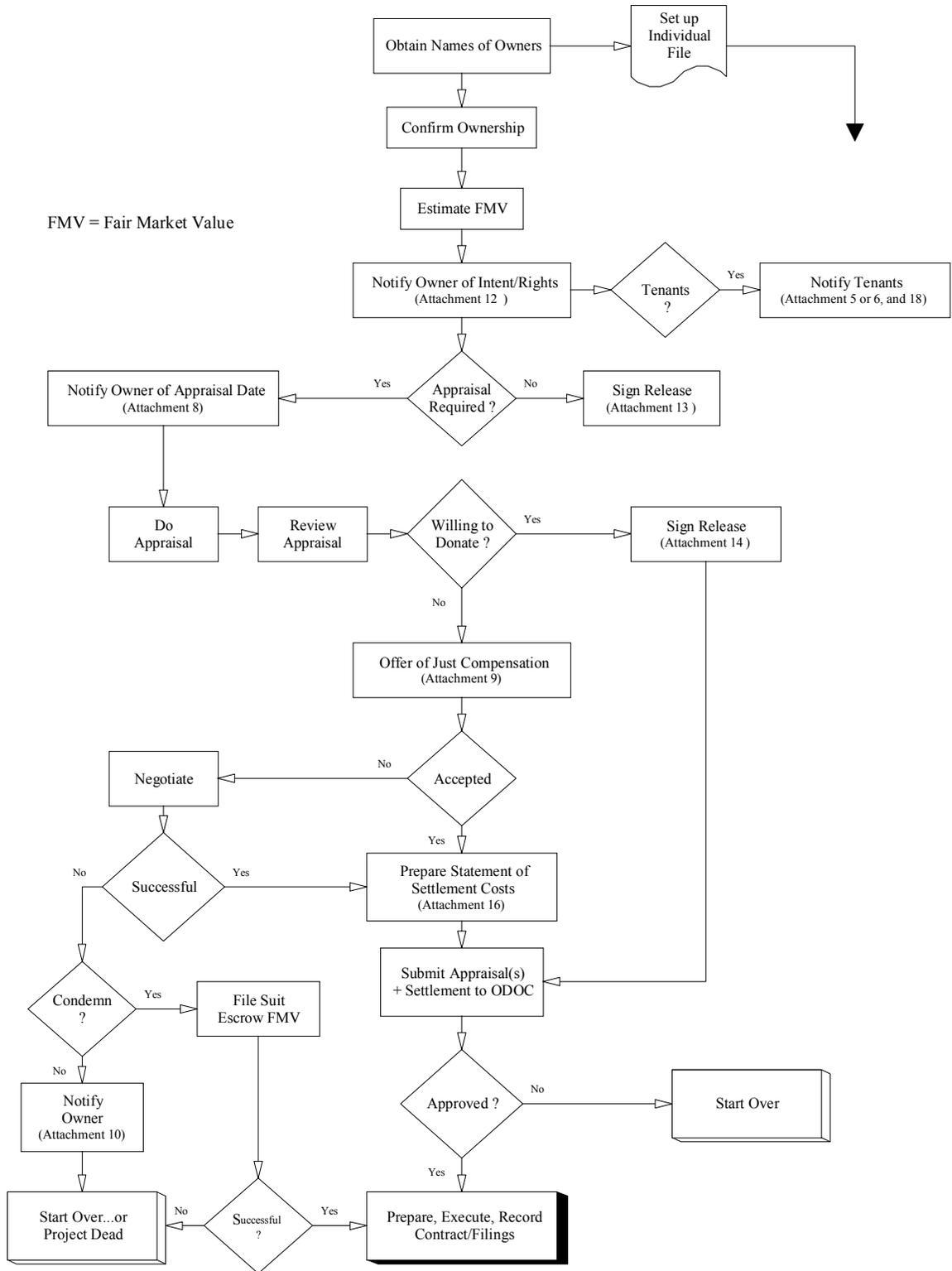
1. Property Acquisition Process, Voluntary Transaction
2. Property Acquisition Process, Non-Voluntary Transaction
3. Sample Voluntary Notice to Specific Owners
4. Sample Voluntary Notice to Several Owners
5. Sample Notice to Tenants Not Displaced
6. Sample Notice to Tenants Who May Be Displaced
7. Sample Letter Notification of Date of Appraisal and Invitation to Accompany
8. Sample Notification of Fair Market Value
9. Sample of Notice of Decision Not to Acquire Property
10. Property Acquisition, Individual Parcel File Requirements
11. Sample Notice of Interest in Acquiring Property, Non-Voluntary Acquisition
12. Sample Waiver of Required Appraisal
13. Sample Agreement to Waive Rights to Full Compensation
14. Sample Statement of the Basis for Determining Just Compensation
15. Sample Statement of Settlement Costs
16. Relocation, Individual Household File Requirements
17. Sample Residential Anti-Displacement and Relocation Assistance Plan
18. Relocation Assistance to Persons Displaced from their Homes (Section 104(d))
19. 49 CFR Part 24-Uniform Relocation Assistance and Real Property Acquisition for Federally-Assisted Program FINAL RULE

**PROPERTY ACQUISITION PROCESS
VOLUNTARY TRANSACTION**



* Either party can opt out of the process at any point.

PROPERTY ACQUISITION PROCESS NON-VOLUNTARY TRANSACTION



[*Grant Recipient Letterhead*]

Date

Address of Property Owner

Dear: *Property Owner Name*

This is to inform you that *Grant Recipient Name* is interested in purchasing the property located at *Street Address, Map, Lot Number or other identification*. The *Grant Recipient Name* has received a Community Development Block Grant from the Oklahoma Department of Commerce for the purpose of *briefly describe project*. Acquisition of the above-referenced property is needed in order for the project to be implemented and its benefits to be enjoyed by the community.

This sale is **voluntary**. If you do not wish to sell, the *Grant Recipient* will **not** acquire the property. The *Grant Recipient* [*does not have the power to acquire your property by condemnation / will not use the power of eminent domain to acquire the property*]. Since the purchase would be a voluntary, arm's-length transaction, you would not be eligible for relocation payments or other relocation assistance available under Federal law. However, tenants are eligible for relocation benefits.

If you are interested in considering the sale of this property to the *Grant Recipient*, an appraisal *and review appraisal* will be conducted to establish the fair market value of the property, which will be the basis for determining the offer to be made for purchasing the property. Please be aware that this letter does not constitute an offer to purchase your property but is intended solely to determine if you have any interest in pursuing such a sale.

Again, please understand that if you do not wish to sell your property, the *Grant Recipient* will take no further action to acquire it. If you are interested in discussing this further, please contact *Name, Address, Phone Number, if different than letterhead*.

Sincerely,

Name
Title

italic type = customize as appropriate.

[/] = select the appropriate option.

SAMPLE
Voluntary Notice to
Specific Owners

[*Grant Recipient Letterhead*]

Date

[*Address of Property Owner*]

Dear *Property Owner Name*:

The *Name of Grant Recipient* has received a Community Development Block Grant from the Oklahoma Department of Commerce for the purpose of *briefly describe project*.

In order to provide these services, we are inviting offers from property owners in *describe geographic area* to sell or donate land. All sales or donations will be on a voluntary basis. The *Grant Recipient* [*does not have the power to acquire property by condemnation / will not use the power of eminent domain to acquire the property*]. If mutually acceptable terms and conditions of such acquisition cannot be reached, the *Grant Recipient* will not take further action to acquire such property. Since the purchase would be a voluntary, arm's-length transaction, you would not be eligible for relocation payments or other relocation assistance otherwise available under Federal law, however, tenants are eligible for relocation benefits.

If you are interested in considering the sale of suitable property to the *Grant Recipient*, an appraisal *and review appraisal* will be conducted to establish the fair market value of the property, which will be the basis for determining the offer to be made for its purchase. Please be aware that this letter does not constitute an offer to purchase your property but is intended solely to determine if you have any interest in pursuing such a sale.

Again, please understand that if you do not wish to sell your property, the *Grant Recipient* will take no further action to acquire it. If you are interested in discussing this further, please contact *Name, Address, Phone Number, if different than letterhead*.

Sincerely,

Name
Title

italic type = customize as appropriate.

[/] = select the appropriate option.

<p>SAMPLE Voluntary Notice to Several Owners</p>

[*Grant Recipient Letterhead*]

Date

[*Address of Tenant*]

Dear *Tenant Name*:

On *date*, *Property Owner* submitted an application to *Grant Recipient Name* for Community Development Block Grant funds to rehabilitate the [*building / residence*] which you occupy at *street address/apartment number*.

This notice is to inform you that, if the requested funding assistance is provided and the building is rehabilitated, you will not be forced to vacate the premises or otherwise be displaced. Neither the property owner nor the [*Grant Recipient*] have any reason to believe that temporary or permanent relocation will be required as a result of the proposed rehabilitation work. You are urged *not to move* anywhere at this time for reasons having to do with the proposed rehabilitation. Should you elect to move for reasons of your own choice, you will not be provided any relocation assistance should it become available.

If the application is approved, you will be able to lease and occupy your present [*residence / apartment, or another suitable, decent, safe and sanitary unit in the same building complex upon completion of the rehabilitation*]. Of course, you must comply with standard lease terms and conditions.

Again, you are urged not to move at this time. You have certain rights to relocation assistance, if relocation is required as a result of the rehabilitation. **By moving prematurely, you waive your rights to such assistance.**

This letter is important and should be retained. If you have any questions concerning this project or your rights, please contact *Name, Title*, at *Address, Telephone Number*.

Sincerely,

Name
Title

italic type = customize as appropriate

[/] = select the appropriate option

SAMPLE
Notice to Tenants
Not Displaced

[*Grant Recipient Letterhead*]

Date

[*Address of Tenant*]

Dear *Tenant Name*:

On *date*, *Property Owner* submitted an application to *Grant Recipient Name* for Community Development Block Grant funds to rehabilitate the [*building / residence*] which you occupy at *street address/apartment number*.

This notice is to inform you that, if the requested funding assistance is provided and the [*building / residence*] is rehabilitated, you may be forced to vacate the premises, either temporarily or permanently. Should this occur, you will be eligible for relocation assistance. This is **not** a notice for you to vacate the premises; you are urged not to move anywhere at this time for reasons having to do with the proposed rehabilitation. Should you elect to move for reasons of your own choice, you will not be provided any relocation assistance. Please contact us before you make any plans to move.

You should continue to pay your rent. Failure to meet your obligations as a tenant may be cause for eviction and loss of any potential relocation assistance. You are also urged not to sign any agreement to purchase or lease a new unit before receiving formal notice of your eligibility for relocation assistance.

If the application is approved and you become eligible for relocation assistance, you will be given advisory services, including referrals to replacement housing, and at least a 90-day advance written notice of the date you will be required to move. You will also receive a payment for your moving and out-of-pocket expenses and may be eligible for financial assistance to help you rent or purchase a replacement house. This assistance is more fully explained in the enclosed brochure, *Relocation Assistance to Tenants Displaced From Their Homes*.

Again, this is not a notice to vacate and does not establish eligibility for relocation payments or other relocation assistance. **By moving prematurely, you may waive your rights to relocation assistance which might otherwise be available to you.**

This letter is important and should be retained. If you have any questions concerning this project or your rights, please contact *Name, Title*, at *Address, Telephone Number*.

Sincerely,

Name

Title

Enclosure

italic type = customize as appropriate

[/] = select the appropriate option



[*Appraiser's Letterhead*]

Date

[*Address of Property Owner*]

Dear *Property Owner Name*:

The firm of *Appraisal Company Name* has been retained by *Grant Recipient Name* to prepare an appraisal of your property located at *Street Address*. The purpose of the appraisal is to determine the fair market value and the just compensation to be offered to you for acquiring rights to the property.

The appraisal of your property will be based on nationally-recognized appraisal standards and techniques to the extent that such principles are consistent with the concepts of values and the rules of evidence of value under the eminent domain provisions of the State of Oklahoma.

I wish to invite you or your agent to accompany me on the inspection of your property. My inspection is scheduled for *Date and Time*. If this is inconvenient, please contact me at *Telephone Number* so a mutually agreeable inspection can be scheduled.

Sincerely,

Appraiser Name
License or Certification Number

SAMPLE

[*Grant Recipient Letterhead*]

Date

[*Address of Property Owner*]

Dear *Name of Property Owner*:

The *Name of Grant Recipient* recently had your real property, located at *Street Address* appraised by *Name of Appraisal Company* on *Date*. The purpose of this appraisal was to establish the fair market value of the property.

* Insert Option A {To be used if this is a voluntary transaction}

This appraisal has been reviewed by a qualified review appraiser and all documentation has been reviewed for its accuracy. The Name of Grant Recipient is prepared to compensate you in the amount of Spell Out Dollar Amount (\$) for the purchase of the above-referenced property. By this action, the Name of Grant Recipient initiates negotiations to acquire this property. As you were advised earlier, if negotiations fail the Name of Grant Recipient will not acquire the property. Attached is a copy of the appraisal report.

The amount offered does not include any partial acquisition for the real property or compensation for damages, if any, to the remaining real property.

* Insert Option B {To be used if this is a non-voluntary transaction}

This appraisal has been reviewed by a qualified review appraiser and all documentation has been reviewed for its accuracy. The Name of Grant Recipient is prepared to compensate you in the amount of Spell Out Dollar Amount (\$) for the purchase of the above-referenced property. By this action, the Name of Grant Recipient initiates negotiations to acquire this property. Attached is a Summary Statement of the Basis for Determination of Just Compensation.

The amount offered does not include any partial acquisition for the real property or compensation for damages, if any, to the remaining real property. Also, this offer does not include any relocation payments either the owner or tenants may be entitled to receive.

We believe this offer is fair and equitable and we urge your favorable consideration and acceptance. If this offer meets with your approval, the *Name of Grant Recipient* will prepare a written sales agreement for your signature.

Sincerely,

Name
Title

Enclosure: Summary Statement of the Basis for Determination of Just Compensation

(*italic type* = customize as appropriate)

SAMPLE

[*Grant Recipient Letterhead*]

Date

[*Address of Property Owner*]

Dear *Name of Property Owner*:

A decision has been made by the *Grant Recipient Name* **not** to acquire the property located at *give location*.

* Insert if this is a non-voluntary transaction.

Upon receipt of this notice, any person moving from the above address will not be eligible for relocation benefits. Please disregard any previous written notice of eligibility for relocation assistance. Since no displacement will occur as a result of Federally-funded actions, there is no basis for providing relocation assistance.

If you have any questions concerning this letter, please feel free to contact the *Grant Recipient Name* at *Telephone Number*.

Sincerely,

Name
Title

Italic type = customize as appropriate

SAMPLE

**PROPERTY ACQUISITION
INDIVIDUAL PARCEL FILE REQUIREMENTS**

The following information on each parcel acquired, as appropriate, must be included in the files:

File	Voluntary	Non-Voluntary
1. Title search/Clearance of Title	√	√
2. Notice of Interest in Acquiring Property	√	
3. Notice of Intent to Acquire Property (plus verification of receipt)		√
4. Notice to Tenants	√	√
5. Notice of Appraisal/Invitation to Accompany Appraiser	√	√
6. Appraisal Report	√	√
7. Documentation supporting waiver of review appraisal	√	
8. Review Appraisal	√	√
9. Estimate of Fair Market Value	√	√
10. Written Offer to Property Owner (plus verification of receipt)	√	√
11. Summary Statement of Basis of Just Compensation		√
12. Statement of Settlement	√	
13. Documentation to Support Waiver of Submission to ODOC	√	√
14. Documentation of Final Offer		√
15. Contract of Sale (plus other legal documentation)	√	√
16. Payment Documentation	√	√
17. Waiver of Appraisal Rights	√	√
18. Waiver of Just Compensation Rights		√
19. Notice of Intent Not to Acquire (plus verification of receipt)	√	√
20. Evidence of Court Deposit	X	√
21. Court Resolution	X	√
22. General Correspondence	√	√
23. ODOC Monitoring Documentation	√	√

√ Applicable

X Not permitted

[*Grant Recipient Letterhead*]

Date

[*Address of Property Owner*]

Dear *Name of Property Owner*:

This is to inform you that the *Name of Grant Recipient* is interested in acquiring [an easement / partial fee interest / fee simple title in your property located at *Street Address or other description*. This property is needed to enable the implementation of *Describe Project*.

You have the right to be compensated for this property *or you may choose to donate the property*. *In either case*, an independent appraisal will be made of the above-referenced property in order to establish its fair market value, unless you elect to waive your rights to an appraisal. An independent appraiser will be hired. You have the right to accompany the appraiser on his/her inspection of the property; a letter inviting you to accompany him/her will be sent by the appraiser at least five days prior to the scheduled visit.

Enclosed for your information is the brochure, "When a Public Agency Acquires Your Property", which gives more details about your rights as a property owner.

This is **not** a notice to vacate the property and does not establish eligibility for relocation payments or other relocation assistance.

If you have any questions about this matter, please feel free to contact *Name* at *Address, Phone Number*.

Sincerely,

Name
Title

Enclosure

Italic type = customize as appropriate

[/] = select appropriate option

SAMPLE

WAIVER OF REQUIRED APPRAISAL

I understand that the *Grant Recipient Name* requires [an easement / partial fee interest / fee simple title interest] in the following property which I own for the purpose of implementing *Describe Project*:

[*Insert Legal Description*]

I further understand that the *Grant Recipient Name* is required, under the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, to provide an independent appraisal and review appraisal in order to establish the fair market value of such property and that such valuation forms the basis for just compensation to which I am entitled.

Having been fully informed of my rights to have appraisals performed for the above-referenced property, I do hereby waive my rights to have such appraisals conducted and do hereby release the *Grant Recipient Name* from its obligations to have such appraisal conducted.

(Signature of Owner)

(Date)

(Signature of Witness)

(Date)

(Signature of Acquiring Official)

(Date)

Italic type = customize as appropriate

[/] = select appropriate option

SAMPLE

AGREEMENT TO WAIVE RIGHTS TO FULL COMPENSATION

I understand that the *Grant Recipient Name* requires [an easement / partial fee interest / fee simple title interest] in the following property which I own for the purpose of implementing *Describe Project*:

[*Insert Legal Description*]

I further understand that the *Grant Recipient Name* is required, under the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, to offer to purchase the above-referenced rights in such property for an amount not less than the fair market value as established by an independent appraisal and review appraisal of the property. I certify, by my signature below, the *Grant Recipient Name* has, in fact, advised me fully of my rights and offered to purchase the property as stipulated above.

Having been informed of my right to just compensation for any interest in my real property which is acquired *Grant Recipient Name*, I freely and without duress agree to give and convey to the *Grant Recipient Name* the interest described above and to decline any right to compensation or payment of the fair market value for the aforementioned property or interest therein and do hereby release the *Grant Recipient Name* from said obligations.

(Signature of Owner)

(Date)

(Signature of Witness)

(Date)

(Signature of Acquiring Official)

(Date)

Italic type = customize as appropriate

[/] = select appropriate option

SAMPLE

STATEMENT OF THE BASIS FOR DETERMINING JUST COMPENSATION

❑ Description and Location of Property to be Acquired

Indicate the street address, lot and block number or other location description of the property to be acquired.

❑ Interest to be Acquired

Indicate whether the acquisition is an easement, partial fee or fee simple title.

❑ Description of Buildings, Structures and Other Improvements

Identify structures which are considered to be part of the real property for which compensation is made. Include building equipment and trade fixtures, if appropriate.

❑ Description of Separately Held Ownership Interest

Identify, if appropriate, any tenant-owned improvements, indicating that such interest is not covered by the offer.

❑ Amount Offered

Indicate the total compensation to be offered. If this is a partial acquisition, any payments for damages should be listed separately from the compensation paid for the property rights.

Approved for the *Grant Recipient Name*

(Signature of Acquiring Official)

(Date)

SAMPLE

STATEMENT OF SETTLEMENT COSTS

Name of Property Owner:

Identification of Acquired Property:

Expenses Incidental to Transfer of Title	Paid by Grant Recipient	Paid by Owner
1. Recording Fees		
2. Transfer Taxes		
3. State Tax Stamps		
4. Survey and Legal Description		
5. Pre-Payment Penalties		
6. Pro-rata Portion of Prepaid Taxes and Public Service Charges		
7. Other (Describe)		
TOTALS		

This Statement of Costs is certified as true and correct:

Signed: _____
 (Closing Attorney)

 (Date)

SAMPLE

**RELOCATION
INDIVIDUAL HOUSEHOLD FILE REQUIREMENTS**

The following information must be included in the General Relocation File:

1. Displacement Policy
2. Demographic Profile of Tenants
3. General Correspondence
4. Tenant Occupancy Form
5. ODOC Monitoring Documentation

The following information on each person or household that is displaced as a result of project activities must be included in the files:

1. Copies of Notice (plus verification of receipt)
2. Income Data of Tenant or Business
3. Description of Relocation Payment Requirements
4. Documentation of Rent Determination
5. Temporary Relocation Documentation
6. Inspection of New Dwelling
7. Displacement Notice (plus verification of receipt)
8. Record of Advisory Services
9. 90 Day Notice
10. 30 Day Notice
11. New Dwelling Inspection Receipts
12. Payment of Claims
13. Last Resort Housing
14. Inspection
15. Appeals
16. General Correspondence
17. Replacement Housing Records

**RESIDENTIAL ANTI-DISPLACEMENT
and
RELOCATION ASSISTANCE PLAN**

The _____ *[City / County]* _____ of _____ will undertake public facility improvements funded through the Community Development Block Grant Program. No demolition or conversion of low- and/or moderate-income dwelling units is anticipated by the _____ *[City / County]* _____ of _____ in conjunction with the activities assisted with these funds. Under Section 104(d) of the Housing and Community Development Act of 1974, as amended, if such demolition or conversion occurs, before obligating or expending funds that will directly result in such demolition or conversion, the _____ *[City / County]* _____ of _____ will make public and submit to the Oklahoma Department of Commerce the following information in writing:

1. A description of the proposed assisted activity;
2. The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as low-and moderate-income dwelling units as a direct result of the assisted activity;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. The location on a map and number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;
5. The source of funding and a time schedule for the provision of replacement dwelling units;
6. The basis for concluding that each replacement dwelling unit will remain a low- and moderate-income dwelling for at least ten (10) years from the date of initial occupancy; and
7. Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units is consistent with the housing needs of low- and moderate-income households in the jurisdiction.

If displacement of low- and moderate-income households occurs in conjunction with the public facilities improvements funded with CDBG funds, the _____ *[City / County]* _____ will provide relocation assistance as described in 570.488(c)(2) to each low- and moderate-income-household displaced by the demolition of housing or by the conversion of a low- and moderate-income dwelling to another use as a direct result of assisted activities.

SAMPLE

**RELOCATION ASSISTANCE TO PERSONS DISPLACED FROM THEIR HOMES
SECTION 104(d)**

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

www.hud.gov/relocation

Introduction

This booklet describes the relocation payments and other relocation assistance provided under section 104(d) of the Housing and Community Development Act of 1974 (section 104(d)) to eligible persons displaced from their homes. Persons eligible for assistance have the option of declining the section 104(d) assistance and receiving assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), if they decide that it is in their best interest.

NOTE: Aliens not lawfully present in the United States are not eligible for URA relocation assistance, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent or child. A person seeking URA relocation assistance must certify that the person is a United States citizen or national, or an alien lawfully present in the United States. (Section 104(d) assistance is not subject to this requirement.)

Eligibility

To be eligible for relocation assistance under section 104(d), you must be a lower- income person (family or individual) and must move as a direct result of the “conversion or demolition of your dwelling unit for a project in which Federal Community Development Block Grant (CDBG), Section 108 Loan Guarantee, or HOME Investment Partnerships funds are used.

“Lower-income” means that your income does not exceed 80% of the median income for the area as established by the U.S. Department of Housing and Urban Development (HUD).

Generally, “conversion” means that before the project, your unit had a “market rent” at or below the HUD Fair Market Rent (FMR) standard, and, after the project, the market rent exceeds the FMR, or the unit was converted to a nonresidential use. HUD determines the FMRs for use in its programs. The levels vary by metropolitan area and by the size of the unit.

The Agency (identified at the back of this booklet) will determine whether you qualify as a lower-income person and if your home will be demolished or “converted.” If you do not qualify for section 104(d) assistance, you may be eligible for relocation assistance under the URA.

Caution. If you are notified that you will be displaced, it is important that you do not move before you learn what you must do to receive the relocation payments and other assistance to which you are entitled.

This booklet may not answer all of your questions. If you have more questions about your relocation, contact your Agency representative. (See name/telephone number in the back of this booklet.) Ask your questions before you move. Afterwards, it may be too late.

Summary of Relocation Assistance

As an eligible tenant (or homeowner) displaced from your home, you will be offered the following advisory and financial assistance:

Advisory Services (same under section 104(d) and URA). This includes referrals to comparable and suitable replacement homes, the inspection of replacement housing to ensure that it meets established standards, help in preparing claim forms for relocation payments, counseling and other assistance to minimize the impact of the move.

Previous Edition Obsolete – HUD 1365-CPD (3/2005)

Payment for Moving Expenses (same under section 104(d) and URA). You may choose either a:

- Payment for Your Actual Reasonable Moving and Related Expenses, or
- Moving Expense and Dislocation Allowance, or
- a combination of both, based on circumstances.

Security Deposit (available under section 104(d) only, when required).

Interim Living Costs, when required.

Replacement Housing Assistance. To enable you to rent, or, if you prefer, to buy a replacement home, you may choose either:

- **Rental Assistance**, or
- **Purchase Assistance.**

If you disagree with the Agency's decision as to the relocation assistance for which you are eligible, you may appeal that decision.

Basic Questions and Answers

How Will I Know I Am Eligible For Relocation Assistance? Any one of several actions can trigger eligibility for relocation assistance. Promptly after eligibility is triggered, the Agency must provide you a written "Notice of Eligibility for Relocation Assistance." To be certain of your eligibility, you should not move before receiving that notice. If you do, you may not receive relocation assistance.

How Will The Agency Know How Much Help I Need? You will be contacted at an early date and personally interviewed by a representative of the Agency to determine your relocation needs and preferences for replacement housing and advisory services. The interviewer will ask certain questions about you and other members of your household, including questions about your income. It is to your advantage to provide the information so that the Agency can assist you in moving with a minimum of hardship. The information you give will be kept in confidence.

How Soon Will I Have To Move? If possible, a mutually agreeable date for the move will be worked out. You will be given enough time to make plans for moving. Unless there is a health or safety emergency, you will not be required to move without at least 90 days advance written notice of (1) at least one "comparable replacement home" that is available to you and (2) the earliest date by which you must move.

What Is A Comparable Replacement Home? A comparable replacement home is:

- Decent, safe, and sanitary.
- Functionally equivalent to your present home. It may not be identical, but it will be equal to or better than your present home.
- Actually available for you to rent.
- Within your ability to pay as described in this booklet.
- Reasonably accessible to your place of employment.
- Generally as well located with respect to public and commercial facilities, such as schools and shopping, as your present home.
- Not subject to unreasonable adverse environmental conditions.
- Available to all persons regardless of race, color, religion, sex, or national origin.

What Is Decent, Safe, And Sanitary Housing? Decent, safe, and sanitary housing is housing that:

- Meets applicable housing and occupancy requirements.
- Is structurally sound, weathertight, and in good repair.
- Contains a safe, adequate electrical wiring system.
- Has adequate living space for the occupants.

- Has a kitchen with a sink, hot and cold running water, and connections for a stove and refrigerator (if you were displaced from a housekeeping unit).
- Has a separate, complete bathroom with hot and cold running water.
- Has heating as required by climatic conditions.
- Has an unobstructed exit to safe, open space at ground level.
- Meets standards protecting occupants from lead-based paint hazards.
- If you are a person with a physical disability, is free of any barriers which would preclude your reasonable use of the unit.

Will The Agency Help Me Find A Replacement Home?

Yes. You will be provided with referrals to housing that has been inspected to ensure that it meets the established standards; If possible, you will be referred to at least three comparable replacement homes. All comparable replacement homes must be available to you, and, with the rental assistance for which you may qualify, they must be affordable to you. The maximum financial assistance for which you may qualify will be based on the cost of the most representative comparable replacement home. Promptly after you become eligible for relocation assistance, the Agency will inform you of such unit and the maximum payment available.

Once the Agency representative has a clear understanding of your needs and preferences, he or she will work with you to assure that you are given the best possible choice of housing. You will be offered appropriate transportation to inspect these units.

If you would like to move to government-owned housing or obtain a Housing Choice Voucher (HCV), let the Agency representative know of your interest. Generally, an eligible displaced person receives preference for such long term housing assistance. You will be given assistance in completing any required application forms.

What If I Find My Own Replacement Housing?

You have every right to find your own replacement housing. However, before you rent or buy, ask the Agency to inspect the unit to make sure that it is decent, safe, and sanitary. If the housing unit is not decent, safe, and sanitary, you will not receive a replacement housing payment.

What If I Encounter A Problem In Obtaining Housing Of My Choice?

If you encounter a problem in buying or renting housing of your choice, notify the Agency immediately. The Agency will look into the matter and try to resolve it. You will receive this help whether you were referred to the housing unit or found it yourself.

If you are unable to buy or rent a housing unit because of discriminatory practices on the part of a real estate broker, rental agent, lender, or a property owner, the Agency will help you file a formal housing discrimination complaint with the U.S. Department of Housing and Urban Development or the appropriate State or local fair housing agency.

What Other Services Will I Receive?

In addition to help in obtaining a comparable replacement home, other assistance, as necessary, will be provided in order to minimize the impact of your move.

This assistance *may* include referral to appropriate public and private agencies that provide services concerning housing financing, employment, health, welfare, or legal assistance. The range of services depends on the needs of the person being displaced. You should ask the Agency representative to tell you about the specific services that will be available to help you and your family.

Payment for Moving Expenses

To pay the cost of moving, you may choose either a payment for actual reasonable moving and related expenses, or a moving expense and dislocation allowance, or a combination of both, based on circumstances.

What Is A Payment For Actual Reasonable Moving And Related Expenses?

If you choose a Payment For Actual Reasonable Moving And Related Expenses, you may include in your claim the reasonable and necessary costs for:

- Transportation for you and your family.
- Packing, moving and unpacking your household goods.
- Disconnecting and reconnecting household appliances and other personal property (examples: telephone and cable TV)
- Storage of household goods, as may be necessary.
Insurance for the replacement value of your property during the move and necessary storage.
- The replacement value of property lost, stolen or damaged in the move (but not through your neglect) if insurance is not reasonably available.

The Agency will explain all eligible moving costs, as well as those which are not eligible. You must be able to account for any costs that you incur, so keep all your receipts. Select your mover with care. The Agency can help you select a reliable and reputable mover.

You may elect to pay your moving costs yourself and be repaid by the Agency, or, if you prefer, the Agency will pay the mover directly. In either case, let the Agency know before you move.

What Is A Moving Expense And Dislocation Allowance?

If you choose a Moving Expense and Dislocation Allowance, you will receive an allowance which is normally based on the number of rooms of furniture you will be moving, as shown on a schedule. The Agency has a copy of the schedule and will help you decide whether choosing this allowance is in your best interest.

If you do not have a large amount of personal property to move, this payment should be more advantageous. No special documentation is required to support your claim. You need only move your personal property and complete the appropriate claim form in order to receive your payment.

Payment for Rental Assistance

You may be eligible to receive rental assistance. If so, you may choose assistance under section 104(d) or under the URA. For most lower-income tenants, the amount of assistance provided under section 104(d) is greater.

Section 104(d) Rental Assistance.

If you are eligible, you will receive assistance based on estimated needs for a period of 60 months. The Agency may offer you that assistance in cash or under the HCV Program. The Agency will tell you which option it is providing to you.

- Cash Rental Assistance. A household's "need" for rental assistance is computed by subtracting the highest of the following calculations from the rent and estimated average monthly utility costs for your new home (or a comparable replacement home, if that cost is lower):
 1. 30 percent of the household's monthly adjusted income,
 2. 10 percent of the household's monthly gross income, or
 3. The welfare rent allowance (where designated).

That monthly need, if any, is multiplied by 60, to determine the total amount that you will receive. This amount will be paid directly to you in monthly installments or other periodic payments.

Example: Let's say that your family's adjusted monthly income is \$600, and the monthly rent and estimated average utility costs for the comparable replacement home to which you move are \$350. In this case, your monthly need would be \$10,200 of rental assistance.

Housing Choice Voucher (HCV) (section 104(d)). You may be offered a HCV. If so, you will also be referred to comparable replacement homes where the owner will accept the voucher. If you rent an acceptable unit where your contribution to the rent is less than the "payment standard," you keep the savings. (If the rent and estimated average monthly utility costs for both the comparable replacement home and the unit to which you relocate exceed the voucher "payment standard," you will qualify for cash assistance to cover the gap for 60 months.)

Advantages of HCV Assistance. The HCV assistance may continue for as long as you have a need. Unlike cash assistance, HCV assistance is recomputed each year to reflect changes in your income, rent or the cost of utilities. While cash assistance will terminate at the end of 60 months, HCV assistance may continue to be available after the 60-month period ends if you still qualify as a lower-income person.

URA Rental Assistance.

URA rental assistance is computed by subtracting the “base monthly rent” for your present home from the rent and average monthly cost of utilities for your new home (or a comparable replacement home, if that cost is lower). That monthly need, if any, is multiplied by 42, to determine the total amount that you will receive. This amount will be paid directly to you in monthly installments or other periodic payments. Generally, the base monthly rent for your present home is the lesser of: (1) the monthly rent and average monthly cost for utilities, or (2) thirty (30) percent of your income (if you are low-income based on HUD income limits).

Examples: Let’s say that the monthly rent and average cost for utilities for your present home are \$250; the monthly rent and estimated average utility costs for a comparable replacement home are \$350; and your monthly gross income is \$700. In this case, your “base monthly rent” would be \$210 because you are low-income and that amount (30 percent of your income) is less than the monthly cost of rent and utilities at your present home (\$250).

- If you rent a replacement home for \$360 per month, including estimated average monthly utility charges, you will receive \$5,880. That amount is 42 times \$140 (the difference between the “base monthly rent” for your present home (\$210) and the cost for a comparable replacement home (\$350)).
- If you rent a replacement home for \$310, including estimated average monthly utility charges, you will receive \$4,200. That amount is 42 times \$100 (the difference between the “base monthly rent” for your present home (\$210) and the actual cost of your new home (\$310)).

Purchase Assistance

If you buy, rather than rent, a replacement home, you may be eligible for assistance to make a down payment. The amount depends on the type of housing that you buy. Section 104(d) purchase assistance is limited to mutual housing and cooperative housing. If you wish to purchase a house that is not mutual or cooperative housing, your purchase assistance would be provided under the URA.

Section 104(d) Purchase Assistance.

If you buy a replacement home which is mutual or cooperative housing, you may be eligible for assistance based on the present value of the monthly payments you would receive if you rented a comparable replacement home for 60 months. Remember, the monthly payment is generally determined by subtracting 30 percent of your adjusted income from the monthly rent and estimated average monthly utility costs for a comparable replacement home.

Example: Assuming the information in the prior section 104(d) example and a 4 percent return on passbook savings, the purchase assistance would be \$9,231. Remember, your net monthly contribution is \$180, and the monthly rent and estimated average monthly cost of utilities for a comparable replacement home total \$350. The monthly difference is \$170. The present value of 60 monthly payments of \$170, discounted at 4 percent, is \$9,231. The full amount of the payment must be applied to the purchase of the mutual or cooperative housing that you buy.

URA Purchase Assistance for Renters.

URA assistance to make a down payment is equal to the amount you would receive if you had rented a comparable replacement home (42 times the amount obtained by subtracting the “base monthly rent” for your present home from the monthly rent and estimated average monthly cost of utilities for a comparable replacement home). Remember, URA assistance is not limited to mutual housing or cooperatives.

Example: Assuming the information in the prior URA examples, the assistance for a down payment would be \$5,880. That amount is 42 times \$140 (the difference between the “base monthly rent” for your present home (\$210) and the monthly rent and estimated average monthly utility costs for a comparable replacement home (\$350)). The full amount of the payment must be applied to the purchase of your new home.

MORE QUESTIONS AND ANSWERS

Must I File A Claim To Obtain A Relocation Payment?

Yes, You must file a claim for each relocation payment. The Agency will, however, provide you with the required claim form, help you to complete it, and explain the type of documentation, if any, that you must submit in order to receive the payment

If you must pay any relocation expenses before you move (for example, a security deposit when you sign a lease for your new home), discuss your financial needs with the Agency. You should be able to obtain an advance payment to meet these costs. An advance payment may be placed in “escrow” or paid directly to a contractor to ensure that the move will be completed on a timely basis.

You must file your claim within 18 months after the date you move. However, it is to your advantage to file as soon as possible after you move. The sooner you submit your claim, the sooner it can be processed and paid. Be careful not to confuse this 18-month filing period with the requirement that you must rent (or buy) and actually occupy a decent, safe and sanitary replacement home within 12 months of the move. (If you are unable to occupy the replacement home within 12 months or file your claim within 18 months after the move, ask the Agency to extend this period.)

You will be paid promptly after you file an acceptable claim. If there is any question regarding your right to a relocation payment or the amount of the payment, you will be notified, in writing, of the problem and the action you may take to resolve the matter.

Will I Have To Pay Rent To The Agency Before I Move?

If the Agency acquires the property in which you live, you may be required to pay a fair rent to the Agency for the period between the acquisition of the property and the date that you move. Such rent will not exceed the market rent for comparable properties in the area.

Do I Have To Pay Federal Income Taxes On My Relocation Payments?

No. You need not report relocation payments as part of your gross income for Federal tax purposes. For information on State or local income taxes, you should check with the State or local income tax office in your area or with your personal tax advisor.

If I Don't Receive The Required Assistance, Can I Appeal?

If you disagree with the Agency's decision as to your right to relocation assistance or the amount of a payment, or the adequacy of the housing to which you have been referred, you may appeal the decision to the Agency.

The Agency will inform you of its appeal procedures. At a minimum, you will have 60 days to file your appeal with the Agency after your receive written notification of the Agency's determination on your claim. Your appeal must be in writing. However, if you need help, the Agency will assist you in preparing your appeal. If you are dissatisfied with the Agency's determination on your appeal, you may request administrative review of that decision (by HUD or the State). You can expect a fair decision on any appeal. However, if you are not satisfied with the final administrative decision on your appeal, you may seek review of the matter by the courts.

I Have More Questions. Who Will Answer Them?

If you have more questions after reading this booklet, contact the Agency and discuss your concerns.

Agency:
Address:
Office Hours:
Telephone No.:
Person to Contact:

WHEN A PUBLIC AGENCY ACQUIRES YOUR PROPERTY

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

www.hud.gov/relocation

Introduction

This booklet describes important features of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and provides general information about public acquisition of real property (real estate) that should be useful to you.

Most acquisitions of real property by a public agency for a Federal project or a project in which Federal funds are used are covered by the URA. If you are notified that your property will be acquired for such a project, it is important that you learn your rights under this important law.

This booklet may not answer all of your questions. If you have more questions about the acquisition of your property, contact the Agency responsible for the project. (Check the back of this booklet for the name of the person to contact at the Agency.) Ask your questions before you sell your property. Afterwards, it may be too late.

General Questions

What Right Has Any Public Agency To Acquire My Property?

The Federal Government and every State government have certain powers which are necessary for them to operate effectively. For example, they have the power to levy taxes and the power to maintain order. Another government power is the power to acquire private property for public purposes. This is known as the power of eminent domain.

The rights of each of us are protected, however, by the Fifth and Fourteenth Amendments of the U.S. Constitution and by State constitutions and eminent domain laws which guarantee that if a public agency takes private property it must pay “just compensation” to the owner. The URA provides additional protections, as explained in this booklet.

Who Made The Decision To Buy My Property?

The decision to acquire a property for a public project usually involves many persons and many determinations. The final determination to proceed with the project is made only after a thorough review which may include public hearings to obtain the views of interested citizens.

If you have any questions about the project or the selection of your property for acquisition, you should ask a representative of the Agency which is responsible for the project.

How Will The Agency Determine How Much To Offer Me For My Property?

Before making you an offer, the Agency will obtain at least one appraisal of your property by a competent real property appraiser who is familiar with local property values. The appraiser will inspect your property and prepare a report that includes his or her professional opinion of its current fair market value. After the appraiser has completed his work, a review appraiser will examine the appraisal report to assure that the estimate is fair and the work conforms with professional appraisal standards.

The Agency must offer you “just compensation” for your property. This amount cannot be less than the appraised fair market value of the property. “Just compensation” for your property does not take into account your relocation needs. If you are eligible for relocation assistance, it will be additional.

Previous Edition Obsolete HUD-1041-CPD (3/2005)

What Is Fair Market Value?

Fair market value is sometimes defined as that amount of money which would probably be paid for a property in a sale between a willing seller, who does not have to sell, and a willing buyer, who does not have to buy. In some areas a different term or definition may be used.

The fair market value of a property is generally considered to be “just compensation.” Fair market value does not take into account intangible elements such as sentimental value, good will, business profits, or any special value that your property may have for you or for the Agency.

How Does An Appraiser Determine The Fair Market Value Of My Property?

Each parcel of real property is different and therefore no single formula can be devised to appraise all properties. Among the factors an appraiser typically considers in estimating the value of real property are:

- How it compares with similar properties in the area that have been sold recently.
- How much rental income it could produce.
- How much it would cost to reproduce the buildings and other structures, less any depreciation.

Will I Have A Chance To Talk To The Appraiser?

Yes. You will be contacted and given the opportunity to accompany the appraiser on his or her inspection of your property. You may then inform the appraiser of any special features which you believe may add to the value of your property. It is in your best interest to provide the appraiser with all the useful information you can in order to insure that nothing of allowable value will be overlooked. If you are unable to meet with the appraiser, you may wish to have a person who is familiar with your property represent you.

How Soon Will I Receive A Written Purchase Offer?

Generally, this will depend on the amount of work required to appraise your property. In the case of a typical single-family house, it is usually possible to make a written purchase offer within 45 to 60 days of the date an appraiser is selected to appraise the property.

Promptly after the appraisal has been reviewed (and any necessary corrections obtained), the Agency will determine just compensation and give you a written purchase offer in that amount along with a “summary statement,” explaining the basis for the offer. No negotiations are to take place before you receive the written purchase offer and summary statement.

What Is In The Summary Statement Of The Basis For The Offer Of Just Compensation? The summary statement of the basis for the offer of just compensation will include:

- An accurate description of the property and the interest in the property to be acquired.
- A statement of the amount offered as just compensation. (If only part of the property is to be acquired, the compensation for the part to be acquired and the compensation for damages, if any, to the remaining part will be separately stated.)
- A list of the buildings and other improvements covered by the offer. (If there is a separately held interest in the property not owned by you and not covered by the offer (e.g., a tenant-owned improvement), it will be so identified.)

Must I Accept The Agency’s Offer?

No, You are entitled to present your evidence as to the amount you believe is the fair market value of your property and to make suggestions for changing the terms and conditions of the offer. The Agency will consider your evidence and suggestions. When fully justified by the available evidence of value, the offer price will be increased.

May Someone Represent Me During Negotiations?

Yes. If you would like an attorney or anyone else to represent you during negotiations, please inform the Agency. However, the URA does not require the Agency to pay the costs of such representation.

If I Reach Agreement With The Agency, How Soon Will I Be Paid?

If you reach a satisfactory agreement to sell your property and your ownership (title to the property) is clear, payment will be made at a mutually acceptable time. Generally, this should be possible within 30 to 60 days after you sign a purchase contract. If the title evidence obtained by the Agency indicates that further action is necessary to show that your ownership is clear, you may be able to hasten the payment by helping the Agency obtain the necessary proof. (Title evidence is basically a legal record of the ownership of the property. It identifies the owners of record and lists the restrictive deed covenants and recorded mortgages, liens, and other instruments affecting your ownership of the property.)

What Happens If I Don't Agree To The Agency's Purchase Offer?

If you are unable to reach an agreement through negotiations, the Agency may file a suit in court to acquire your property through an eminent domain proceeding. Eminent domain proceedings are often called condemnations. If your property is to be acquired by condemnation, the Agency will file the condemnation suit without unreasonable delay.

An Agency may also decide not to buy your property, if it cannot reach agreement on a price, and find another property to buy instead.

What Happens After The Agency Condemns My Property?

You will be notified of the action. Condemnation procedures vary, and the Agency will explain the procedures which apply in your case.

Generally, when an Agency files a condemnation suit, it must deposit with the court (or in an escrow account) an amount not less than its appraisal of the fair market value of the property. You should be able to withdraw this amount, less any amounts necessary to pay off any mortgage or other liens on the property and to resolve any special ownership problems. Withdrawal of your share of the money will not affect your right to seek additional compensation for your property.

During the condemnation proceeding, you will be provided an opportunity to introduce your evidence as to the value of your property. Of course, the Agency will have the same right. After hearing the evidence of all parties, the court will determine the amount of just compensation. If that amount exceeds the amount deposited by the Agency, you will be paid the difference, plus any interest that may be provided by law.

To help you in presenting your case in a condemnation proceeding, you may wish to employ an attorney and an appraiser. However, in most cases the costs of these professional services and other costs which an owner incurs in presenting his or her case to the court must be paid by the owner.

What Can I Do If I Am Not Satisfied With The Court's Determination?

If you are not satisfied with the court judgment, you may file an appeal with the appropriate appellate court for the area in which your property is located. If you are considering an appeal, you should check on the applicable time limit for filing the appeal and consult with your attorney on whether you have a basis for the appeal. The Agency may also file an appeal if it believes the amount of the judgment is too high.

Will I Have To Pay Any Closing Costs?

You will be responsible for the payment of the balance on any mortgage and other liens on your property. Also, if your ownership is not clear, you may have to pay the cost of clearing it. But the Agency is responsible for all reasonable and necessary costs for:

- Typical legal and other services required to complete the sale, recording fees, revenue stamps, transfer taxes and any similar expenses which are incidental to transferring ownership to the Agency.
- Penalty costs and other charges related to prepayment of any recorded mortgage on the property that was entered into in good faith.
- Real property taxes covering the period beginning on the date the Agency acquires your property.

Whenever possible, the Agency will make arrangements to pay these costs directly, If you must incur any of these expenses yourself, you will be repaid--usually at the time of closing. If you later discover other costs for which you should be repaid, you should request repayment from the Agency immediately. The Agency will assist you in filing a claim. Finally, if you believe that you were not properly repaid, you may appeal the decision to the Agency.

May I Keep Any Of The Buildings Or Other Improvements On My Property?

Very often, many or all of the improvements on the property are not required by the Agency. This might include such items as a fireplace mantel, your favorite shrubbery, or even an entire house. If you wish to keep any improvements, please let the Agency know as soon as possible.

If you do arrange to keep any improvement, the Agency will deduct only its salvage value from the purchase price you would otherwise receive. (The salvage value of an item is its probable selling price if offered for sale on the condition that the buyer will remove it at his or her own expense.) Of course, if you arrange to keep any real property improvement, you will not be eligible to receive a relocation payment for the cost of moving it to a new location.

Can The Agency Take Only A Part Of My Property?

Yes. But if the purchase of only a part of your property reduces the value of the remaining part(s), you will be paid for the loss in value. Also, if any remaining part would have little or no utility or value to you, the Agency will offer to buy that remaining part from you.

Occasionally, a public project will increase the value of the part which is not acquired by the Agency. Under some eminent domain laws, the amount of such increase in value is deducted from the purchase payment the owner would otherwise receive.

Will I Have To Pay Rent To The Agency After My Property Is Acquired?

If you remain on the property after the acquisition, you may be required to pay a fair rent to the Agency. Such rent will not exceed that charged for the use of comparable properties in the area.

How Soon Must I Move?

If possible, a mutually agreeable date for the move will be worked out. Unless there is an urgent need for your property (e.g., your occupancy would present a health or safety emergency), you will not be required to move without at least 90 days advance written notice.

If you reach a voluntary agreement to sell your property, you will not be required to move before you receive the agreed purchase price. If the property is acquired by condemnation, you cannot be required to move before the estimated fair market value of the property has been deposited with the court so that you can withdraw your share.

If you are being displaced from your home, you will not be required to move before a comparable replacement home is available to you.

Will I Receive Relocation Assistance?

Title II of the URA requires that certain relocation payments and other assistance must be provided to families, individuals, businesses, farms, and nonprofit organizations when they are displaced or their personal property must be moved as a result of a project that is covered by the URA.

The Agency will furnish you a full explanation of any relocation assistance to which you may be entitled. If you have any questions about such assistance, please contact the Agency. In order for the Agency to fulfill its relocation obligations to you, you must keep the Agency informed of your plans.

My Property Is Worth More Now, Must I Pay Capital Gains Tax On The Increase?

Internal Revenue Service (IRS) Publication 544 explains how the Federal income tax would apply to a gain or loss resulting from the sale or condemnation of real property, or its sale under the threat of condemnation, for public purposes. If you have any questions about the IRS rules, you should discuss your particular circumstances with your personal tax advisor or your local IRS office.

I'm A Veteran, How About My VA Loan?

After your VA home mortgage loan has been repaid, you will be permitted to obtain another VA loan to purchase another property. Check on such arrangements with your nearest Veterans Administration Office.

Is It Possible To Donate Property?

Yes. You may donate your property or sell it to the Agency for less than its fair market value. The Agency must obtain an appraisal of the property and offer just compensation for it, unless you release the Agency from these obligations.

Additional Information

If you have any questions after reading this booklet, contact the Agency and discuss your concerns with the Agency representative.

Agency:

Address:

Office Hours:

Telephone Number:

Person to Contact

RELOCATION ASSISTANCE TO TENANTS DISPLACED FROM THEIR HOMES

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

www.hud.gov/relocation

Introduction

This booklet describes the relocation payments and other relocation assistance provided under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) to tenants displaced from their homes. This includes any family or *individual* that must move as a direct result of rehabilitation, demolition or acquisition for a project in which Federal funds are used.

If you are notified that you will be displaced, it is important that you do not move before you learn what you must do to receive the relocation payments and other assistance to which you are entitled.

Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. ALL persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.

This booklet may not answer all of your questions. If you have more questions about your relocation, contact the Agency responsible for the project. (Check the back of this booklet for the name of the person to contact at the Agency.) Ask your questions before you move. Afterwards, it may be too late.

Summary of Relocation Assistance

As an eligible tenant displaced from your home, you will be offered the following advisory and financial assistance:

- **Advisory Services.** This includes referrals to comparable and suitable replacement homes, the inspection of replacement housing to ensure that it meets established standards, help in preparing claim forms for relocation payments and other assistance to minimize the impact of the move.
- **Payment for Moving Expenses.** You may choose either a:
 -
 - 1. Payment for Your Actual Reasonable Moving and Related Expenses, or
 - 2. Fixed Moving Expense and Dislocation Allowance, or
 - 3. A combination of both, based on circumstances.
- **Replacement Housing Assistance.** To enable you to rent, or if you prefer, buy a comparable or suitable replacement home, you may choose either:
 -
 - 1. **Rental Assistance,** or
 - 2. **Purchase Assistance.**

If you disagree with the Agency's decision as to the relocation assistance for which you are eligible, you may appeal that decision.

General Questions

How Will I Know I Am Eligible For Relocation Assistance?

You should receive a written notice explaining your eligibility for relocation assistance. You should not move before receiving that notice. If you do, you may not receive relocation assistance.

Previous Edition Obsolete – HUD 1042-CPD

How Will The Agency Know How Much Help I Need?

You will be contacted at an early date and personally interviewed by a representative of the Agency to determine your relocation needs and preferences for replacement housing and advisory services. The interviewer will ask certain questions about you and other members of your household, including questions about your income. It is to your advantage to provide the information so that the Agency can assist you in moving with a minimum of hardship. The information you give will be kept in confidence.

How Soon Will I Have To Move?

If possible, a mutually agreeable date for the move will be worked out. You will be given enough time to make plans for *moving*. Unless there is a health or safety emergency, you will not be required to move without at least 90 days advance written notice of (1) at least one “comparable replacement home” that is available to you and (2) the earliest date by which you must move.

What Is A Comparable Replacement Home?

A comparable replacement home is:

- Decent, safe, and sanitary.
- Functionally equivalent to (and equal or better than) your present home.
- Actually available for you to rent.
- Affordable.
- Reasonably accessible to your place of employment.
- Generally as well located with respect to public and commercial facilities, such as schools and shopping, as your present home.
- Not subject to unreasonable adverse environmental conditions.
- Available to all persons regardless of race, color, religion, sex, or national origin.

What is Decent, Safe, and Sanitary Housing?

Decent, safe, and sanitary housing is housing that:

- Meets applicable housing and occupancy requirements.
Is structurally sound, weathertight, and in good repair.
- Contains a safe, adequate electrical wiring system.
- Has adequate living space for the occupants.
- Has a kitchen with a sink, hot and cold running water, and connections for a stove and refrigerator (if you were displaced from a housekeeping unit).
- Has a separate, complete bathroom with hot and cold running water.
- Has heating as required by climatic conditions.
- Has an unobstructed exit to safe, open space at ground level.
- Meets standards protecting occupants from lead-based paint hazards.
- If you are person with a physical disability, is free of any barriers which would preclude your reasonable use of the unit.

Will The Agency Help Me Find A Replacement Home?

Yes. You will be provided with referrals to housing that has been inspected to ensure that it meets established standards. If possible, you will be referred to at least three comparable replacement homes. The maximum financial assistance for which you may qualify will be based on the cost of the most representative comparable replacement home that is available to you. Promptly after you become eligible for relocation assistance, the Agency will inform you of such unit and the maximum payment available.

Once the Agency representative has a clear understanding of your needs and preferences, he or she will work with you to assure that you are given the best possible choice of housing. The Agency will offer you appropriate transportation to inspect these units.

If you would like to move to government-owned housing or obtain a Housing Choice Voucher (HCV) let the Agency representative know of your interest. Generally, an eligible displaced person receives preference for such long term housing assistance. You will be given assistance in completing any required application forms.

What If I Find My Own Replacement Housing?

You have every right to find your own replacement housing. However, before you rent or buy, ask the Agency to inspect the unit to make sure that it is decent, safe, and sanitary. If the housing unit is not decent, safe, and sanitary, you will not receive a replacement housing payment.

What If I Encounter A Problem In Obtaining Housing Of My Choice?

If you encounter a problem in buying or renting housing of your choice, notify the Agency immediately. The Agency will look into the matter and try to resolve it. You will receive this help whether you were referred to the housing unit or found it yourself.

If you are unable to buy or rent a housing unit because of discriminatory practices on the part of a real estate broker, rental agent, lender, or a property owner, the Agency will help you file a formal housing discrimination complaint with the U.S. Department of Housing and Urban Development or the appropriate State or local fair housing agency.

What Other Services Will I Receive?

In addition to help in obtaining a comparable replacement home, other assistance, as necessary, will be provided in order to minimize the impact of your move. This assistance may include referral to appropriate public and private agencies that provide services concerning housing financing, employment, health, welfare, or legal assistance. The range of services depends on the needs of the person being displaced. You should ask the Agency representative to tell you about the specific services that will be available to help you and your family.

What Is a Payment For Actual Reasonable Moving and Related Expenses?

You may choose to receive a relocation payment to cover the reasonable cost of your move. If you choose a Payment For Actual Reasonable Moving And Related Expenses, you may include in your claim the reasonable and necessary costs for:

- Transportation for you and your family.
- Packing, moving and unpacking your household goods.
- Disconnecting and reconnecting household appliances and other personal property (e.g., telephone and cable TV).
- Storage of household goods, as may be necessary.
- Insurance for the replacement value of your property during the move and necessary storage.
- The replacement value of property lost, stolen or damaged in the move (but not through your neglect) if insurance is not reasonably available.

The Agency will explain all eligible moving costs, as well as those which are not eligible. You must be able to account for any costs that you incur, so keep all your receipts. Select your mover with care. The Agency can help you select a reliable and reputable mover.

You may elect to pay your moving costs yourself and be repaid by the Agency or, if you prefer, you may have the Agency pay the mover. In either case, let the Agency know before you move.

What Is A Fixed Moving Expense And Dislocation Allowance?

If you choose a Fixed Moving Expense and Dislocation Allowance, you will receive an allowance which is based on the number of rooms in your home or the number of rooms of furniture you will be moving, as shown on a schedule. The Agency has a copy of the schedule and will help you decide whether choosing this allowance is in your best interest.

If you do not have a large amount of personal property to move, this payment should be more advantageous. No special documentation is required to support your claim. You need only move your personal property and complete the appropriate claim form in order to receive your payment.

How Much Rental Assistance Will I Receive?

You may be eligible to receive Rental Assistance for a 42-month period. The assistance is computed in the following manner:

The assistance needed for one month is determined by subtracting the “base monthly rent” for your present home from the cost of rent and utilities for your new home (or a comparable replacement home, if that cost is lower). That monthly need, if any, is multiplied by 42, to determine the total amount that you will receive. This amount will be paid directly to you. The Agency must provide the assistance in monthly installments or other periodic payments. Generally, the base monthly rent for your present home is the lesser of: (1) the monthly rent and average monthly cost for utilities, or (2) thirty (30) percent of your average monthly gross household income, if you are low-income based on HUD income limits.

Examples: Let’s say that the monthly rent and average cost for utilities for your present home are \$250; the monthly rent and estimated average utility costs for a comparable replacement home are \$350; and your monthly gross income is \$700. In this case your “base monthly rent” would be \$210 because you are low-income and that amount (30 percent of your income) is less than the monthly cost of rent and utilities at your present home (\$250).

- If you rent a replacement home for \$360 per month, including estimated average monthly utility charges, you will receive \$5,880. That amount is 42 times \$140 (the difference between the “base monthly rent” for your present home (\$210) and the cost for a comparable replacement home (\$350)).
- If you rent a replacement home for \$310, including estimated average monthly utility charges, you will receive \$4,200. That amount is 42 times \$100 (the difference between the “base monthly rent” for your present home (\$210) and the actual cost of your new home (\$310)).

To qualify for rental assistance, you must rent and occupy a decent, safe, and sanitary home within one year after the date you move. However, the Agency will extend this period for good cause.

If I Decide to Buy, Rather Than Rent, How Much Assistance Will I Receive?

If you buy a replacement home, you may be eligible for assistance to make a down payment equal to the amount you would receive if you rented a comparable replacement home (i.e., 42 times the amount obtained by subtracting the ‘base monthly rent for your present home from the monthly rent and estimated average monthly utility costs for a comparable replacement home). A down payment assistance payment will be paid in a lump sum.

Example: Assuming the information in the prior examples, the down payment assistance payment would be \$5880. That amount is 42 times \$140 (the difference between the “base monthly rent” for your present home (\$210) and the monthly rent and estimated *average* monthly utilities cost for a comparable replacement home (\$350). The full amount of the payment must be applied to the purchase of the replacement dwelling.

Must I File A Claim To Obtain A Relocation Payment?

Yes. You must file a claim for each relocation payment. The Agency will, however, provide you with the required claim form, help you to complete it, and explain the type of documentation, if any, that you must submit in order to receive the payment.

If you must pay any relocation expenses before you move (e.g., a security deposit when you sign a lease for your new home), discuss your financial needs with the Agency. While refundable deposits are not covered by URA payments, you may be able to obtain an advance payment to meet these costs. An advance payment may be placed in “escrow” or paid directly to a contractor to ensure that the move will be completed on a timely basis.

You must file your claim within 18 months after the date you move. However, it is to your advantage to file as soon as possible after you move. The sooner you submit your claim, the sooner it can be processed and paid. If you are unable to file your claim within 18 months, ask the Agency to extend this period.

Be careful not to confuse this 18-month period with the 12-month period within which you must rent (or buy) and occupy a replacement dwelling in order to be eligible for a replacement housing payment.

You will be paid promptly after you file an acceptable claim. If there is any question regarding your right to a relocation payment or the amount of the payment, you will be notified, in writing, of the problem and the action you may take to resolve the matter.

Will I Have To Pay Rent To The Agency Before I Move?

If the Agency acquires the property in which you live, you may be required to pay a fair rent to the Agency for the period between the acquisition of the property and the date that you move. Such rent will not exceed the market rent for comparable properties in the area.

Do I Have To Pay Federal Income Taxes On My Relocation Payments?

No. Section 216 of the URA states that you need not report relocation payments as part of your gross income for Federal tax purposes, For information on State or local income taxes, you should check with the State or local income tax office in your area or with your personal tax advisor.

What If I Don't Receive The Required Assistance. Can I Appeal?

If you disagree with the Agency's decision as to your right to relocation assistance or the amount of a payment, or the adequacy of the housing to which you have been referred, you may appeal the decision to the Agency.

The Agency will inform you of its appeal procedures. At a minimum, you will have 60 days to file your appeal with the Agency after you receive written notification of the Agency's determination on your claim. Your appeal must be in writing. However, if you need help, the Agency will assist you in preparing your appeal.

If you are a low- or moderate-income person and are dissatisfied with the Agency's determination on your appeal, you may have an additional right to request administrative review of that decision (e.g., by HUD or the State).

You can expect a fair decision on any appeal. However, if you are not satisfied with the final administrative decision on your appeal, you may seek review of the matter by the courts.

I Have More Questions. Who Will Answer Them?

If you have further questions after reading this booklet, contact the Agency and discuss your concerns with an Agency representative.

- Agency:
- Address:
- Office Hours:
- Telephone No.:
- Person to Contact:

RELOCATION ASSISTANCE TO DISPLACED BUSINESSES, NONPROFIT ORGANIZATIONS AND FARMS

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

www.hud.gov/relocation

Introduction

This booklet describes the relocation assistance and payments provided to displaced businesses, nonprofit organizations and farms under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA). This includes any such occupant that moves from real property, or moves personal property from real property, as a direct result of acquisition, rehabilitation or demolition for a Federal project or a project in which Federal funds are used.

If you are notified that you will be displaced, it is important that you do not move before you learn what you must do to receive the relocation payments and other assistance to which you are entitled.

Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.

This booklet may not answer all of your questions. If you have more questions about your relocation, contact the Agency responsible for the project. (Check the back of this booklet for the name of the person to contact at the Agency.) Ask your questions before you move. Afterwards, it may be too late.

Summary of Relocation Assistance

As an eligible displaced person, you will be offered the following advisory and financial assistance:

- Advisory Services includes referrals to suitable replacement locations, help in preparing claim forms for relocation payments and other assistance to minimize the impact of the move.
- Payment for Moving and Reestablishment Expenses falls into two general categories:
 1. Payment for Actual, Reasonable Moving and Related Expenses. If you choose this payment, you may also be eligible for a Payment for Reestablishment Expenses, up to \$10,000.
 2. Fixed Payment (“In Lieu Of” Payment). As an alternative to receiving payment for your actual, reasonable and related moving and reestablishment expenses, certain persons are eligible to choose a Fixed Payment in the amount of \$1,000
 3. \$20,000.

General Questions

How Will I Know I Am Eligible For Relocation Assistance?

You should receive a written notice explaining your eligibility for relocation assistance. You should not move before receiving that notice. If you do, you may not be eligible for relocation assistance.

How Will The Agency Know How Much Help Need?

You will be contacted at an early date and personally interviewed by a representative of the Agency to determine your relocation needs and preferences.

How Soon Will I Have To Move?

Every reasonable effort will be made to provide you with sufficient time to find and reestablish your business in a suitable replacement location. If possible, a mutually agreeable date for the move will be worked out. You will be given enough time to make plans for moving. Unless there is a health or safety emergency, you will not be required to move without at least 90 days advance written notice.

How Will I Find A Replacement Location?

The Agency will provide you with current information on available replacement locations that meet your needs. The Agency may also provide you with the names of real estate agents and brokers who can assist you in finding the type of replacement location you need.

While the Agency will assist you in obtaining a suitable replacement location, you should take an active role in finding and relocating to a location of your choice; no one knows your needs better than you. When searching for a replacement location for your business, you should ensure that there are no zoning or other requirements which will unduly restrict your planned operations

What Other Assistance Will Be Available To Help Me?

In addition to help in finding a suitable replacement location, other assistance, as necessary, will be provided by the Agency. This includes providing information on Federal, State, and local programs that may be of help in reestablishing a business. For example, the Small Business Administration (SBA) provides managerial and technical assistance to some businesses.

You should ask the Agency representative to tell you about the specific services that may be available to help you.

I Have A Replacement Location And Want To Move. What Should I Do?

Before you make any arrangements to move, notify the Agency as soon as possible. The Agency will discuss the move with you and advise you of the relocation payment(s) for which you may be eligible, the requirements to be met, and how to obtain a payment.

I Plan To Discontinue My Business Rather Than Move. What Should I Do?

If you have decided to discontinue your business rather than reestablish, you may still be eligible to receive a payment. Contact the Agency and discuss your decision to discontinue your business. You will be informed of the payment, if any, for which you may be eligible and the requirements that must be met to obtain the payment.

I Own This Property. Will I Be Paid For It Before I Have To Move?

If you reach a negotiated agreement to sell your property to a public agency, you will not be required to move before you receive the agreed purchase price. If the property is acquired through an eminent domain proceeding, you cannot be required to move before the estimated fair market value of the property has been deposited with the court. (You should be able to withdraw this amount immediately, less any amounts necessary to pay off any mortgage or other liens on the property and to resolve any special ownership problems. Withdrawal of your share of the money will not affect your right to seek additional compensation for your property.)

Ask the Agency to provide you a copy of the HUD information brochure, **When a Public Agency Acquires Your Property (HUD-1041-CPD)**. If you have any questions about the acquisition of your property, please contact the Agency.

What Moving Expenses Are Eligible For Payment?

If you choose a Payment For Actual, Reasonable Moving and Related Expenses, you may include in your claim the reasonable and necessary cost of:

- Transportation of the displaced person and personal property. Transportation costs beyond 50 miles are ineligible, unless the Agency determines that relocation beyond 50 miles is justified.
- Packing, crating, unpacking, and uncrating personal property.
- Disconnecting, dismantling, removing, reassembling, and reinstalling relocated personal property including machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.
- Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.
- Insurance for the replacement value of the property in connection with the move and necessary storage.
- The replacement value of property lost, stolen, or damaged in the process of moving where insurance covering such loss, theft, or damage is not reasonably available.
- Any license, permit, fees or certification required at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.
- Professional services as the Agency determines to be actual, reasonable and necessary for: Planning the move of the personal property; Moving the personal property; and Installing the relocated personal property at the replacement location.
- Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.
- Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:
 - (1) The fair market value in place of the item, as is for continued use, less the proceeds *from* its sale; or
 - (2) The estimated cost of moving the item as is, but not including any allowance for storage or for reconnecting a piece of equipment, if the equipment is in storage or not being used at the acquired site. If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.
- The reasonable cost incurred in attempting to sell an item that is not to be relocated.
- Purchase of substitute personal property. If an item of personal property, (which is used as part of a business or farm operation) is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of: (1) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or (2) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage.
- Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual, reasonable expenses, not to exceed \$2,500, which are incurred in searching for a replacement location, including: Transportation; meals and lodging away from home; time spent searching, obtaining permits, attending zoning hearings and negotiating the purchase or lease of a replacement site (based on reasonable salary or earnings); fees paid to a real estate agent or broker to locate a replacement site (exclusive of any fees or commissions related to the purchase of such sites).
- Low value/high bulk. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing Agency, the allowable moving cost payment shall not exceed the lesser of: (1) the amount which would be received if the property were sold at the site or (2) the replacement cost of a comparable quantity delivered to the new business location. Examples include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the Agency.

In addition to the eligible expenses for moving personal property listed above, the following items are also eligible moving expenses if the Agency determines they are actual, reasonable and necessary:

- Connection to available nearby utilities from the right-of-way to improvements at the replacement site.

- Professional services (based on a reasonable Agency pre-approved hourly rate) performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site).
- Impact fees or one time assessments for anticipated heavy utility usage.

The Agency will explain all eligible moving and related costs, as well as those which are not eligible. You must be able to account for all costs that you incur; so keep all your receipts. The Agency will inform you of the documentation needed to support your claim.

You may elect to pay your moving costs yourself and be repaid by the Agency or, if you prefer, you may have the Agency pay the mover. In either case, select your mover with care. The Agency can help you select a reliable and reputable mover.

Also, keep the Agency informed about your moving plans. You must provide the Agency reasonable advance written notice of the approximate date of the start of your move or disposition of your personal property and an inventory of the items to be moved. The Agency may agree to waive this requirement. You must permit the Agency to make reasonable and timely inspections of the personal property at the old and new locations and to monitor the move.

What Is A Payment For Reestablishment Expenses?

If you choose to receive a payment for your actual moving and related expenses, you may also be eligible to receive a payment for reestablishment expenses, not to exceed 10,000. Such expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to the following:

- Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
- Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
- Construction and installation costs for exterior signing to advertise the business.
- Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
- Advertisement of replacement location.
- Estimated increased costs of operation during the first 2 years at the replacement site for such items as: Lease or rental charges; Personal or real property taxes; Insurance premiums; and Utility charges, excluding impact fees.
- Other items that the Agency considers essential to the reestablishment of the business.

What Is A Fixed Moving Payment ("In Lieu Of" Payment)?

Certain businesses, nonprofit organizations and farms are eligible to obtain a Fixed Moving Payment, "in lieu of" receiving a payment for Actual, Reasonable Moving and Related Expenses and a Payment for Reestablishment Expenses. The Fixed Payment for a business or farm operation is based on the average annual net earnings of the business or farm operation; the Fixed Payment for a nonprofit organization is based on average annual gross revenues less administrative expenses. A Fixed Payment will not be less than \$1,000, nor more than \$20,000. Check with the Agency to see if you are eligible for this payment option.

The Agency will inform you as to your eligibility for this payment and the documentation you must submit to support your claim.

Remember, when you elect to take this payment you are not entitled to reimbursement for any other moving or reestablishment expenses.

Must I File A Claim For A Relocation Payment?

Yes. You must file a claim for a relocation payment. The Agency will, however, provide you with the required claim form, help you to complete it, and explain the type of documentation that you must submit in order to receive the payment.

All claims for relocation payments must be filed no later than 18 months after: For tenants, the date of your move. For owners, the later of (1) the date of your move; or (2) the date of final payment for the acquisition of your property. However, it is to your advantage to file as soon as possible after you move. The sooner you submit your claim, the sooner it can be processed and paid. If you are unable to file your claim within 18 months, ask the Agency to consider extending this period. You will be paid promptly after you file an acceptable claim. If there is any question regarding your right to a relocation payment or the amount of the payment, you will be notified of the problem in writing and the action you must take to resolve the matter.

If you must pay any relocation expenses before you move, discuss your needs with the Agency. You should be able to obtain an advance payment. An advance payment may be placed in ‘escrow’ to ensure that the move will be completed on a timely basis.

Will I Have To Pay Rent To The Agency Before I Move?

If the Agency acquires your property, you may be required to pay a fair rent to the Agency for the period between the acquisition of the property and the date that you move. Such rent will not exceed the market rent for comparable properties in the area.

Do I Have To Pay Federal Income Taxes On My Relocation Payments?

No. Section 216 of the URA states that you need not report relocation payments as part of your gross income for Federal tax purposes. For information on State or local income taxes, you should check with the State or local income tax office in

If I Don't Receive The Required Assistance, Can I Appeal?

Yes. If you disagree with the Agency's decision as to your right to relocation assistance or the amount of a payment, you may appeal the decision to the Agency. The Agency will inform you of its appeal procedures. At a minimum, you will have 60 days to file your appeal with the Agency after you receive written notification of the Agency's determination on your claim. Your appeal must be in writing. However, if you need help, the Agency will assist you in preparing your appeal.

If you are not satisfied with the Agency's final decision on your appeal, you may seek review of the matter by the courts.

I Have More Questions. Who Will Answer Them?

If you have further questions after reading this booklet, contact the Agency and discuss your concerns with the Agency representative.

Agency:
Address:
Office Hours:
Telephone Number:
Person to Contact:

RELOCATION ASSISTANCE TO DISPLACED HOMEOWNER OCCUPANTS

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

www.hud.gov/relocation

Introduction

This booklet describes the relocation payments and other relocation assistance provided under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) to most homeowners whose home is acquired by a public agency for a Federal project or a project in which Federal funds are used.

To be eligible for the assistance described in this booklet, you must have owned and occupied your home for at least 180 days before the Agency offered to buy it. If you have owned and occupied your home for less than 180 days but for 90 days or more before the Agency offered to buy it, you should refer to the HUD booklet entitled, “**Relocation Assistance to Tenants Displaced From Their Homes**” for a summary of relocation assistance and payments for which you may be eligible (if you have owned and occupied your home for less than 90 days, you may still be eligible for relocation assistance, contact the Agency for additional information).

If you are notified that your home will be acquired and you will be displaced, it is important that you do not move before you learn what you must do to receive the relocation payments and other assistance to which you are entitled.

Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.

This booklet may not answer all of your questions. If you have more questions, contact the Agency responsible for the project. (Check the back of this, booklet for the name of the person to contact at the Agency.) Ask your questions before you move. Afterwards, it may be too late.

Summary of Relocation Assistance

As an eligible displaced homeowner occupant, you will be offered the following advisory and financial assistance:

Advisory Services. This includes referrals to comparable replacement homes, the inspection of replacement housing to ensure that it meets established standards, help in preparing claim forms for relocation payments and other assistance to minimize the impact of the move.

- **Payment for Moving Expenses.** You may choose either a:
 1. Payment for Your Actual Reasonable Moving and Related Expenses, or
 2. A Fixed Moving Payment, or
 3. A combination of both, based on circumstances.
- **Replacement Housing Payment.** To enable you to buy or, *if you* prefer, rent a comparable replacement home, you may choose either:
 1. Purchase Assistance, or
 2. Rental Assistance.

If you disagree with the Agency’s decision as to the relocation assistance for which you are eligible, you may appeal that decision.

General Questions

Will I Be Paid For My Property Before I Have To Move?

If you reach an agreement to sell your property to the Agency, you will not be required to move before you receive the agreed purchase price. If the property is acquired through an eminent domain proceeding, you cannot be required to move before the estimated fair market value of the property has been deposited with the court. (You should be able to withdraw this amount immediately, less any amounts necessary to pay off any mortgage or other liens on the property and to resolve any special ownership problems. Withdrawal of your share of the money will not affect your right to seek additional compensation for your property.)

Will I Have To Pay Rent To The Agency Before I Move?

You may be required to pay a fair rent to the Agency for the period between the acquisition of your property and the date that you move. The rent will not exceed that charged for the use of comparable properties.

How Will I Know I Am Eligible For Relocation Assistance?

You should receive a written notice explaining your eligibility for relocation assistance. You will become eligible for relocation assistance on the date you receive the Agency's written offer of "just compensation" to purchase your home. You should not move before receiving that purchase offer. If you do, you may not receive relocation assistance. For information about the acquisition of your home, ask the Agency for a copy of the booklet, "When a Public Agency Acquires Your Property."

How Will The Agency Know How Much Help I Need?

You will be contacted at an early date and personally interviewed by a representative of the Agency to determine your relocation needs and preferences for replacement housing and advisory services. The interviewer will ask certain questions about you and other members of your household. It is to your advantage to provide the information so that the Agency can assist you in moving with a minimum of hardship. The information you give will be kept in confidence.

How Soon Will I Have To Move?

If possible, a mutually agreeable date for the move will be worked out. You will be given enough time to make plans for moving. Unless there is a health or safety emergency, you will not be required to move without at least 90 days advance written notice of (1) at least one "comparable replacement home" that is available to you and (2) the earliest date by which you must move.

What Is A Comparable Replacement Home? A comparable replacement home is:

- Decent, safe, and sanitary.
- Functionally equivalent to your present home.
- Actually available for you to buy.
- Affordable.
- Reasonably accessible to your place of employment.
- Generally as well located with respect to public and commercial facilities, such as schools and shopping, as your present home.
- Not subject to unreasonable adverse environmental conditions.
- Available to all persons regardless of race, color, religion, sex, or national origin.

What is Decent, Safe, and Sanitary Housing? Decent, safe, and sanitary housing is housing that:

- Meets local housing and occupancy requirements.

Additionally, it is housing that:

- is structurally sound, weather tight, and in good repair.
- Contains a safe, adequate electrical wiring system.
- Has adequate living space for the occupants.
- Has a kitchen with a sink, hot and cold running water, and connections for a stove and refrigerator.
- Has a separate, complete bathroom with hot and cold running water and sewage system.
- Has heating as required by climatic conditions.
- Has an unobstructed exit to safe, open space at ground level.
- Is free of any barriers that would preclude your reasonable use of the unit, if you are a person with a physical disability.

Will The Agency Help Me Find A Replacement Home?

Yes. You will be provided with referrals to comparable replacement housing. If possible, you will be referred to at least three comparable replacement homes. The *maximum* financial assistance for which you may qualify will be based on the cost of the most representative comparable replacement home that is available to you. When the Agency gives you its initial written purchase offer, it will typically inform you at that time, or shortly thereafter, of your eligibility for relocation assistance, identifying the most comparable replacement home and explain the maximum amount of relocation assistance available to you.

Once the Agency representative has a clear understanding of your needs and preferences, he or she will work with you to assure that you are given the best possible choice of housing and offer you transportation to inspect these units.

If there is a mortgage on your present home, the Agency will refer you to lenders that can provide mortgage financing for your new home. If the money paid for your old home is applied to the purchase of your new home, there should not be any increase in the number or amount of your monthly payments for mortgage interest and principal.

What If I Find My Own Replacement Housing?

You have every right to find your own replacement housing. However, before you buy or rent, ask the Agency to inspect the unit to make sure that it is decent, safe, and sanitary. If the housing unit is not decent, safe, and sanitary, you will not receive a replacement housing payment.

What If I Encounter A Problem In Obtaining Housing Of My Choice?

If you encounter a problem in buying or renting housing of your choice, notify the Agency immediately. The Agency will look into the matter and try to resolve it. You will receive this help whether you were referred to the housing unit or found it yourself.

If you are unable to buy or rent a housing unit because of discriminatory practices on the part of a real estate broker, rental agent, lender, or a property owner, the Agency will help you file a formal housing discrimination complaint with the U.S. Department of Housing and Urban Development or the appropriate State or local fair housing agency.

What Other Services Will I Receive?

In addition to help in obtaining a comparable replacement home, other assistance, as necessary, will be provided in order to minimize the impact of your move. This assistance may include referral to appropriate public and private agencies that provide services concerning housing financing, employment, health, welfare, or legal assistance. The range of services depends on the needs of the person being displaced. You should ask the Agency representative to tell you about the specific services that will be available to help you and your family.

What Is a Payment For Actual Reasonable Moving And Related Expenses?

You are entitled to a relocation payment to cover the actual reasonable cost of your move. If you choose a Payment For Actual Reasonable Moving And Related Expenses, you may include in your claim the reasonable costs for:

- Transportation for you and your family.
- Packing, moving and unpacking your household goods.
- Disconnecting and reconnecting household appliances and other personal property (e.g., telephone and cable TV).
- Storage of household goods, as may be necessary.
- Insurance for the replacement value of your property during the move and necessary storage.
- The replacement value of property lost, stolen or damaged in the move (but not through your neglect) if insurance is not reasonably available.

The Agency will explain all eligible moving costs, as well as those which are not eligible. You must be able to account for any costs that you incur, so keep all your receipts. Select your mover with care. The Agency can help you select a reliable and reputable mover. You may elect to pay your moving costs yourself and be repaid by the Agency or, if you prefer, you may have the Agency pay the mover. In either case, let the Agency know before you move.

What Is A Fixed Moving Payment?

If you choose a Fixed Moving Payment, you will receive a payment based on the number of rooms of furniture you will be moving, as shown on the Fixed Residential Moving Cost Schedule. The Agency has a copy of the schedule and will help you decide whether choosing this payment is in your best interest.

If you do not have an unusually large amount of personal property to move and are capable of moving yourself, this payment should be more advantageous to you. No special documentation is required to support your claim. You need only move your personal property and complete the appropriate claim form in order to receive your payment.

I Want To Buy Another Home. How Much Purchase Assistance Will I Receive?

To help you buy a comparable replacement home, you will receive Purchase Assistance equal to the sum of the following three costs:

- **Purchase Price Differential.** If the cost of replacement housing exceeds the amount the Agency pays for your present home, you may be eligible for a payment to cover the difference. The Agency will inform you in writing of the location and cost of comparable replacement housing (and explain the basis of its determination) so that you will know in advance how much assistance you may receive. That information should help you decide how much you wish to pay for replacement housing.

You are free to purchase any decent, safe and sanitary housing unit of your choice. If the purchase price is less than the cost of a comparable replacement home, the payment will be limited to the actual difference. If it exceeds the cost of a comparable replacement home, the payment will be based on the cost of a comparable home.

Examples: Let's say that the Agency pays \$120,000 to purchase your home and that a comparable replacement home costs \$130,000.

1. If you pay \$129,000 for a replacement home, you would receive a \$9,000 differential payment (the difference between the Agency's payment for the acquisition of your home and the cost of your replacement home).
2. If you pay \$132,000 for the replacement home, you would receive a \$10,000 differential payment (the difference between the Agency's acquisition payment and the cost of the comparable replacement home).

Mortgage Interest Differential Payment. This amount covers the "present value" of the additional costs required to finance the purchase of a replacement home that result if the interest rate you must pay for a new mortgage is higher than the interest rate on the mortgage on your present home. It also covers other debt service costs. The payment is based on the lesser of: the mortgage balance on your present home or your new mortgage amount. To be eligible, the mortgage on your home must have been a valid lien for at least 180 days before the Agency's initial written purchase offer for your home.

You should provide the Agency with a copy of your mortgage(s) as soon as possible. Based on that information and the prevailing terms and conditions of new mortgage financing, the Agency will compute the approximate mortgage interest differential payment for which you will be eligible, inform you of that amount and explain the conditions on which it is based. The payment will be made available with the purchase price differential in a timely manner to reduce the amount you must borrow to buy your new home.

Incidental Expenses. This amount covers those extra costs typically charged when one buys real property, such as the cost of preparing the deed and recording fees; the cost of title insurance, revenue stamps and transfer taxes (not to exceed the cost for comparable replacement housing); loan application, loan origination and appraisal fees; the cost of a credit report; and for other costs such as certification of structural soundness, home inspection and termite inspection. It does not cover prepaid expenses, such as property taxes and insurance.

Remember, your total replacement housing payment is the sum of the purchase price differential, mortgage interest differential, and incidental expenses.

To qualify for the payment, you must purchase and occupy a decent, safe and sanitary replacement home within one year after the later of: the date you move or the date you receive the final payment for the acquisition of your present home. However, the Agency will extend this period for good cause.

If I Decide To Rent, Rather Than Buy, Another Home, I-low Much Assistance Will I Receive?

If you decide to rent rather than buy a replacement home, you may be eligible to receive **Rental Assistance**. The assistance covers a 42-month period and is computed in the following manner.

The assistance needed for one month is based on the difference between the market rent for your present home (including utilities), as determined by the agency, compared to a comparable rental dwelling available on the market (including utilities). That monthly need, if any, is multiplied by 42 to determine the total amount that you will receive. This amount will be paid directly to you in monthly installments or other periodic payments.

Examples: Let's say that the monthly "market rent" and average cost for utilities for your present home are \$250 and the monthly rent and estimated average utility costs for a comparable replacement home are \$350.

1. If you rent a replacement home for \$360 per month, including estimated utility charges, you will receive \$4,200. That amount is 42 times \$100 (the difference between the market rent for your present home (\$250) and the cost for a comparable replacement home (\$350)).
2. If you rent a replacement home for \$310, including estimated average monthly utility charges, you will receive \$2,520. That amount is 42 times \$60 (the difference between the "base monthly rent" for your present home (\$250) and the actual cost of your new home (\$310)).

To qualify for rental assistance, you must rent and occupy a decent, safe, and sanitary home within one year after the later of: the date you move or the date you receive the final payment for the acquisition of your present home. However, the Agency will extend this period for good cause. The amount of rental assistance cannot exceed the computed purchase price differential.

Must I File A Claim To Obtain A Relocation Payment?

Yes. You must file a claim for each relocation payment. The Agency will provide you with the required claim forms, help you to complete them, and explain the type of documentation, if any, that you must submit in order to receive your relocation payments.

If you must pay any relocation expenses before you move (e.g., a deposit when you contract for the purchase of a new home), discuss your financial needs with the Agency. You will be able to obtain an advance payment to meet these costs. An advance payment to purchase a home may be placed in 'escrow.' An advance payment for moving expenses may be paid directly to the moving contractor to ensure that the move will be completed on a timely basis.

You must file your claim within 18 months after the date you move or receive the final payment for the acquisition of your present home. However, it is to your advantage to file as soon as possible after you move. The sooner you submit your claim, the sooner it can be processed and paid. If you are unable to file your claim within 18 months, ask the Agency to extend this period.

Be careful not to confuse this 18-month period with the 12-month period within which you must buy or rent and occupy a replacement dwelling in order to be eligible for a replacement housing payment.

You will be paid promptly after you file an acceptable claim. If there is any question regarding your right to a relocation payment or the amount of the payment, you will be notified, in writing, of the problem and the action you may take to resolve the matter.

Do I Have To Pay Federal Income Taxes On My Relocation Payments?

No. Section 216 of the URA states that you need not report relocation payments as part of your gross income for Federal tax purposes. For information on State or local income taxes, you should check with the State or local income tax office in your area or with your personal tax advisor.

What If I Don't Receive The Required Assistance, Can I Appeal?

If you disagree with the Agency's decision as to your right to relocation assistance or the amount of a payment, or the adequacy of the housing to which you have been referred, you may appeal the decision to the Agency.

The Agency will inform you of its appeal procedures. At a minimum, you will have 60 days to file your appeal with the Agency. Your appeal must be in writing. However, if you need help, the Agency will assist you in preparing your appeal. If you are a low or moderate-income person and are dissatisfied with the Agency's determination on your appeal, you may have an additional right to request administrative review of that decision (e.g., by HUD or the State). The Agency will explain whether this option is available.

You can expect a fair decision on any appeal. However, if you are not satisfied with the final administrative decision on your appeal, you may seek review of the matter by the courts.

I Have More Questions. Who Will Answer Them?

If you have any questions after reading this booklet, contact the Agency and discuss your concerns with an Agency representative.

Agency:

Address:

Office Hours:

Telephone Number:

Person to Contact:



Federal Register

Tuesday,
January 4, 2005

Part V

Department of Transportation

Federal Highway Administration

**49 CFR Part 24
Uniform Relocation Assistance and Real
Property Acquisition for Federal and
Federally-Assisted Programs; Final Rule**

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****49 CFR Part 24**

[FHWA Docket No. FHWA-2003-14747]

RIN 2125-AE97

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs**AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Final rule.

SUMMARY: The FHWA is revising the regulation that sets forth governmentwide requirements for implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act). These changes will clarify present requirements, meet modern needs and improve the service to individuals and businesses affected by Federal or federally-assisted projects while at the same time reducing the burdens of government regulations. The regulation has not been fully reviewed or updated since it was issued in 1989. These amendments to the Uniform Act regulation will affect the land acquisition and displacement activities of 18 Federal Agencies including the new Department of Homeland Security.

DATES: *Effective Date:* February 3, 2005.

FOR FURTHER INFORMATION CONTACT: Mamie L. Smith, Office of Real Estate Services, HEPR, (202) 366-2529; Reginald K. Bessmer, Office of Real Estate Services, HEPR, (202) 366-2037; or JoAnne Robinson, Office of the Chief Counsel, HCC-30, (202) 366-1346, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Electronic Access**

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Background

Title 49, CFR, part 24 implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et*

seq., (the Uniform Act). The Uniform Act applies to all acquisitions of real property or displacements of persons resulting from Federal or federally-assisted programs or projects and affects 18 Federal Agencies. This regulation has not been comprehensively revised or updated since its initial publication in 1989.

The FHWA, as the lead Federal Agency, hosted an all-Agency meeting in 2001 to begin discussions about a comprehensive review of this regulation because of numerous requests from various Agencies to update 49 CFR Part 24. The FHWA worked with the 18 other Federal Agencies to form a Federal Interagency Task Force to explore the need to revise this regulation. The FHWA then hosted five nationwide public listening sessions to gather public input into the need for regulatory reform.

After receiving public input, working with the Interagency Task Force and incorporating recommendations from all 18 Federal Agencies, the FHWA published a notice of proposed rulemaking (NPRM) on December 17, 2003 (68 FR 70342). The NPRM proposed revisions to the Uniform Act regulation that would clarify present requirements, meet modern needs and improve the service to the individuals and businesses affected by Federal or federally-assisted projects while at the same time reducing the burdens of government regulations. An extensive history of the Uniform Act's implementation, and a comprehensive narrative outlining the efforts to update this regulation is discussed in the preamble to the NPRM in great detail.

Public Meetings

During the comment period to the NPRM, the FHWA hosted three additional public meetings (in Washington, DC; Atlanta, GA; and Lakewood, CO) to discuss the proposed changes to the regulation as outlined in the NPRM. The meetings were held to assure that every opportunity was offered to encourage additional public and stakeholder comment on the proposed changes. A total of 60 individuals and organizations attended the three public meetings. Also, during the comment period, the FHWA posted on its Web site a pre-addressed comment form for easy access and mailing to the docket.

Discussion of Comments Received to the Notice of Proposed Rulemaking (NPRM)

In response to the NPRM published on December 17, 2003, the FHWA received 775 comments to the docket.

The 775 comments were received from 80 individual commenters. The commenters included a variety of groups and organizations, such as local public Agencies, State Highway Administrations, private real estate and environmental consulting firms and interested individuals.

Of the 775 docket comments, 62 were positive and supportive of the proposed changes and 58 were on subjects where no change had been proposed. Thirty comments were programmatic questions and will be answered through a follow-up question and answer memorandum, and 26 comments requested increases in statutory limits that cannot be addressed in the regulations. On March 3, 2004, all 18 Federal Agencies were invited and encouraged to send representatives to an Interagency Federal Task Force (IFTF) meeting to review and respond to the 775 comments. Of the 18 Federal Agencies, 12 responded by sending one or more representatives. Following the initial meeting, four additional IFTF meetings were held and all 775 comments were categorized into subparts discussed individually, and evaluated. The FHWA, as Lead Agency, would like to thank the Department of Housing and Urban Development (HUD) who worked closely with FHWA to organize and share in hosting the work group meetings to assure that all comments were carefully considered.

Section-by-Section Discussion Changes*Subpart A—General*

Section 24.1(b)

One commenter indicated that § 24.1(b) should include an anti-discrimination purpose.

A number of Federal statutes (notably the Civil Rights Acts of 1964 and 1968) and Executive Orders apply to Agencies carrying out Federal or federally-assisted programs, and prohibit discrimination on the basis of race, color, sex, age, religion, national origin or disability. These legal authorities are self-executing and do not require specific mention in a rule implementing the Uniform Act to find effect. Any explicit listing of such provisions in this regulation runs the risk of inadvertent omission, creating the implication that any legal authority not referenced is somehow inapplicable.

Section 24.2 Definitions and Acronyms

Two commenters suggested various formatting changes. One suggested that clarity and readability would be improved by stating each defined term only once, rather than entry as a heading, followed by repeating the term

in the definition. Another suggested that we adopt simplified formatting.

We appreciate these comments, however, we will keep the same format in this final rule.

Section 24.2(a) Personal Property

One commenter requested that we add a definition of personal property.

We considered the request, however, after surveying the varying State laws that define personal property, we have determined that it would not be feasible to provide a single definition that would fit within all State laws. Therefore, whether an item is personal property or real property will continue to be left to State law.

Section 24.2(a)(5) Citizen

One commenter requested that we define or clarify the term "noncitizen national" used in the definition of "citizen" in § 24.2(a)(5).

The term "noncitizen national" was added to the definition of citizen in 1999 (64 FR 7130). The term includes persons from certain United States possessions, such as American Samoa, who are considered citizens for purpose of this part. Accordingly, no change in the final rule is necessary.

Section 24.2(a)(6)(ii) Comparable Replacement Dwelling

Ten comments were made on the proposal to remove the phrase "style of living" from the definition of comparable replacement dwelling. The majority of the comments were in favor of removing the phrase; however, two commenters were concerned that the displaced person's rights would be diminished if the phrase is deleted.

We carefully considered removing "style of living" from the definition of comparability, and we determined that the displaced person would not suffer any erosion of protections provided by existing comparability requirements. The phrase "style of living" has sometimes been misused and has proven to be confusing.

Occasionally, the phrase has been used out of context and interpreted to require identical unique features found in acquired dwellings. In such cases, the standard for replacement housing has been raised to a level above "comparable." This interpretation can make it nearly impossible to find appropriate replacement housing and could result in replacement housing payments greater than those intended by the Congress.

A more complete explanation can be found in the preamble to the NPRM (68 FR 70344). The Congress recognized that strict and absolute adherence to an

exhaustive, detailed, feature-by-feature comparison can result in rigidities. We believe other criteria currently under the definition of comparability will adequately cover the factors covered by "style of living" and, therefore, have not included this phrase in the final rule.

Section 24.2(a)(6)(viii) Deductions from Rent

One commenter objected to the proposed addition of language in § 24.2(a)(6)(viii) that would have allowed rent owed to an Agency to be taken into account when determining whether a comparable replacement dwelling is within a displaced person's financial means. The comment noted that State landlord/tenant laws normally govern disputes over rent, and that § 24.2(a)(6)(viii) should not, in effect, supercede the tenant protections contained in such laws in determining a displaced person's financial means.

We agree with this comment, and accordingly have not adopted the language that would have considered any rent owed the Agency in determining financial means.

Section 24.2(a)(6)(viii) Financial Means

The Uniform Act requires that comparable replacement dwellings must be "within the financial means" of a displaced person. This term is defined further within the definition of comparable replacement dwelling. The NPRM proposed simplifying the definition of financial means by consolidating it from three paragraphs to a single paragraph. No change in meaning was intended.

We received 12 comments on this proposed change. The commenters expressed two major concerns. First, several comments indicated that consolidating the separate paragraphs relating to owners and tenants was confusing and might, in some cases, result in changes to replacement housing payments.

After further consideration, we believe these comments are correct, and, accordingly, have not adopted the proposed consolidation. (We have, however, deleted some redundant language relating to welfare assistance programs that designate amounts for shelter and utilities, since this is now addressed in § 24.402(b)(2)(iii).)

Secondly, because of other related changes in the NPRM, several commenters stated that the proposal would no longer adequately address the benefits to be provided to a person who is not eligible to receive replacement-housing payments because of a failure to meet the necessary length of occupancy requirements. Such persons are still

entitled to receive comparable replacement housing within their financial means.

Besides proposing to simplify the description of financial means, the NPRM also proposed changing the way the rental replacement housing payment would be computed by revising the description of "base monthly rent" in § 24.402(b)(2), and removing the reference to 30 percent of income in § 24.404(c)(3) (which describes the eligibility of persons that fail to meet the length of occupancy requirements). The later two changes have been adopted, as discussed further in this preamble.

We agree that the proposed changes left it unclear as to the benefits that were to be provided to persons who failed to meet length of occupancy requirements. Accordingly, we have retained a paragraph (§ 24.2(a)(6)(viii)(C)), within the description of financial means, that addresses those persons, described in § 24.404(c)(3), who do not meet length of occupancy requirements. It is similar to the current provision, and provides that the payment to such persons shall be the amount, if any, by which the rent at the replacement dwelling exceeds the base monthly rent described in § 24.402(b)(2), over a period of 42 months.

Section 24.2(a)(6)(ix) Subsidized Housing

Several commenters took issue with the proposed change to apply a government housing subsidy program's unit size restrictions when providing comparable replacement housing.

It appears that several of the commenters did not understand how the government subsidy programs work. The choice of a replacement dwelling is always left to a displaced person, but a displaced tenant's eligibility for relocation assistance is premised upon the selection of a decent, safe and sanitary "comparable" dwelling. The existing regulations have long provided that a comparable dwelling, in the case of a person displaced from housing receiving certain project-based or voucher based subsidies, is another dwelling unit receiving the same or a similar subsidy.

In such cases the HUD program requirements for subsidized housing, may limit the unit size of available subsidized housing by applying a determination as to a family's current needs, even though the displacement dwelling may have been larger. This final rule acknowledges these requirements, and provides in § 24.2(a)(6)(ix) that the requirements of government housing assistance

programs, relating to the size of the dwelling unit that may be provided, apply when such housing is used as a comparable replacement dwelling.

A person displaced from a subsidized unit may elect to relocate to housing available on the private market without subsidy, but the available relocation payment will be limited by a computation using a comparable subsidized unit. In most cases, the long-term housing subsidy available to someone displaced from a subsidized unit, will be more advantageous than a relocation payment based on the selection of a dwelling available on the private market. The relocation payment for a dwelling on the private market is limited to a rental differential for a 42-month period by the Uniform Act.

Section 24.2(a)(8)(ii) Decent, Safe and Sanitary

Twenty comments were received concerning the inclusion of standards relating to deteriorated paint or lead-based paint in the definition of "decent, safe, and sanitary dwelling" in § 24.2(a)(8). While all of these comments were favorable, there is no legal authority for mandating these standards in connection with the referral to comparable private market replacement housing under the Uniform Act. Accordingly, this language has been removed from the list of the mandatory elements of "decent, safe, and sanitary" replacement housing appearing in this regulation. Instead, we have included in appendix A a suggestion that such standards may be required by local housing and occupancy codes, and may, in any event be highly desirable in protecting the health and safety of displaced persons and their families.

Section 24.2(a)(8)(iv) Housing and Occupancy Codes

Of the seven comments received on § 24.2(a)(8)(iv) having to do with using local housing and occupancy codes to determine whether the unit is decent, safe and sanitary, most were concerned with determining the number of rooms and living space per individual. One commenter requested that the FHWA set a minimum number of square feet in a bedroom for each occupant as well as set an age standard for bedrooms occupied by siblings of opposite gender.

The protection of the public health, safety and welfare is an essential power of a sovereign government specifically reserved to the States. Accordingly, this regulation references local housing and occupancy codes as the primary source for defining "standard" housing. (In the case of certain federally subsidized replacement housing, federally-issued

"housing quality standards" may be employed where such codes do not exist or are not applied to such housing.)

As was noted in the preamble to the NPRM, the existing regulatory policy on this subject would apply only in the absence of local codes. This has been clarified in § 24.2(a)(8)(iv). Questions of whether contrary or more restrictive housing and occupancy standards than those found in a local code, imposed by State law, must be deemed to override these local standards must be determined as a matter of State law by courts of competent jurisdiction or by the State's Attorney General, and cannot be addressed in these regulations.

Section 24.2(a)(8)(vi) Egress to Safe Open Space

We received three comments concerning the removal of the requirement that replacement housing units have two means of egress when replacement units are on the second story or above and have direct access to a common corridor. One was in favor of the change, a second was uncertain as to the purpose of the requirement and another was against the change for fear of the safety risks to the displaced person.

This is an area best handled through local fire and building codes and does not require Federal guidelines to assure the safety of displaced persons. There was overwhelming support for removing the requirement from our five national Public Listening Sessions that we held leading up to preparations of the NPRM. Therefore, no change was made to the language proposed in the NPRM.

Section 24.2(a)(8)(vii) Disability

Thirteen commenters requested that the definitions of Comparable Replacement Dwelling and Decent Safe and Sanitary Dwelling (and the corresponding provisions of appendix A) go into more detail regarding the needs of persons with disabilities, as well as a variety of disabilities.

Because the needs of persons who are disabled are addressed by other Federal or local statutory and regulatory requirements, which may or may not apply to any individual project which triggers the Uniform Act, we believe it is unnecessary to elaborate further in this rule except as noted in appendix A. The final rule addresses the need to accommodate the displaced person's needs in terms of unit size, location, access to services and amenities, reasonable ingress, egress or use of a replacement unit, and therefore, we do not believe additional detail is necessary.

We agree that there is a need to revise some of the language in appendix A, § 24.2(a)(8)(vii) to address the physical attributes of replacement housing for persons with physical disabilities beyond those dependent on a wheelchair. Therefore, we have broadened the language in the final rule to include persons with a physical impairment that substantially limits one or more of the major life activities of such individual. We have not addressed the needs of other nonphysical disabilities (such as mental impairment) in this rule since it is unclear what unit attributes would need to be addressed for this class of persons and any needs of such persons would be more appropriately addressed by other statutory and regulatory requirements.

Section 24.2(a)(9)(ii)(D) Temporary Relocation

In 1987, the Uniform Act was amended to cover displacement from Federal and federally-assisted programs or projects as a direct result of rehabilitation. To counter the disincentive this might create for a tenant temporarily displaced from a residence while that residence is being rehabilitated, we considered such a person not to be displaced, if, and only if, certain stringent protections are applied. These included covering moving expenses to and from the temporary location, payment of increased housing costs during the period of relocation, the guarantee of a return to the same unit, or to another suitable unit in the same building or complex, and a limitation on a rental increase at the rehabilitated replacement unit.

We believe that this interpretation of the law, to create an exception to its general applicability, must be limited and strictly applied, in order to meet the intent of Congress. Accordingly, the NPRM proposed that displacement for a period exceeding 12 months must ordinarily be considered significant enough to fall within the general rule pertaining to displacement as a direct result of rehabilitation, and not to come within the limited exception to the definition of "displaced person" which the law establishes. Therefore, the language proposed in the NPRM will not change.

We received eleven comments on the proposed language further describing temporary relocation in § 24.2(a)(9)(ii)(D) of appendix A. Two comments supported this change. However, we are seriously concerned that several of the commenters appear to believe that a person who is displaced by a project that triggers the Uniform

Act can somehow be exempted from full relocation assistance benefits as a displaced person if the Agency terms his/her relocation "temporary", regardless of the required length of time or hardship caused to the displaced person. We are further concerned that some commenters seem to consider the cost to their project more important than the protection provided by the Uniform Act. This may indicate that appropriate project and relocation planning is not taking place. It is for this reason that additional clarity concerning temporary relocation has been added to the rule.

Several commenters referenced the HUD policies on temporary relocation. HUD has indicated for years that it has always restricted "temporary relocation" to situations where the Uniform Act trigger was rehabilitation. In such cases, a tenant was guaranteed the right to return to a unit in the project prior to moving from the displacement dwelling. In recent years, HUD has permitted grantees to consider up to one year as acceptable temporary relocation duration, but again, only where the Uniform Act trigger is rehabilitation. However, HUD reports that some HUD grantees may have abused this policy and stretched it to apply in situations which are clearly beyond the scope of "temporary," where an entire building or group of buildings is being demolished and will be replaced with fewer units. In this situation, displaced persons cannot be guaranteed a unit in the new building(s) at the time they are required to move from the displacement unit for reasons including: there may be insufficient units rebuilt; former tenant may not meet newly adopted return criteria, and, return to the project may not be for years simply because of the massive demolition and rebuilding that must take place. While many of these sorts of projects purport to allow displaced tenants to return, the reality is that few can. We do not support advising tenants that they are only being temporarily relocated, and are not displaced, when their actual return to a unit in the project is in doubt, and/or may not be for an extended period of time. Further, permanently displacing a person and providing them with full relocation assistance under the Uniform Act should not automatically negate their ability to apply for or return to the site of the HUD funded project that caused their displacement. Many HUD projects give preference to former tenants who want to return.

The rule, now requires that any residential tenant who has been temporarily relocated for a period beyond one year must be contacted by

the Agency and offered all permanent relocation assistance.

One commenter suggested imposing the same one-year requirement upon owner occupants and nonresidential occupants. The final rule adopts language in the proposed rule that provides that "temporary relocation should not extend beyond one year before the person is returned to his or her previous unit or location." We believe this establishes a sound policy that should be followed in most cases. We recognize, however, that in some situations, involving temporary relocations caused by disasters or public health emergencies, Agencies may not be able to provide permanent relocation benefits to such occupants within one year, if ever, because of statutory or programmatic limitations.

We also agree with the commenter who suggested that a temporary move of personal property is not intended to be covered by the one-year limitation on temporary moves.

We expanded the language in appendix A, § 24.2(a)(9)(ii)(D), to cover "rehabilitation or demolition" as suggested by one of the commenters. As noted, we are not changing the language relative to "one year" as we believe this is a reasonable time for any tenant to be in temporary housing (one year is a fairly common initial lease period across the United States). After the one-year period, the final rule requires that a residential tenant be offered permanent relocation assistance. Such tenants may be given the opportunity to choose to continue to remain temporarily relocated for an agreed to period (based on new information about when they can return to the displacement unit), choose to permanently relocate to the unit which has been their temporary unit, and/or choose to permanently relocate elsewhere with Uniform Act assistance. It is expected that temporary relocations will be rare, and, for HUD funded projects, clearly planned for in the development of the project, and used only where a tenant is guaranteed a replacement unit in the project or unit from which they were displaced.

Section 24.2(a)(9)(ii)(M) American Dream Downpayment Initiative (ADDI)

A new paragraph, § 24.2(a)(9)(ii)(M), has been added to the list of "persons not displaced" to reflect a provision, added by Section 102 of the American Dream Downpayment Act (Pub. L. 108-186; codified at 42 U.S.C. 12821) provides that the Uniform Act does not apply to the American Dream Downpayment Initiative (ADDI), a downpayment assistance program

administered by the Department of Housing and Urban Development.

Section 24.2(a)(11) Dwelling Site

We received nine comments in response to the proposed definition of dwelling site. Most agreed that it was needed. Six commenters asked that additional information be provided on what constitutes a dwelling site.

We agree and are revising the definition for clarity. We have provided specific examples in appendix A as to when its use is appropriate.

Section 24.2(a)(12) Eviction For Cause

We received nine comments on the proposal to simplify the eviction for cause provisions in § 24.206 by moving some of them to a new definition in § 24.2(a)(12). Several commenters found this proposal to be confusing, and believed that it resulted in substantive changes to the eviction for cause provisions. This was not our intent, and accordingly we have not adopted the changes to § 24.206 and the new definition that were proposed in the NPRM. We have retained the current regulatory language in § 24.206.

One commenter objected to a clarifying sentence proposed in § 24.206 of appendix A, which simply stated that an eviction related to project development does not affect entitlement to relocation benefits. The commenter felt that this conflicted with the current eviction for cause provisions. However, we have retained the language in appendix A to make it clear that evictions related to scheduled project development, to gain possession of property, do not affect relocation eligibility. As noted in § 24.206, a person who is a lawful occupant on the date of initiation of negotiations is presumed to be entitled to relocation benefits, and can only be denied relocation benefits if the person had received an eviction notice prior to the initiation of negotiations, or is evicted thereafter "for serious or repeated violations of material terms of the lease or occupancy agreement." We do not consider an eviction resulting from a failure to move or relocate when asked to do so, or to cooperate in the relocation process for a federally funded project, to be based on a "serious or repeated violation of material terms" of a lease or agreement.

If an eviction is "for the project" (resulting from a failure to move or relocate when asked to do so, or to cooperate in the relocation process) such an eviction cannot be considered as "serious or repeated violation of material terms" of a lease or agreement unless, prior to executing the lease, the

tenant was notified in writing of the proposed project and its possible impact on him/her and that he/she would not be eligible for relocation payments. While public housing leases may have a clause requiring that a tenant move or cooperate in a move, these provisions are included for the purpose of adjusting unit size as necessary for changes in family composition, and do not negate the tenant's eligibility for relocation benefits caused by a federally-assisted project which triggers the Uniform Act.

Section 24.2(a)(13) Financial Assistance/Lease Payments

One commenter objected to the proposed addition of the term "lease payment" in the definition of "Federal financial assistance" in § 24.2(a)(13). The commenter noted that this term is not included in the statutory definition of "Federal financial assistance" and its addition could have major consequences that were not mentioned or considered in the NPRM. We agree and have deleted the term.

Section 24.2(a)(14) Household Income

We received 16 comments concerning the new definition of household income. Most of the comments were positive and in support of the new definition. However, four commenters requested that we go further in our definition of household income by adding additional examples. Several of the same commenters also requested that the examples given in appendix A be moved to the definition in § 24.2(a)(14).

Because the sources of household income constantly change and vary by household, we will not produce a more definitive list of income sources. Based on the experience of other Federal Agencies that use definitions of income, such definitions can never be totally comprehensive or timely, and could render the regulations outdated within a short period of time. Displacing Agencies need to determine income for each individual or family based on whatever financial resources are available (earned, unearned, benefits, etc.). When a question arises as to whether something should be considered as income, the Federal Agency administering the program should be contacted for its assessment. To further assist in the determination of income exclusions, the FHWA has provided a Web site. (*see* appendix A, § 24.2(a)(14)), of income exclusions that are federally mandated. The income exclusions change periodically based on congressional action and the FHWA will update the Web site as necessary.

We are opposed to moving the examples in appendix A to the definition. The examples are to support the definition and should not be a part of the definition. Therefore, they will remain in appendix A.

One commenter suggested that we change the language in the definition to assure that income claimed is actually received. It is our position that the responsibility for verifying income should be left to the acquiring Agency.

One commenter raised the concern that we have not made provisions for changes that may occur in the income stream throughout a 12 month period. We suggest that if the income changes before the relocation offer is made, that an adjustment be made based upon verification of the change in income. Otherwise, we suggest using the income stream in existence at the time of the relocation offer. The amount of a displaced tenant's replacement housing payment should not be adjusted if the tenant's income later changes. The Uniform Act envisions a rental assistance payment that is determined once, and which is not affected by subsequent events. Replacement Housing Payments under the Uniform Act are not to be confused with rental or homeownership subsidy programs. There is no statutory provision for adjusting relocation claims or payments based on changes in income after the eligibility determination has been made.

Section 24.2(a)(15) Initiation of Negotiations

The NPRM proposed adding paragraph (iv) to the definition of Initiation of Negotiations (ION) in § 24.2(a)(15), to address ION for acquisitions that occur amicably, without recourse to the power of eminent domain. The intent was to avoid establishing a tenant's relocation eligibility before there was any certainty that the property would actually be acquired.

We received 21 comments on this change. A major concern was that delaying tenant eligibility in these cases, until the owner accepts an offer to purchase, might have an adverse effect on such tenants by, for example, their being forced to move as part of the pre-acquisition negotiations, as well as otherwise increasing uncertainty in program management.

In response, we have revised paragraph (iv) in the final rule to provide that ION means the actions described in paragraphs (i) and (ii), for routine Agency acquisitions, except that, in the case of amicable acquisitions covered in paragraph (iv), the ION does not become effective for purposes of

establishing relocation eligibility until there is a written agreement between the Agency and the owner to purchase the property. This would establish the potential relocation entitlement of tenants at the time negotiations begin, but would not provide relocation benefits in the event no agreement was reached to acquire the property. Such tenants should be fully informed of their potential eligibility.

In response to a comment we also changed the reference to "acceptance of the Agency's offer to purchase the real property" to "written agreement between the Agency and the owner to purchase the real property," for greater clarity and specificity.

At the request of the Environmental Protection Agency (EPA), the language in § 24.2(a)(15)(iii), concerning the initiation of negotiations on superfund related projects, has been updated and clarified, primarily to delete references to a "Federal or federally-coordinated health advisory." Such health advisories are general in nature and are rarely related to determinations that relocation is necessary. Rather, the action that triggers relocation is a fact-based determination by the EPA, or the Federal Agency conducting an action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510 or Superfund) (CERCLA), that temporary relocation or acquisition is necessary because there is a threat to an individual's health or safety. Typically, on such projects, temporary relocation occurs first, and then, if warranted by the circumstances, it may be followed by permanent relocation. Similar clarifications have also been made in appendix A, § 24.2(a)(15)(iii).

Section 24.2(a)(17) Mobile/Manufactured Homes

A new definition for the term "mobile home" has been added to this section. Six comments were received on this proposed addition. Five commenters agreed that the definition was needed, and three comments proposed changes to the definition to differentiate between mobile homes, manufactured housing and recreational vehicles. The term "mobile home" includes both manufactured homes and recreational vehicles used as residences. Appendix A explains that "mobile homes" and "manufactured homes" are recognized as synonymous by HUD for that Agency's programs, and for purposes of this regulation will be considered the same. Appendix A also includes further requirements that recreational vehicles must meet in order to qualify as replacement housing in appendix A.

(Subpart F continues to include an explanation of the different methods of computing relocation assistance when a mobile home has been determined to be personal property, and when it is determined to be real property.)

Section 24.2(a)(22) Program or Project

One commenter requested a more detailed definition of the term "project." Federal Agency experience over the years has amply demonstrated that it is not feasible to devise a common definition of "project" which could apply to all Federal and federally-assisted programs subject to the Uniform Act. Widely varying legislative and administrative histories of the various programs currently covered, as well as (in some cases) decades of practice, have led to the conclusion that the broad definition of "project" should remain unchanged. To alter the present definition might prove highly disruptive to the administration of many programs administered by Federal Agencies.

However, Federal Agencies should always interpret the term "project" in a way that will ensure that persons who are forced to move as a result of Federal or federally-assisted activities are covered by the Uniform Act.

Section 24.2(a)(30) Utility Costs

Two commenters suggested further clarifying the expenses that are included in the definition of utility costs. In response, we have replaced the reference to heat and light with a reference to electricity, gas, and other heating and cooking fuels.

Section 24.4(a)(3) Assurances

We received two comments opposing the changes proposed in the NPRM to § 24.4(a)(3) of the NPRM. One commenter was concerned that the proposed language would exempt Agencies undertaking arm's length acquisitions from required compliance with the Uniform Act. Similarly, a second commenter brought to our attention that the proposed language may nullify the conditions set forth in CFR 49 Part 24.101(b)(1). We did not intend to undermine the requirements of other sections of the regulations, therefore, after careful review, we agree that the proposed language may be perceived to conflict with the provisions in § 24.101(b)(1), and have not adopted the proposal in the final rule.

Section 24.8 Compliance with Other Laws and Regulations

Several commenters suggested the inclusion of additional laws and regulations within § 24.8.

The existing regulatory language requires the implementation of this part to be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to the laws and regulations cited. The list is merely a representative sample of some significant laws and regulations and is by no means intended to be a comprehensive listing of all applicable laws and regulations. An applicable law or regulation is not required to be cited in this section to be applicable to this part. Therefore, no change is considered necessary. However, for clarity, we have corrected two existing laws. We have added, "as amended" after the reference to the Robert T. Stafford Disaster Relief and Emergency Assistance Act in § 24.8(n); and, we have added a reference to EO 12892, Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (January 17, 1994), § 24.8(o). EO 12892 replaced EO 12259.

Section 24.9 Records and Reports

We received twelve comments on the proposed revisions to § 24.9(c), which proposed to require each Federal Agency to submit an annual report summarizing its relocation and acquisition activities. One commenter supported this change and one sought further clarification. The remaining ten commenters opposed this change, primarily on the grounds that it would impose significant administrative burdens and would have little apparent value.

It was not our intent to increase administrative burdens. As was noted in the NPRM, our primary interest was in obtaining more accurate information, to more effectively monitor implementation of the Uniform Act. However, due to the negative comments received, we have decided not to adopt the proposed change.

Further, since no comments objected to the proposed simplification of the report form in appendix B, we have adopted the proposed form and the instructions for its use. The simplification of the form may lead to greater use by Agencies.

Outside the context of Part 24, the lead Agency will explore the possibility of obtaining such additional acquisition and displacement information from other Federal Agencies as may result from routine Agency operations and oversight.

Subpart B—Real Property Acquisition

We received a comment that the NPRM proposed change to replace the term "fair market value" with "market

value" throughout Subpart B to better reflect current appraisal terminology was neither minor nor reflected universally accepted eminent domain terminology throughout the country.

Upon further examination, we determined that "fair market value" terminology is consistent with Uniform Act language and it appears that Federal courts see no difference in the terms "fair market value" and "market value." Accordingly, we have retained the terminology "fair market value" throughout the subpart, except for § 24.101(b)(1) through (5), where eminent domain is not applicable. But we have added language to appendix A noting that for Federal eminent domain purposes, the two terms may be synonymous.

Section 24.101(a) Direct Federal Program or Project

Federal Agencies advised us voluntary transaction provisions were being used to a significant extent and suggested that these exceptions should no longer apply to acquisitions by Federal Agencies. Their proposal to eliminate this provision for Federal agencies direct purchases is consistent with section 305(b)(2) (42 U.S.C. 4655(b)(2)) of the Uniform Act, which allows these exceptions for recipients of Federal financial assistance, but provides no such exceptions for Federal Agencies themselves. We included the Agencies' suggested revision in the NPRM.

Formerly, the two major exceptions to real property acquisition requirements in Subpart B were voluntary transactions and acquisitions in which the Agency does not have the power of eminent domain. We restructured this section to clarify the application of the real property acquisition requirements set forth in this subpart, and to revise the exceptions to those requirements.

We have adopted the Agencies' proposed change in the final rule, but the exceptions for federally-assisted projects and programs remains in § 24.101(b).

One commenter objected to excluding direct Federal acquisitions from voluntary transaction procedures because the commenter believed that where an Agency acquired a property that was listed for sale, it would create a windfall for that property owner by allowing the owner to receive Uniform Act benefits.

However, as noted elsewhere in this rule (See § 24.2(a)(9)(ii)(E) and (H) and 24.101(a)(2)), if a property owner voluntarily conveys his or her property, without recourse to the power of eminent domain, he or she would

continue to be ineligible for relocation benefits.

Based on a comment we added the word "direct" to the title of § 24.101(a) for clarity. We also added language to appendix A to further clarify the applicability of this paragraph.

We updated language in the rule and in appendix A to reflect the Rural Utilities Service, successor Agency to the Rural Electrification Administration.

We added § 24.101(a)(2) to make it clear that, despite the rule change to make all direct Federal acquisitions undertaken without recourse to the power of eminent domain subject to the provisions of Subpart B, the owners of property acquired voluntarily by direct Federal acquisition, continue to be ineligible for relocation assistance benefits.

Section 24.101(c) Less-Than-Full-Fee Interest in Real Property

There was a comment suggesting we move the language from appendix A, discussing Agencies applying these regulations to any less-than-full-fee acquisition, into the body of the rule itself for greater clarity.

We agree, and the final rule reflects this change.

Section 24.102 Basic Acquisition Policies

We received a comment stating that § 24.102 relates only to acquisitions under the threat of eminent domain, and should be retitled to reflect that.

We respectfully disagree with this comment and note the exceptions to the applicability of Subpart B, Real Property Acquisition, are in 49 CFR 24.101.

Section 24.102(c)(2) Appraisal, Waiver thereof, and Invitation to Owner

We received 28 comments on the NPRM appraisal waiver provisions. Twelve support the changes proposed in the NPRM.

Five commenters disagree with the proposed "two-tier" waiver threshold, especially the provision that the property owner be given the option to have an appraisal if the Agency wishes to use a waiver threshold between \$10,000 and \$25,000. These comments expressed the position that this procedure would be confusing and not really accomplish much.

In response to the language proposed in the NPRM, we received comments requesting waiver thresholds far in excess of \$10,000. However, the Agencies are not comfortable with a waiver threshold over the proposed \$10,000 limit without additional safeguards for the property owner. Part of this caution is based on the regulatory

history of the present policy, which links the appraisal waiver threshold to the cost of appraisal, i.e., a concern that appraisal costs were exceeding acquisition costs. The final rule does not change the NPRM proposal. We point out that use of the appraisal waiver provision is optional for an Agency, so if appraisal waiver provisions become burdensome or ineffective, the Agency need not implement them.

Two commenters expressed concern that appraisal waiver provisions risked property owner protection and were inconsistent with OMB Circular 92-06, which states, "Agencies should prepare real estate appraisal and appraisal review reports in accordance with written and approved agency standards consistent with the Uniform Standards of Professional Appraisal Practice (USPAP), sections (sic) I-III, as developed by the Appraisal Standards Board of the Appraisal Foundation."

We point out that appraisal waivers for low value acquisitions are specifically authorized by the Uniform Act, Section 301(2). We share the concern that property owners retain protections intended by the Uniform Act. That is one reason why we did not raise the waiver threshold to any higher level. As for the issue of consistency with USPAP, appraisal waiver is not an appraisal performance issue, but an issue about when an appraisal is needed under Federal law.

A question was also raised as to whether the threshold applies to the value of the larger parcel (before value) or the value of the proposed acquisition. The regulation states that it applies to the "anticipated value of the proposed acquisition."

One commenter suggested removing the "on a case-by-case basis" language from proposed § 24.102(c)(ii) because it created confusion.

We did remove the "on a case-by-case-basis" language from the final rule as it was unclear.

There was one comment expressing concern about situations where a high percentage of an Agency's acquisitions may be through appraisal waiver procedures.

The FHWA shares that concern and is considering initiating research to examine this issue as it applies to our partner State DOTs; however, it is beyond the scope of this rulemaking action.

Two commenters pointed out (and support) that the NPRM proposed adding language that the determination to use an appraisal waiver must be made by a qualified person.

We are pleased to see not only support for this provision, but that it

was significant enough to comment on it.

Because of the number of comments indicating confusion in general as to the appraisal waiver provisions, we have added further explanation in appendix A.

Section 24.102(f) Basic Negotiation Procedures

Two commenters suggested that "reasonable opportunity" provided to an owner to consider and respond to an offer should be defined with a specific time frame (such as 30 days).

We did not include a required time frame, but appendix A does discuss the issue, stating that, depending on the circumstances, 30 days would seem to be a minimum time frame. We are reluctant to specify a time frame because we believe that circumstances can dramatically impact what is an appropriate reasonable opportunity to consider an offer and present information.

One commenter stated that giving property owners "a reasonable opportunity to consider the offer" has the potential to slow down project times.

We recognize this potential, however, we believe this statement reflects the primary purpose of the Uniform Act and this regulation, which is to assist and protect property owners and occupants.

One commenter suggested that Agencies should provide the owner and/or his/her appraiser a copy of the Agency's appraisal requirements and inform them that their appraisal should be based on those requirements.

This is an excellent idea, and we have included language to encourage Agencies to do this in appendix A.

One commenter suggested adding the word "all" to "reasonable efforts to contact the owner."

We agree and added the word "all" to the final rule for greater clarity.

Section 24.102(i) Administrative Settlement

Comments indicated support for this section, but noted that not much was changed. We agree. The revised language focuses more on clearly stating the supporting justification for settlements.

One commenter suggested that § 24.107, certain legal expenses, should be cross-referenced in this section.

Since the topics and issues are different, we did not make that change.

We have revised the language to require more specific information in the written justification ("state" rather than "indicate") and deleted specific suggestions ("appraisals, recent court

awards, estimated trial costs, or valuation problems") in favor of requesting "what available information, including trial risks, supports the settlement."

Section 24.102(n) Conflict of Interest

The NPRM proposed expansion of this section to include all persons making waiver valuations under § 24.102(c)(2). This change would bring equal conflict of interest standards to all individuals valuing real property, whether their work is waiver valuations, appraisal, or appraisal review, and would clarify who is covered.

We received 24 comments on the proposed revision to this section. The majority of comments referenced the proposal that any person functioning as a negotiator shall not supervise or formally evaluate the appraiser, review appraiser or person making waiver valuations.

Comments received focused on the impacts on Agency operations. A major concern was how an Agency could comply with the requirement that an appraiser, review appraiser or anyone making a waiver valuation not be supervised or evaluated by anyone negotiating for the property since currently most, if not all, managers frequently become involved in negotiations.

This is a difficult issue, but we, as well as the other affected Federal Agencies, continue to support the provision providing independence for appraisers from officials negotiating to acquire the property.

One commenter recommended that no Agencies be exempted from appraiser independence provisions and suggested that streamlined appraisals and reports could be used to meet budgetary needs.

The exemption is not based on financial considerations, but rather on recognition that some small Agencies, especially Federal-assistance recipients such as local public Agencies, do not have the staffing levels that are needed to support the separation of functions.

One commenter wondered about the impact on consultants of providing independence for appraisers from officials negotiating to acquire the property, and suggested the ethical controls in the Uniform Standards of Professional Appraisal Practice (USPAP)¹ are sufficient.

¹ Uniform Standards of Professional Appraisal Practice (USPAP). Published by The Appraisal Foundation, a nonprofit educational organization. Copies may be ordered from The Appraisal Foundation at the following URL: <http://www.appraisalfoundation.org/html/USPAP2004/toc.htm>.

We note that USPAP controls apply to the appraiser, whose only recourse to inappropriate pressure from a manager or supervisor is refusal to do the assigned task. We believe that this does not adequately address conflict of interest concerns. Policing conflict of interest should not be the appraiser's responsibility. The impact on a consultant will ultimately be up to the funding Agency, which may waive this provision if it believes it appropriate to do so. Again, the responsibility to prevent undue pressure on an appraiser is on the Agency.

One commenter suggested the same (Agency) person should be able to procure contract appraisal services and serve as a negotiator.

This comment was from a local public Agency, which, as such, would be eligible for a waiver if granted by the Federal funding Agency, therefore we did not incorporate such a change.

One commenter expressed a concern that a Federal Agency could give itself a waiver from the requirement that negotiators may not supervise appraisers.

We believe the regulation is clear that the waiver is only for "a program or project receiving Federal financial assistance." This precludes the Federal Agency from granting itself a waiver.

One commenter supported the exception in the last paragraph, which allows the appraiser, the review appraiser and preparer of a waiver valuation to also act as negotiator when the offer to acquire is \$10,000 or less. However, another commenter objected to this exception, stating the issue was too important to allow a waiver.

Another commenter suggested the \$10,000 threshold be raised to match the appraisal waiver threshold.

One commenter objected to allowing appraisers to act as negotiators in acquisitions under \$10,000.

We did not change the threshold amount because the participating Federal Agencies continue to believe that the \$10,000 limit provides a reasonable and appropriate exception for low value transactions. The rule adopts the conflict of interest language proposed in the NPRM.

Section 24.103 Criteria for Appraisals

One commenter asked if there is some way we could require that all appraisals prepared for use under the Uniform Act meet appraisal requirements in this rule. The commenter was referring to appraisals made other than for the Agency, such as for property owners.

Many jurisdictions grant broad authority to property owners to express their opinions about their property, and

some even compensate them for the costs of an independent appraisal. We see no way we can require appraisal requirements in this rule for property owners' appraisals or other valuation opinions. We suggest Agencies make available their appraisal requirements to property owners so at the least they will know what the requirements are for the Agency's appraisal(s).

The revisions relating to appraisals in §§ 24.103 and 24.104 are the first since The Appraisal Foundation published the USPAP in 1989. Considerable confusion and misunderstanding as to the applicability of the USPAP provisions to Uniform Act real property acquisitions have existed ever since USPAP was first published. The Uniform Act and 49 CFR part 24 set the requirements for appraisal and appraisal review in support of Federal and federally-assisted acquisition of real property for government projects. Many of the revised provisions of §§ 24.103 and 24.104 are intended to assist the appraiser, the Agency and others in understanding the requirements of these subparts in light of the USPAP.

We changed the terminology throughout this section from "standards" to "requirements" to avoid confusion with USPAP standards rules. We also added the phrase "Federal and federally-assisted program" to more accurately identify the type of appraisal practices that are to be referenced, and to differentiate them from private sector, especially mortgage lending, appraisal practice.

One commenter suggested we use USPAP Standards 1, 2 and 3 for several reasons. Certified and licensed appraisers in most States are required to comply with USPAP, and although the Jurisdictional Exception may be used where the USPAP is contrary to law or public policy, that complicates matters unnecessarily. Also, USPAP standards are already in place, and this would assure the Federal government, taxpayers and property owners that appraisals and appraisal reports comply with certain minimum standards.

Uniform Act appraisal requirements have been in place for some time and actually predate USPAP. They were put in place to do what the commenter suggests: provide assurance that when an Agency needs real property, all the parties involved are treated fairly. That is the primary purpose of the Uniform Act. As for the USPAP Jurisdictional Exception, we believe any "complication" is mostly based in misunderstanding of how it works. In any case, USPAP Jurisdictional Exceptions are by definition based in law or public policy and the Agency has

very little, if any, flexibility for optional compliance with the Uniform Act.

Section 24.103(a) Appraisal Requirements

In the NPRM we proposed stating that these regulations set forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs to make it clear that other performance standards, such as USPAP and those issued by professional appraisal societies, do not directly govern programs covered by the Uniform Act. Based on the comments we received, this proposed language clarified the relationship between the appraisal requirements in this rule and USPAP and we have included that language in the final rule. Additionally, we have added further explanatory language in appendix A.

The NPRM proposed adding a requirement for a scope of work statement in each appraisal. The scope of work replaces the former appraisal problem statement. It also renders obsolete the former "minimum standards" and "detailed" appraisals, replacing them with an infinitely variable standard driven by the circumstances of each acquisition. We have included in appendix A a discussion on preparing the scope of work.

We received several comments supporting the adoption of the scope of work. One commenter suggested that the scope of work for Uniform Act purposes needs to be clearly differentiated from the scope of work required by USPAP.

As of the publication of this regulation, the Appraisal Standards Board has not finalized the scope of work in USPAP, so it would be premature to attempt to differentiate. It is our hope that the two concepts will be consistent and that a scope of work written in compliance with this rule will be compatible with any future scope of work requirement in USPAP.

One commenter said that the appraiser should not be able to unilaterally determine the scope of the assignment or what the appraiser will provide the Agency. However, another commenter suggested that the appraiser should decide the scope of work, perhaps in consultation with the client (Agency). This comment was made as part of a discussion about the Agency instructing the appraiser that in certain circumstances, the sales comparison approach would be the only approach to value to be used.

We point out that Agencies have had input to the appraisal process under the old rule. First, the "sales comparison

approach only" option has been available to Agencies for many years and has, to our knowledge, caused no problems. Second, these requirements are written on the basis that the Agency is a "knowledgeable user" of appraisal services. That is, the Agency is familiar with both the appraisal process and its own needs, and is capable of participating in a legitimate statement of work to solve the appraisal problem. Accordingly, we believe that appraisers should not be given final authority over the appraisal process for an Agency. We believe it is appropriate that this option continue to be retained by the Agency.

One commenter said it believes the purpose and/or function of the appraisal, a definition of the estate being appraised, and if it is market value, its applicable definition, and the assumptions and limiting conditions should be stated separately, and not be in the scope of work.

We believe the scope of work, as a vehicle of agreement between the appraiser and the Agency, is the appropriate place to include these items. They should also be included in the appraisal report, as part of the scope of work statement.

One commenter questioned the meaning of "the extent appropriate" for application of the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).²

The UASFLA is a publication that summarizes Federal eminent domain appraisal case and statute law. So, to the extent that an Agency either follows Federal eminent domain practices, or voluntarily adopts UASFLA as its appraisal guidelines, it may be applicable.

Another commenter recommended that the appraisal clearly define and list which items are considered as real property and which are considered as personal property.

We agree and the regulation and appendix A have been revised to reflect this suggestion.

Still another commenter suggested the five-year sales history be changed to ten years since the property may not have changed hands in the last five years.

Although we did not change the requirement in the regulation, we point out that its requirements are minimums. If the appraiser or the Agency believes

higher levels of performance are necessary, then the appraisal scope of work should reflect that.

Section 24.103(a)(2)(ii) Appraisal Requirements

A commenter suggested that USPAP compliance would require appraisers to invoke the USPAP Departure Provision to use only the sales comparison approach.

We disagree with this evaluation. At the present time, a State certified or licensed appraiser who is requested by an Agency to provide only the sales comparison approach would, in our opinion, be doing so under the USPAP Jurisdictional Exception Rule, since the Agency's request would be pursuant to the authority granted it under its law and public policy, which is the basis for a USPAP Jurisdictional Exception.

Section 24.103(d) Qualifications of Appraisers and Review Appraisers

One commenter suggested the rule should recognize that appraisal professional organizations' designations provide an indication of an appraiser's abilities.

We have added language to § 24.103(d)(1) and corresponding text to appendix A to emphasize the need for appraisers and review appraisers to be qualified and competent, and that State licensing or certification, and professional designations can help provide an indication of an appraiser's abilities.

Section 24.103(d)(1)

While the majority of the comments on the proposed changes to this section were positive, we did receive several comments that recommended that appraisers and review appraisers be required to be State certified.

Although we have not adopted that suggestion, we recognize the need for appraisers and review appraisers to be qualified and competent, and that State licensing or certification, and professional designations can help provide an indication of an appraiser's abilities. Therefore, we have added certification and licensing to the list of items to be considered by an Agency in determining the qualification of an appraiser (or review appraiser). We also note that some States have specifically excluded certain State Agency appraisers from State licensing/certification requirements.

Section 24.104 Review of Appraisals

For consistency, the term review appraiser is used throughout this rule to refer to the person performing appraisal reviews. We also added language that

² The "Uniform Appraisal Standards for Federal Land Acquisitions" is published by the Interagency Land Acquisition Conference. It is a compendium of Federal eminent domain appraisal law, both case and statute, regulations and practices. It is available at <http://www.usdoj.gov/enrd/land-ack/toc.htm> or in soft cover format from the Appraisal Institute at <http://www.appraisalinstitute.org/ecom/publications/default.asp> and select "Legal/Regulatory" or call 888-570-4545.

will clarify and specify the responsibilities, authorities and expectations associated with appraisal review.

One commenter stated that the NPRM significantly expands appraisal review responsibilities and requirements.

We believe the final rule more accurately elucidates what was commonly assumed to be appraisal review responsibilities and requirements.

A commenter suggested that the final rule should allow administrative reviews performed by appraisers or non-appraisers where the values are less than \$50,000.

We disagree because only a technical review can provide the basis for approving an appraisal for valuation purposes.

There was an objection to the discussion in the first two paragraphs of appendix A as being promotional and self-serving.

This discussion provides information on the concept of appraisal review as it is used by public Agencies and we believe it is necessary.

One commenter said the proposed change to allow the review appraiser to support and approve a different value without any oversight or review is not a good policy. This could result in the review appraiser being pressured to increase or reduce appraised values without oversight.

First, the policy allowing the review appraiser to support and approve a value different from that of the appraisal being reviewed has been part of the preceding rule and is not new. Second, at the Agency's option, the Agency official who establishes the amount believed to be just compensation to be offered to the property owner may be someone other than the review appraiser.

Section 24.104(a) Review Appraisers

Several commenters responded to the three options available for the appraisal review.

One commenter expressed concern for using the term "rejected."

We agree and replaced the term "rejected" proposed in the NPRM with "not accepted." This more clearly reflects that such appraisals, while they may meet others' standards or requirements, do not meet the requirements of this rule and the Agency.

One commenter suggested that the type and level of review should be left to the discretion of the acquiring client Agency.

We agree that the Agency should have some discretion as to the review, and we

believe that is included in the appraisal review provisions. However, we also believe the amount of appraisal review discipline specified in this rule is necessary to assure compliance with the Uniform Act requirement that the offer believed to be just compensation be based on an approved appraisal.

The same commenter also suggested that the rule delete the requirement that all appraisals must be reviewed.

We do not believe we have flexibility under the Uniform Act to make appraisal review optional. The Uniform Act calls for an approved appraisal, which this rule interprets and implements as requiring a technically reviewed appraisal. We note that while the Uniform Act specifically grants authority for waiver of the appraisal, it does not do so for approving an appraisal.

There were two comments saying the appraisal review provisions should be consistent with USPAP. One specifically cited that having the review appraiser approve the appraisal was not consistent with USPAP, and should be changed unless there is a compelling reason to be different.

We believe, first of all, that it is not inconsistent with USPAP for the review appraiser to be requested to approve the appraisal. We believe the requirement for approving the appraisal is within the bounds of USPAP's Standard Rule 3-1(c) where identification of the scope of the (review appraisal) work to be performed is discussed. Second, if there is any question as to consistency, we point out that the requirement for an "approved appraisal" is in the Uniform Act and would appear to qualify as a USPAP Jurisdictional Exception, based on being "law or public policy."

One commenter suggested that the phrase "accepted (but not used)" could raise questions in condemnation litigation as to why a report met "government standards" was not used, perhaps implying the Agency shopped for the value it wanted to get.

The appraisal review report should discuss why one of two or more reports was selected as approved for best supporting an offer believed to be just compensation.

Another commenter stated that references to the review appraiser setting just compensation is inaccurate and should be deleted.

The language in § 24.104 was carefully written to follow the Uniform Act. A staff review appraiser may be authorized to "develop and report the amount believed to be just compensation," not "set" just compensation, which we acknowledge is the purview of the courts.

One commenter raised a concern that the review appraiser should be required to develop an opinion on whether or not the report complies with Standards 1, 2 and 3 of USPAP as well as an opinion of market value.

As we have noted, while this regulation is intended to be consistent with USPAP, it implements the Uniform Act and its requirements only; it is not a vehicle for implementing USPAP.

A commenter suggested that the owner be offered the opportunity to accompany the review appraiser on the inspection of the property.

An on-site inspection by the review appraiser is not a specific requirement of these regulations, so inviting the property owner would be inappropriate. The necessity of an onsite inspection by the review appraiser depends on the appraisal problem, the appraisal(s), and Agency policy.

One commenter asked what was the background of accepted, approved and rejected.

The three appraisal review results options specified reflect the results that were always needed, but never specifically cited. They are directly related to the needs of the acquisition process specified in the Uniform Act. Additional language has been added to appendix A to further clarify that process.

Section 24.104(b) Review of Appraisals

One commenter expressed the position that it is not good policy to allow the review appraiser, as part of the appraisal review process, to develop independent valuation information if he/she could not approve any submitted appraisal. Concern was expressed that there was potential for undue coercion to be exerted on the review appraiser without oversight.

We believe that newly introduced provisions to enhance appraiser and review appraiser independence will mitigate this risk. We point out that the provisions allowing the review appraiser to develop an independent valuation are carried over from the previous rule.

Section 24.104(c) Written Report

One commenter requested clarification that only a duly authorized Agency staff person can make the approved appraisal decision, because Agencies sometimes mistakenly believe they have no choice but to accept the review appraiser's conclusion.

This is clarified in the final rule.

Another commenter asked if an appraisal report which has had its value conclusion modified in some fashion

during review, maintains its status as approved.

This would come into play primarily when, subsequent to submission by a fee appraiser, the reviewer modifies the recommended (or approved) amount due to a plan revision or other similar reason. For the purposes of the Uniform Act and this regulation, the review appraiser could adjust the recommended or approved amount to reflect changes without voiding the acceptance of the reviewed appraisal report, if those changes are not so substantial as to change the appraisal problem.

Still another commenter asked whether the requirement that any damages or benefits to any remaining property be identified in the review appraiser's report is to be just a simple allocation between damages and benefits or whether discussion is implied.

The requirement is to "identify" any damages or benefits. Therefore, if some discussion may be needed to explain an allocation, such discussion should be included, too, but is not explicitly required.

Two commenters objected to authorizing the review appraiser to determine the amount believed to be just compensation, opining that is a management determination.

We agree it is a management determination, but it is also appropriate to give management the option of delegating this responsibility to a staff review appraiser.

Section 24.105 Acquisition of Tenant-Owned Improvements.

One commenter stated that some tenant-owned improvements or modifications made to accommodate a tenant's disability or the disability of a household member, such as ramps, may have no market value or salvage value because they are of limited use to anyone but the tenant who installed them. In such situations, the regulations should require that the household be compensated for the replacement value of the improvements.

We did not change the provision in § 24.105 for such a situation because the residential occupant would be "made whole" through relocation assistance provisions of this regulation.

Section 24.106 Expenses Incidental to Transfer of Title to the Agency

One commenter stated that we should add a new paragraph describing "other related costs incurred", solely as a result of transfer of real property to the Agency. The regulation can allow only those expenses specified by the Uniform

Act, section 303, therefore, this change was not made.

Subpart C—General Relocation Requirements

Section 24.202 Applicability

One commenter suggested we change the word "benefits" to "entitlements." We feel that since the word "assistance" is used throughout the Uniform Act that we will change the word "benefits", when feasible, to "assistance" to be more in line with the language used in the Uniform Act. The Uniform Act program is not an entitlement program but rather a reimbursement program to assist in relocating to a new site.

Section 24.203(b) Notice of Relocation Eligibility

One commenter requested that we further define "promptly" in § 24.203(b), suggesting that it refers to the prompt notification of all occupants/tenants after the initiations of negotiations and, therefore, should be defined to not exceed 7 calendar days or perhaps up to 10 calendar days at most. We consider promptly meaning "as soon as practicable" and do not believe that further elaboration is necessary. Displacing Agencies may wish to further define the term in their operational procedures. (The FIIWA has issued guidance in the past to the State Highway Agencies suggesting that, as used in this section, "promptly" means 7 to 10 days).

Section 24.203(d) Notice of Intent to Acquire

The NPRM proposed moving the definition of notice of intent to acquire from the "Definitions" section to the "Notices" section of the regulations. The intent was to group all relocation notices in one place for consistency. A minor revision in wording for clarity was also proposed. No change in the meaning of the term was intended.

We received four comments on this proposed change. One commenter proposed alternative wording for the term that has not been adopted. Three commenters expressed confusion over the intent of this term, therefore, further explanation is warranted here.

The notice of intent to acquire is one of three actions (the other two being initiation of negotiations for acquisition, and actual acquisition) that can establish a person's eligibility for relocation assistance (see § 24.2(a)(9)(i)(A)). Unlike the other notices described in § 24.203, a notice of intent to acquire is not mandatory. As was noted when the 1989 final rule was issued (54 FR 8916), its purpose "is to

clearly establish a displaced person's eligibility for relocation benefits. However, it should be understood that the absence of such a notice does not deprive the person of eligibility for relocation benefits."

A notice of intent to acquire may be used to establish a person's eligibility for relocation assistance prior to the initiations of negotiations and sometimes prior to commitment of Federal-financial assistance. A notice of intent to acquire is a means by which displacing Agencies may establish a person's relocation eligibility in advance of the typical acquisition and relocation process in order to conduct orderly relocation, minimize adverse impacts on displaced persons and to expedite project advancement and completion.

One commenter suggested that the notice of intent to acquire could be confused with the "notice to owner" found in § 24.102(b). A notice to owner is merely an Agency's notice informing the owner of the Agency's interest in acquiring the property; it is not a commitment and does not establish relocation eligibility. Whereas a notice of intent to acquire is an Agency's written notice provided to a person to be displaced; it is a commitment and clearly establishes relocation eligibility in advance of the normal acquisition and relocation process.

One commenter was uncertain as to the relationship between the notice of intent to acquire, and the notice of relocation eligibility, described in § 24.203(b). While the notice of intent to acquire is one of three possible actions that establish eligibility for relocation assistance, the notice of relocation eligibility is a mandatory notice that notifies persons when they become eligible for relocation assistance. For greater clarity and consistency we have added references to the notice of intent to acquire and actual acquisition in § 24.203(b) to make it clear that the notice of relocation eligibility must be provided after whichever Agency action first triggers a person's eligibility for relocation assistance.

Section 24.204(b)(1) Disaster Relief Act and Section 24.204(c) Basic Conditions of Emergency Move

For clarity, we have updated the citation to the Robert Stafford Disaster and Emergency Assistance Relief Act, as amended, (42 U.S.C. 5122) in § 24.204(b)(1). We have also added a reference to "displacement dwelling" in § 24.204(c) to emphasize that we are referring to relocations from such dwellings.

Section 24.205 Relocation Planning, Advisory Services, and Coordination

One commenter asked whether changes in § 24.205 were intended to preclude so-called “global settlements.” Another comment, focusing primarily on § 24.207(f) (which prohibits Agencies from requesting that displaced persons waive relocation benefits), recommended that the regulation would preclude the use of such settlements. The comment described “global settlements” as “the packaging of relocation entitlements (in some cases moving, mortgage interest, price differential, etc.) with the fair market value to reach an administrative settlement of the acquisition.”

The changes to § 24.205 are not intended to reflect “global settlements.” We do not believe that such settlements are consistent with the requirements of the Uniform Act or this part.

The Uniform Act and this part require that relocation payments be determined in accordance with specific fact based criteria. For example, a homeowner’s replacement housing payment shall be based on the “amount, if any” that must be added to “the acquisition cost of the dwelling acquired” to equal the reasonable cost of a comparable dwelling. It is therefore impossible to accurately determine the amount of a displaced homeowner’s replacement housing payment until the actual acquisition cost of the acquired dwelling is established. Furthermore, a replacement housing payment can only be made to a displaced homeowner if the homeowner purchases and occupies a decent safe and sanitary replacement dwelling within one year after he or she receives final payment for the acquired dwelling. Accordingly, under the Uniform Act and this part, a homeowner’s replacement housing payment cannot be determined until the actual acquisition cost is known.

In addition, actual reasonable moving expenses often cannot be determined until after the move has been completed. Relocation benefits provided under the Uniform Act and this part must be determined in accordance with the applicable requirements contained therein, and any “settlement”, related to relocation benefits, that does not do so would not be consistent with statutory and regulatory requirements.

Both §§ 24.205 and 24.207(f) are drafted to ensure that displaced persons are fully advised of all relocation assistance benefits that are available to them, and that a displaced person is offered all the assistance and benefits for which he or she is eligible. This

applies to both residential and nonresidential displacements.

Section 24.205(c)(2)(i)(A–F) General Planning

We received eleven comments on the proposed requirement for obtaining information from the displaced business owners concerning a business’s needs during the relocation process to enable the acquiring Agency to assist the business in successfully relocating to a replacement site. Most were in favor of the new informational requirements. Three commenters expressed concerns, stating that their planning process was undertaken early, during the early environmental studies, and that the information would be obsolete prior to the actual relocation process.

We included this requirement so that the interviews, where the six informational items are to be obtained, are conducted during the advisory assistance process. This process is to be undertaken when relocation can be expected to begin within a short interval of time.

One commenter was concerned that some business owners engaged legal counsel that advised the businesses not to provide any information to the displacing Agency. In such cases, acquiring Agencies should explain to business owners that the intent of the interview questions is to obtain data that will enable the Agency to better assist the displaced business, and that the Agency is required to seek such information by a Federal regulation implementing the Uniform Act.

Section 24.205(c)(2)(i)(C)

We received two comments recommending we change the wording in § 24.205(c)(2)(i)(C) concerning the resolution of personalty/realty issues, in order that the provision apply to all businesses not just tenant businesses. We agree with the recommendation and have removed “tenant” from § 24.205(c)(2)(i)(C).

We received six comments to the proposed change to § 24.205(c)(2)(i)(C), concerning identification and resolution of realty/personalty items prior to an appraisal of the property.

All commenters agreed that this is a problem area and that a change is needed. However, all commenters shared a common concern, that requiring resolution prior to the appraisal of the property is sometimes not possible.

One commenter suggested “should” be used in place of “must.” Several commenters reminded us that most Agencies are aware of the problem and make every effort to identify and resolve

these issues as early as possible, but that sometimes it is not possible given the reluctance of tenants and owners to cooperate.

We received many comments from the public prior to the NPRM requesting a stronger position be taken on resolving realty/personalty issues early in the process. However, we recognize the valid concerns reflected in the comments and, therefore, have changed § 24.205(c)(2)(i)(C) to provide that “every effort must be made” to identify and resolve realty/personalty issues prior to “or at the time of” the appraisal.

Section 24.205(c)(2)(i)(E)

We received three comments on § 24.205(c)(2)(i)(E) which proposed that interviews with displaced business owners include an estimate of a business searching expense payment based on the estimated difficulty in locating a replacement site. The comments questioned the purpose of obtaining an estimate of searching expenses and asked whether the acquiring Agency or the business owner should prepare it.

There are two general purposes for this provision. The first is to generate a discussion of the anticipated problems faced by the business to enable the acquiring Agency to determine the time required for the move; and, second, to factor in the time and costs of investigating a replacement site. These costs include those necessary to obtain permits, attend zoning hearings and negotiate the purchase of a replacement site. Our primary intent was to identify problems in locating a replacement site. For clarity, and in response to the comments, we have deleted the requirement that an estimate of the searching expense payment be provided.

Section 24.205(c)(2)(ii)

Several commenters noted the incorrect placement of a sentence concerning business interviews within the residential portion of this section of the regulations, at the end of § 24.205(c)(2)(ii). This sentence was erroneously repeated from the preceding business interview discussion, and has been deleted from the final rule.

One commenter recommended that the regulations provide that reasonable accommodations be made for disabled displaced persons in the interview process and with regard to transportation. The NPRM did not propose any changes in this area and we believe none are necessary. Agencies must make every effort to provide reasonable accommodations for all displaced persons, including the

disabled, in order to minimize any adverse impacts. This is not a new requirement; it is a fundamental principle of relocation advisory services. As such, no additional changes were adopted.

Section 24.205(c)(2)(ii)(D)

We received 12 comments regarding the proposal that an Agency, which has a program objective of providing minority persons with an opportunity to relocate outside of areas of minority concentration, may determine to provide a reasonable and justifiable increase in the payment to facilitate such a move. Every comment disagreed with the addition of this flexibility for various reasons, many because it was perceived as a mandate to provide additional payments rather than an option based on an Agency's program goals. Based on further consideration, and in response to the comments, we removed this language from the final rule.

Section 24.205(c)(2)(ii)(E)

We received six comments on § 24.205(c)(2)(ii)(E), which concerns transportation to inspect replacement housing. One commenter suggested that such transportation should be "need based" for only certain individuals, such as those with health limitations or disabilities. Another commenter wanted to add the wording "as appropriate." Still another commenter wanted the decision to provide this transportation to be at the discretion of the Agency.

The requirement to offer transportation to all displaced persons is not new. A minor clarification was proposed to emphasize that all displaced persons are entitled to such transportation. It has been our experience that most people will provide their own transportation, but in fairness to all, transportation shall be offered to all displaced persons equally.

One commenter voiced concern about government liability in transporting non-government persons, and suggested designating other forms of transportation. We purposely did not designate a mode of transportation. It is the responsibility of the Agency to decide how they will transport a displaced person. If liability is a concern, there are other means of transportation available such as a taxicab or rental car.

Section 24.206 Eviction for Cause

See the explanation under Subpart A, definitions, § 24.2(a)(12), in this preamble.

Section 24.207(f) Waiver of Benefits

We received 17 comments on § 24.207(f), which provides that displacing Agencies shall not propose or request that a displaced person waive his or her relocation benefits. This section complements §§ 24.205(c) and 24.203(a), (b) and (c) which describe the information and notices that must be provided to persons prior to displacement.

The comments were virtually unanimous in support of § 24.207(f). However, it appears that a few commenters did not fully understand this provision. As we noted in the preamble to the NPRM (68 FR 70348–70349), because the Uniform Act imposes requirements on displacing Agencies to provide relocation assistance, a person to be displaced cannot relieve an Agency from the Uniform Act's requirements by agreeing to waive his or her relocation assistance and benefits.

Appendix A, § 24.207(f), provides that a person, after they have been fully advised of all relocation payments and assistance to which they are entitled, may, in a written statement, choose not to accept some or all of such benefits. In the unlikely event that a person simply refuses to accept some or all payments and assistance, and refuses to provide any written statement to that effect, the Agency should document such refusal in writing.

We have made two minor changes to § 24.207(f) in response to comments. We have inserted "No" as the first word of the section's title, to emphasize that this provision is not intended to encourage any waiver of benefits. We have also changed the phrase "relocation assistance and payments provided by the Uniform Act," to "relocation assistance and benefits provided by the Uniform Act," to avoid any implication that this section would apply to payments for the acquisition of real property, which are addressed in detail in subpart B.

Section 24.207(g) Expenditure of Payments

We received five comments on proposed § 24.207(g). These generally requested minor editorial changes or further clarification. This section expresses longstanding practice and understanding by stating that relocation payments provided to a displaced person are not "Federal financial assistance" for purposes of this part, and therefore, their expenditure is not subject to the Uniform Act. In response to the comments received minor

changes have been made to improve clarity.

Subpart D—Payments for Moving and Related Expenses

Section 24.301(b) Moves From a Dwelling

We received 13 comments on § 24.301(b), moving from a dwelling. Most of the commenters were unclear on what is meant by the phrase "but not by the lower of two bids or estimates" in § 24.301(b). It has long been our position that a residential displaced person cannot be paid for a self-move based on the lower of two bids or estimates. This has always been a moving option reserved for businesses. There are only three types of moving options available for residential moves, that are described in §§ 24.301(b)(1) and (2)(i) and (ii). After careful consideration of the comments we agree that the proposed language in § 24.301(b) could be misunderstood and have made changes to better clarify that a residential self-move cannot be based on the lower of two bids or estimates.

Two commenters questioned why we allow an actual cost move, supported by receipted bills, to equal the hourly rate that a commercial mover would receive. In response to that, the rate a commercial mover would pay is only there as a comparison, to ensure that the rate charged is not excessive. The rate may be less than the prevailing commercial rate.

One commenter suggested that we make it clear that the hourly rate for equipment rental be based on the actual cost of the equipment rental, but not exceed the cost a commercial mover would charge. We agree and have added language to §§ 24.301(b)(2)(ii) and 24.301(d)(2)(ii) to reflect this clarification.

Section 24.301(b)(2)(iii) and (c)(2)(iii) Moving Cost Finding

We received 20 comments on the proposed new method of moving personal property that would allow a qualified Agency staff person to estimate and determine the cost of a small uncomplicated personal property move up to \$3,000, with the informed consent of the displaced person (NPRM § 24.301(b)(2)(iii).)

The comments varied from those who supported the proposal to those who opposed it. Others found it confusing and questioned the legality of our actions. Six commenters requested we increase the amount anywhere from \$5,000 to \$10,000 with one commenter suggesting the amount be set individually by each State. Four

commenters requested additional explanation as to what determines a "qualified" staff person and two commenters questioned the legality of such a move indicating that there is no statutory support for creating a different type of move.

One commenter suggested we tie the amount to a meaningful index to be evaluated periodically similar to the Fixed Residential Moving Costs Schedule and one commenter requested an explanation of how we arrived at \$3,000.

This proposed change was intended to provide greater flexibility. However, because of the apparent misunderstanding of the purpose of the proposal, and the range of confusion and concern expressed, we have decided not to adopt this proposal.

Section 24.301(d) Moves From a Business, Farm or Nonprofit organization

One commenter brought to our attention that we had inadvertently left out actual cost moves as one of the options for business moves. We agree and thank the commenter for bringing it to our attention. We have added it back in the regulations as part of § 24.301(d)(2)(ii).

Two commenters requested additional information on hourly rates. We feel hourly rates are adequately explained in Actual Cost Self-Move.

Section 24.301(d)(2) Self-Move

One commenter objected to the elimination of "qualified staff" to estimate actual, reasonable moving expenses, especially in low-cost uncomplicated moves. While we recognize that it is sometimes difficult to receive an accurate estimate from a professional mover, the use of such an estimate, wherever possible, is valuable in establishing accuracy. We understand that occasionally it is necessary to consult trade associations representing specialty movers on a case-by-case basis. As a result, we did not make any changes to the rule.

Section 24.301(e) Personal Property Only

We received seven comments concerning the new paragraph on personal property, § 24.301(e). All were positive comments, however, four commenters requested additional explanation of what is covered by the new paragraph. The four commenters were concerned that, as proposed, § 24.301(e), personal property, would be limited to eligible expenses as described in § 24.301(g)(1) through (g)(7) and not be eligible for expenses in § 24.301(g)(8)

through (g)(18). Thus, in effect eliminating the use of actual direct loss of tangible personal property, substitute personal property, searching expense, and other normally eligible business expenses.

As explained in the preamble to the NPRM, this provision was only intended to be used for moving personal property from property acquired for a Federal or federally-assisted project, where there was no need for a full relocation of a residence, business, farm or nonprofit organization. It was not intended to cover the eligible moving items in § 24.301(g)(8) through (g)(18). However, upon further consideration, eligibility for payment based on § 24.301(g)(18) Low Value/High Bulk is determined to be appropriate for inclusion in a personal property only move. As such, we have revised this section of the regulations to include § 24.301(g)(18) as an eligible actual moving expense as part of a nonresidential personal property only move.

It should also be noted that personal property only moves do not trigger eligibility for reestablishment expense payments, nor are they eligible for actual moving expense payments under § 24.301(g)(8) through (g)(17).

For moving options and examples of the types of personal property only relocations, see appendix A, § 24.301(e).

Section 24.301(g)(3) Eligible Moving Expenses

We received 19 comments regarding compliance with code requirements at the replacement site of a small business, farm or nonprofit organization. The commenters requested that we consider moving more criteria from § 24.304 to either §§ 24.301 or 24.303.

Nine of the commenters urged moving the provision providing payments for "repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance" from the reestablishment expense § 24.304, which provides a reestablishment payment not to exceed \$10,000, to § 24.303, where the reimbursement provision is not limited. Four commenters suggested that we should move additional criteria from § 24.304 to other sections that provide payment for actual, reasonable and necessary expenses.

We do not believe these suggestions are appropriate since we believe actual moving cost expenses for businesses should be limited to personal property items, while expenses for improving business real property should be reimbursed under reestablishment provisions of § 24.304. However, we

note that three provisions which were formerly under reestablishment limitations, and which do not fall within the category of realty or personalty, have been moved to revised § 24.303, and can be considered for reimbursement without a defined dollar limitation.

Four commenters requested further clarification of the reference to modifications of personal property in § 24.301(g)(3). To clarify, the provision for displaced businesses, permitting modifications to the personal property within the replacement structure, provides payment for costs necessary to adapt personal property to the replacement site, and includes modifications mandated by Federal, State or local law, code, or ordinance. This includes circumstances when such property and equipment was "grandfathered" in the displacement structure, but changes or upgrading of the personalty is required by the Americans with Disabilities Act (ADA), the Occupational Safety and Health Administration (OSHA), other Federal laws, State or local law, code or ordinances at the replacement site. The modifications authorized for reimbursement must be clearly and directly associated with the reinstallation of the personal property and cannot be for general repairs or upgrading of equipment because of the personal choice of the business owner. Finally, the expenditures for authorized modifications must be reasonable and necessary.

Two commenters were concerned that we may have gone too far in moving some items from §§ 24.304 to 24.303, instead suggesting that more attention should be given to the level of service provided to businesses as proposed in § 24.205. Their concern is that it is questionable whether having no cost limits will always improve the percentage of successful business relocations. We considered their concern but have elected to make the proposed changes.

To further clarify § 24.301(g)(3) we have restructured the existing wording to distinguish residential and nonresidential items and added a reference to Federal, State or local law, code or ordinance.

Section 24.301(g)(12)

We received one comment recommending that § 24.301(g)(12) further define the limits of eligible fees for professional services. The commenter recommended that such eligible fees be limited to fees related to actually moving the personal property, and not include fees related to

conceptual building or site layouts intended for construction/reconstruction at the replacement property.

No changes have been made to this section. The professional services described in this section only include those that are directly related to moving personal property. Conceptual building or site layouts intended for construction/reconstruction at the replacement property are not considered eligible expenses under this section. Professional services related to these types of expenses may be considered eligible expenses under § 24.303(b), related nonresidential eligible expenses, if the Agency determines them to be actual, reasonable and necessary.

Section 24.301(g)(14) and (g)(14)(i)

We received 13 comments recommending that we clarify § 24.301(g)(14) relating to the actual direct loss of tangible personal property. In particular commenters expressed confusion about the meaning of the phrase “value in place as is for continued use,” with two comments suggesting that the regulation include a definition of an appraisal method to estimate this in-place value. Two comments requested clarification as to whether reconnect charges should be included with the estimated moving cost.

The term “value in place as is for continued use” means the depreciated value of the item as it is installed at the displacement site as of the date of the acquisition. We have modified Appendix A, § 24.301(g)(14) to clarify the correct value considerations to estimate in-place value. Generally, an item will be valued based on the current cost of the item as installed on the displacement site, and depreciated to reflect the current condition and estimated remaining useful life. Standard professional personal property appraisal methods would be acceptable. The in-place value at its “as is” condition may not include costs that reflect code or other requirements that were not actually in effect at the displacement site; or include installation costs for machinery or equipment that is not operable or not installed at the displacement site.

The estimated moving cost for an item is also to be limited to the “as is” condition of the item at the displacement site. Therefore, estimated reconnect costs may not include costs to meet code or other requirements that would only be necessary to relocate the item to a replacement site. Since the item is claimed as a loss and is not to be relocated, allowable reconnect costs

may only reflect an estimate of the cost that would be incurred to install the item as it currently exists at the displacement site. Also the moving cost estimate may not include reconnect costs for an item that is not operable or installed at the displacement site.

We believe that the provision proposed in the NPRM, as further explained in appendix A, is correct and consistent with this intent of the Uniform Act, to provide moving benefits that are actual, reasonable and necessary. Therefore, we have included this provision in the final rule.

Section 24.301(g)(17)

We received twelve comments concerning § 24.301(g)(17), which proposed raising the searching expense limit from \$1,000 to \$2,500. One commenter was not in favor of the increase. Other commenters wanted a greater increase on the allowable limit, no limitation, or urged that it be indexed. The remaining commenters expressed agreement with the increase and/or sought clarifications.

Two commenters asked whether the actual fees assessed for permits are payable under § 24.301(g)(17)(v). This provision includes the actual time and effort required to obtain permits and to attend zoning hearings, not the assessed fees for the permits.

Section 24.301(g)(17) also includes the time spent in negotiating the purchase of a replacement business site based on a reasonable salary or earnings rate. We have added paragraph (g)(17)(vi) to provide for these expenses. In addition, fees necessary in obtaining such permits are eligible costs but should be based on a pre-approved hourly rate that is reasonable and necessary.

Section 24.301(g)(18)

We received ten comments on § 24.301(g)(18) concerning low value/high bulk personal property. Most comments concerned basing the moving payments on the lesser of the amount received if sold, and the replacement cost at the new location of the business. Two commenters stated that a determination as to whether items should be moved should be a joint decision between business operator and the displacing Agency.

We have adopted the proposed language providing for payment of the lesser of the described amounts. We believe that the business owner should be permitted to make the decision on whether the material is to be moved to the new business location. However, the amount of the reimbursement in the move cost should be limited to that set

forth in the final rule. Also, there was concern that the items listed in the last sentence of § 24.301(g)(18) are the only items that can be moved under this provision. However, that was not the intent. The items listed are only examples and there certainly can be other items that qualify under this provision. We have made a minor clarification to address this concern.

Section 24.301(h)(12)

We received six comments on § 24.301(h)(12). Two commenters objected to listing refundable security and utility deposits as ineligible moving expenses. While a good argument might be made for providing reimbursement for these expenses, the Uniform Act provides no authority for their reimbursement and we therefore cannot include them in the regulatory description of “actual, reasonable moving expenses,” without a legislative change. The fact that they are refundable would remove them from eligibility.

Section 24.302 Fixed Payment For Moving Expenses—Residential Moves

We received one comment on the proposed changes to § 24.302, Fixed Residential Moving Cost Schedule (FRMCS). The commenter requested that the amounts be updated annually or biannually. The same commenter requested that the amount be increased to be more in line with what a professional commercial mover would receive.

The purpose of the FRMCS is not to be in competition with professional commercial movers, but rather to offer an option to the commercial move. There are currently three methods to move personal property from a dwelling: a professional commercial mover, the fixed residential moving cost schedule, or an actual cost move based on receipted bills (*See* § 24.301(b).) The Fixed Residential Moving Cost Schedule is updated every three years. The language in the final rule will remain as proposed in the NPRM.

Section 24.303(b) Related Nonresidential Eligible Expenses

We received 7 comments requesting further clarification of eligible professional services mentioned in § 24.303(b). There was confusion as to whether professional services included attorneys’ fees and other professional services relating to costs of negotiating to acquire property, closing costs, etc.

Generally, professional services performed prior to the purchase or lease of a replacement site, to determine it’s suitability for the displaced person’s

business operation, would be eligible for reimbursement; provided the Agency determines that they are actual, reasonable and necessary. Such professional services include, but are not limited to, soil testing, feasibility and marketing studies, and may be based on a pre-approved hourly rate. Fees and commissions directly related to the purchase or lease of the site, such as realtor commissions or finder's fees are ineligible for reimbursement.

Moving expenses for businesses sometimes include the cost of obtaining outside professional services made necessary only by the relocation. For example, attorneys' fees for representation before zoning authorities, or the cost of obtaining a soil analysis necessary in the preparation of a replacement site are directly related to relocation, and may be considered eligible expenses. By contrast, if these services are provided by regular employees of the displaced business, (such as staff engineers,) or professional contractors ordinarily used by the business for its everyday operations (such as legal counsel on retainer), these services are considered ordinary costs of doing business, and cannot be recognized among eligible moving expenses.

One commenter suggested we revise the wording in this section for clarity. We concur and have made some minor modifications.

Section 24.304 Reestablishment Expenses—Nonresidential Moves

Three comments suggested that § 24.303 be expanded to include costs necessary to satisfy requirements of Federal, State or local law, code or ordinance, including the Americans with Disabilities Act (ADA). In the NPRM we considered such costs to be among those listed as reestablishment expenses in § 24.304(a). As mentioned above, reestablishment expenses are, by statute, available to displaced farms, nonprofits, and small businesses, and are limited to \$10,000.

In the NPRM we proposed increasing assistance to businesses and farms by changing some of the costs that had been considered to be reestablishment expenses, to actual reasonable moving expenses, which are not subject to the \$10,000 cap. However, the proposed changes only included those costs that were unrelated to improvements to the replacement site. Costs related to improving the replacement real property were more clearly considered to be "reestablishment expenses," and accordingly, were retained in § 24.304.

We continue to believe that this approach provides the most reasonable

interpretation of the Uniform Act's requirements and, therefore, in the final rule we have left costs of repairs or improvements to the replacement real property, required by Federal, State or local law or codes, in § 24.304, as reestablishment expenses.

Section 24.304(a)(2)

We received one comment pointing out that § 24.304(a)(2), which concerns necessary modifications to the replacement property, seems to apply to existing buildings which are purchased or leased and must be renovated to some extent, and asked if this section applied to new construction.

The cost of constructing a new business building on the vacant replacement property is considered a capital expenditure and, as provided in § 24.304(b)(1), is generally ineligible for reimbursement as a reestablishment expense. In those rare instances when a business cannot relocate without construction of a replacement structure, a displacing Agency may request a waiver from the funding Agency of § 24.304(b)(1) under the provisions of 49 CFR part 24.7.

Subpart E—Replacement Housing Payments

Section 24.401(a) Eligibility

One commenter assumed that appendix A is not regulatory. This is not accurate. Appendix A is an integral part of the regulation, and, while it does not impose mandatory requirements, it does provide important additional guidance and information concerning the purpose and intent of a number of the provisions in part 24.

Section 24.401(e) Incidental Expenses

One commenter suggested that the payment of actual reasonable expenses incidental to the purchase of a replacement dwelling, described in § 24.401(e), would be simplified by providing a single payment for a displaced homeowner's actual closing costs up to a fixed amount, such as \$3,000. While this suggestion might simplify the computation of this component of the replacement housing payment, it was not proposed for public comment in the NPRM and, therefore, it is outside the scope of this rulemaking. However, this suggestion could be addressed in a future rulemaking effort to update 49 CFR part 24.

Section 24.401(f) Rental Assistance for 180-day Homeowner

We received nine comments on the change in proposed in § 24.401(f) that would allow a rental assistance payment for a displaced 180-day homeowner

(who elects to rent instead of purchase a replacement dwelling) to exceed \$5,250 if the difference in the estimated market rent of the acquired dwelling and the rent for a comparable replacement dwelling support a higher figure. The NPRM also proposed that the rental supplemental payment not be allowed to exceed the amount the 180-day homeowner would have received as a housing (purchase) supplemental payment under § 24.401(b).

Three of the nine commenters suggested clarification as to the maximum amount of assistance to which the displaced 180-day homeowner is entitled. In response, we have made several minor changes to this section. The rental assistance payment cannot exceed the amount the 180-day homeowner would have received under § 24.401(b)(1) (see also § 24.401(c)) which describes how that amount is determined. The payment cannot include costs for expenses under §§ 24.401(b)(2) and (3) (also see §§ 24.401(d) and (e)) as it is not possible to calculate what the 180-day homeowner who rents would have received for increased mortgage interest costs and incidental costs if the person does not actually purchase a replacement dwelling.

Section 24.402(b)(2) Base Monthly Rental for Replacement Dwelling

We received 23 comments on the proposed change in § 24.402(b)(2) that reflects more closely the statutory requirement that only a low-income displaced person's income shall be taken into consideration when calculating rental assistance payments for a comparable replacement dwelling (42 U.S.C. 4624(a)). We have adopted this change in the final rule and it is more in line with the intent of the Uniform Act in that it assures consideration of income for low-income persons. The procedures in § 24.402(b)(2)(ii) will continue to use 30 percent of monthly gross household income, but only for displaced persons who qualify as low income under the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits.³

Of the 23 comments, thirteen strongly favored the change; five expressed concern about increased administrative burden; three commenters requested that we drop the 30 percent altogether; one expressed concern that the change would deny replacement housing

³ A link to the applicable URA Low Income Limit is available on FHWA's Web site at the following URL: <http://www.ftwva.dot.gov/realestate/ua/ualic.htm>.

assistance to tenants; and one commenter pointed out that there would be variations of income by county and State.

We have carefully considered each comment and for the following reasons, we have adopted the proposed change in the final rule. Regarding the increased administrative burden, we have requested several of our field offices to use the HUD Annual Survey of Income Limits and find it relatively user friendly. The initial attempt, as in any new procedure, was awkward, but additional tests became increasingly easier. The request to drop the 30 percent requirement completely would not be in compliance with the Uniform Act, as noted above. The concern by one commenter that the change would eliminate those who are most in need of the assistance is incorrect. We believe that we would be reaching out specifically to those who are truly in need of additional assistance. Those tenants that do not fall into the low-income category will be offered a comparable dwelling based on a rent-to-rent comparison.

Section 24.402(c) Downpayment Assistance Payment

We received eight comments on the proposed change in the criteria to receive a downpayment. Four commenters expressed support for the proposed change to the discussion of § 24.402(c) in appendix A. The proposal would remove language that indicated that an Agency should limit the amount of downpayment assistance to an amount ordinarily required for conventional loan financing. The proposed change allows a displaced person to apply the full amount of the rental replacement housing payment as a downpayment towards the purchase price of the replacement dwelling and related incidental expenses, regardless of any limitation on what is ordinarily required for conventional loan financing. No negative responses were received and the change has been adopted.

Two commenters stated that § 24.404(c)(1)(viii), (concerning possible differences between a rental assistance payment and a downpayment when providing housing of last resort) was inconsistent with the proposed change to appendix A, § 24.402(c), described above. We agree and, accordingly, have deleted § 24.404(c)(1)(viii).

Section 24.403(a) Determining Cost of Comparable Replacement Dwelling

The NPRM proposed that the homeowner's replacement housing payment be broadened to include any

increase in real property taxes at the replacement dwelling during the first two years of ownership. We received 31 widely varying comments on this proposal. Nine comments opposed the proposed change. Six comments supported the proposal. Eleven comments supported the concept, but either disagreed with the details of the proposal, or also wanted to include any increases in such costs as insurance, utilities and homeowner's association fees. The remaining comments asked for clarification or expressed no opinion.

Comments that opposed the proposal mentioned such factors as: the addition of substantial administrative burdens, with relatively little benefit; the difficulty in factoring in various State or local provisions that grant property tax relief based on age, income, disability or other factors; and the view that an increase in real property taxes is not really part of the "cost" of the replacement dwelling for purposes of the Uniform Act.

We have carefully considered the comments and have decided not to adopt this proposed change. Our decision is based primarily on the general administrative burdens mentioned in the comments, as well as on the difficulty, suggested in the comments, of trying to develop a reasonably equitable and manageable system for providing short term compensation for property tax increases. We believe that it would be difficult for such a system to easily take into account the variable and inconsistent nature of such taxes resulting from provisions of State and local law that often provide reduced taxes in certain circumstances or to certain groups. Our decision was also influenced by the lack of any clear indication in the Uniform Act that real property taxes were intended to be included as part of the cost of a comparable dwelling.

Not including this proposal in the final rule does not affect the ability of any displacing Agency to compensate displaced homeowners for increased property taxes and similar costs if otherwise authorized to do so.

Section 24.403(a)(1)

The NPRM proposed removing the requirement that Agencies adjust the asking price of comparable replacement dwellings in computing a homeowner's replacement housing payment. That adjustment was considered burdensome for displacing Agencies, as well as for displaced homeowners by, in effect, forcing the homeowner to negotiate for a price lower than the asking price when purchasing a replacement dwelling.

We received 14 comments on this proposal. Ten supported it, and three asked for some further clarification. One commenter requested the right to continue adjusting the comparable. We have adopted the proposal without change. Accordingly, since the requirement to adjust asking prices has been deleted from the rule, there is no longer any authority or basis for Agencies operating under the Uniform Act to make such adjustments (which would reduce the amount of the homeowner's replacement housing payment). Displacing Agencies must now use the asking price of a comparable dwelling in computing the replacement housing payment.

Section 24.403(a)(6)

In the NPRM, we proposed to include language in § 24.2(a)(6)(viii) that would have allowed rent owed to an Agency to be taken into account when determining whether a comparable replacement dwelling is within a displaced person's financial means. Because we received a comment objecting to similar language in § 24.2(a)(6)(viii), we have decided to remove this language from both 24.403(a)(6) and § 24.2(a)(6)(viii).

Subpart F—Mobile Homes

Sections 24.501 through 24.502

We received seven comments on Subpart F, Mobile Homes, concerning clarifications of §§ 24.501 and 24.502. Four commenters identified incorrect wording in §§ 24.502(a)(1)(iii) and 24.502(b)(2). The error concerned the replacement housing payment eligibility computation for an eligible homeowner that is displaced from his/her mobile home. We agree that the wording did not accurately transpose in formatting the NPRM and the error has been corrected in §§ 24.502(a)(1)(iii) and 24.502(b)(2).

Two commenters suggested a simplification of the terms describing a displaced homeowners application of a rental assistance payment and concerning a homeowner who is not displaced from their mobile home. After reviewing these provisions we have determined that they are clear as proposed in the NPRM; however, to further clarify the comparable replacement home site we have moved the existing §§ 24.502(d) to 24.502(b)(3).

Distributions Tables

For ease of reference, distribution and derivation tables are provided for the current sections and the proposed sections as follows:

DERIVATION TABLE		DERIVATION TABLE—Continued		DERIVATION TABLE—Continued	
New section	Old section	New section	Old section	New section	Old section
24.1	24.1.	24.101(b)(5)	24.101(a)(5).	24.303(b)	24.304(a)(7) and (a)(9).
24.2(a)(1)	24.2 Agency.	24.101(c)	24.101(b).	24.303(c)	24.304(a)(11).
24.2(a)(2)	24.2 Alien not lawfully present in the United States.	24.101(d)	24.101(c).	24.304(a)(4)	24.304(a)(5).
24.2(a)(3)	24.2 Appraisal.	24.102(c)(1)	24.102(c).	24.304(a)(5)	24.304(a)(8).
24.2(a)(4)	24.2 Business.	24.102(n)	24.103(e).	24.304(a)(6)	24.304(a)(10).
24.2(a)(5)	24.2 Citizen.	24.103(a)(1)	24.103(a)(2).	24.304(a)(7)	24.304(a)(12).
24.2(a)(6)	24.2 Comparable replacement dwelling.	24.103(a)(2)	24.103(a)(3).	24.305	24.306.
24.2(a)(6)(i) through (vii).	24.2 Comparable replacement dwelling (1) through (7).	24.103(a)(3)	24.103(a)(4).	24.305(b)(1) through (4).	24.306 (b)(1) through (4).
24.2(a)(6)(viii)(A) through (C).	24.2 Comparable replacement dwelling (8)(f) through (iii).	24.103(a)(4)	24.103(a)(5).	24.305(c) through (e)	24.306 (c) through (e).
24.2(a)(6)(ix)	None.	24.103(a)(5)	24.103(a)(6).	24.306	24.307.
24.2(a)(7)	24.2 Contribute materially.	24.203(a)(2) through (5).	24.203(a)(4).	24.401(c)(2)	24.401(c)(4).
24.2(a)(8)	24.2 Decent, safe, and sanitary dwelling.	24.203(d)	24.2 Notice of intent to acquire.	24.403(a)(5)	24.207(e).
24.2(a)(9)	24.2 Displaced person.	24.205(a)(4)	None.	24.403(a)(6)	24.207(f).
24.2(a)(9)(ii)(M)	None.	24.205(a)(5)	24.205(a)(4).	24.403(a)(7)	24.401(c)(2).
24.2(a)(10)	24.2 Dwelling.	24.205(c)(2)(i)(A) through (F).	None.	24.403(g)	24.401(c)(3).
24.2(a)(11)	None.	24.205(c)(2)(ii)(A)	24.205(c)(2)(ii).	None	24.404(c)(1)(viii).
24.2(a)(12)	24.2 Farm operation.	24.205(c)(2)(ii)(B)	24.205(c)(2)(ii)(A).	24.501(a)	24.501 Intro. para.
24.2(a)(13)	24.2 Federal financial assistance.	24.205(c)(2)(ii)(C)	24.205(c)(2)(ii)(B).	24.501(b)	24.505(e).
24.2(a)(14)	None.	24.205(c)(2)(ii)(D)	24.205(c)(2)(ii)(C).	24.502 Heading	24.503.
24.2(a)(15)	24.2 Initiation of negotiations.	24.205(c)(2)(ii)(E)	24.205(c)(2)(ii)(D).	24.502(a)	24.503(a)(1) and 505(c).
24.2(a)(16)	None.	24.205(c)(2)(ii)(F)	None.	24.502(a)(1)	24.503(a)(1) and 505(c).
24.2(a)(17)	24.2 Lead Agency.	None	24.205(c)(2)(vi).	24.502(a)(2) and (3)	24.503(a)(2) and (3).
24.2(a)(18)	None.	24.205(e)	24.205(c)(2)(iv).	24.502(b)	24.503(b).
24.2(a)(19)	24.2 Mortgage.	24.207(e)	24.207(g).	24.502(b)(1)	None.
24.2(a)(20)	24.2 Nonprofit organization.	24.207(f) and (g)	None.	24.502(b)(2)	24.503(a)(3) and 503(b).
24.2(a)(21)	24.2 Owner of a dwelling.	24.301(a)	24.303(a) and 24.502(b).	24.502(c)	24.505(a).
24.2(a)(22)	24.2 Person.	24.301(a)(1) and (2)	24.502(a).	24.502(d)	24.503(a)(3)(iii) and 24.505(b)(1).
24.2(a)(23)	24.2 Salvage value.	24.301(b)(1) and (2)	24.301 Intro. para.	24.502(e)	24.505(b)(2).
24.2(a)(24)	24.2 Small business.	24.301(b)(1)	24.303(a).	24.503	24.504.
24.2(a)(25)	24.2 State.	24.301(b)(2)(i)	24.302 First sentence.		
24.2(a)(26)	24.2 Tenant.	24.301(b)(2)(ii)	None.		
24.2(a)(27)	24.2 Uneconomical remnant.	24.301(b)(3)	None.		
24.2(a)(28)	24.2 Uniform Act.	24.301(c)	None.		
24.2(a)(29)	24.2 Unlawful occupancy.	24.301(d)	24.303(a).		
24.2(a)(30)	24.2 Utility costs.	24.301(d)(1) and (2)	24.303(c).		
24.2(a)(31)	24.2 Utility facility.	24.301(d)(1)	24.303(e).		
24.2(a)(32)	24.2 Utility relocation.	24.301(f)	24.303(a)(1) and 24.301(a).		
24.2(a)(33)	None.	24.301(g)(1)	24.301(b) and 24.303(a)(2).		
24.2(b)	None.	24.301(g)(2)	24.303(a)(3).		
24.8(m)	None.	24.301(g)(3)	24.303(a)(4) and 24.301(d).		
24.8(n)	None.	24.301(g)(4)	24.303(a)(5) and 24.301(e).		
24.8(o)	None.	24.301(g)(5)	24.303(a)(7) and 24.301(f).		
24.101(a) and (b)	24.101(a).	24.301(g)(6)	24.303(a)(14) and 24.301(g).		
24.101(b)(1)	24.101(a)(1).	24.301(g)(7)	24.502(b)(1).		
24.101(b)(1)(i)	24.101(a)(1)(i).	24.301(g)(8)	24.502(b)(2).		
24.101(b)(1)(ii)	24.101(a)(1)(ii).	24.301(g)(9)	24.503(b)(3).		
24.101(b)(1)(iii)	24.101(a)(1)(iii).	24.301(g)(10)	24.303(a)(6).		
24.101(b)(1)(iv)	24.101(a)(1)(iv).	24.301(g)(11)	24.303(a)(8).		
24.101(b)(2)	24.101(a)(2).	24.301(g)(12)	24.303(a)(8)(i) through (iii).		
24.101(b)(2)(i)	24.101(a)(2)(i).	24.301(g)(12)(i) through (iii).	24.303(a)(9) through (13)(iv).		
24.101(b)(2)(ii)	24.101(a)(2)(ii).	24.301(g)(13) through (17).	None.		
24.101(b)(3)	24.101(a)(3).	24.301(g)(17)(v) and (vi).	None.		
24.101(b)(4)	24.101(a)(4).	24.301(g)(18)	None.		
		24.301(h)(1) through (11).	24.305(a) through (k).		
		24.301(i)	24.303(b).		
		24.301(j)	24.303(d).		
		24.303 Intro. para.	23.303 Intro. para.		
		24.303(a)	24.304(a)(4).		

DISTRIBUTION TABLE

Old section	New section
Subpart A	Subpart A
24.1	24.1 Text unchanged.
24.2 Heading	24.2 Heading revised.
None	24.2(a) Introductory para. added.
Agency	24.2(a)(1) Revised.
(1) Acquiring agency	24.2(a)(1)(i) Redesignated and revised.
(2) Displacing agency	24.2(a)(1)(ii) Redesignated and text unchanged.
(3) Federal agency	24.2(a)(1)(iii) Redesignated and text unchanged.
(4) State agency	24.2(a)(1)(iv) Redesignated and text unchanged.
Alien not lawfully present in the US.	24.2(a)(2) Redesignated.
Appraisal	24.2(a)(2)(i) Redesignated and revised.
	24.2(a)(2)(ii) Redesignated and text unchanged.
	24.2(a)(3) Redesignated and text unchanged.
Business	24.2(a)(4) Redesignated.

This final rule will not adversely affect, in a material way, any sector of the economy. This action will assist Agencies in developing their programs that acquire real property or displace persons by providing increased assistance, especially for businesses, farms and nonprofit organizations. None of the changes will materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612) the FHWA has evaluated the effects of this action on small entities and has determined that the final rule will not have a significant economic impact on a substantial number of small entities.

This action updates the government-wide regulation that provides assistance for persons, including small businesses, displaced by Federal and federally-assisted programs or projects. One of the reasons for the update is to increase assistance for displaced small businesses. We anticipate this final rule will have a positive impact on those relatively few small businesses that are affected by such programs or projects. Financial impacts on local governments are mitigated by the fact that any increased costs will accrue only on federally-assisted programs, which will include participation of Federal funds. For these reasons, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). The updates are applicable only on Federal and federally-assisted programs. This final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$120.7 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action will not have a substantial direct effect or sufficient federalism implications on States that will limit the policymaking discretion of the States. The FHWA has also determined that this action will not preempt any State law, or State

regulation, or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this final rule will not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This action will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interface with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This final rule meets applicable standards in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This action does not involve an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this final rule under Executive Order 13175, dated November 6, 2000, and believes that this action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt

tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements and Transportation.

Issued on: December 27, 2004.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, Part 24, as set forth below:

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

Subpart A—General

- Sec.
- 24.1 Purpose.
 - 24.2 Definitions and acronyms.
 - 24.3 No duplication of payments.
 - 24.4 Assurances, monitoring and corrective action.
 - 24.5 Manner of notices.
 - 24.6 Administration of jointly-funded projects.
 - 24.7 Federal Agency waiver of regulations.
 - 24.8 Compliance with other laws and regulations.
 - 24.9 Recordkeeping and reports.
 - 24.10 Appeals.

Subpart B—Real Property Acquisition

- 24.101 Applicability of acquisition requirements.
- 24.102 Basic acquisition policies.
- 24.103 Criteria for appraisals.
- 24.104 Review of appraisals.
- 24.105 Acquisition of tenant-owned improvements.

- 24.106 Expenses incidental to transfer of title to the Agency.
 24.107 Certain litigation expenses.
 24.108 Donations.

Subpart C—General Relocation Requirements

- 24.201 Purpose.
 24.202 Applicability.
 24.203 Relocation notices.
 24.204 Availability of comparable replacement dwelling before displacement.
 24.205 Relocation planning, advisory services, and coordination.
 24.206 Eviction for cause.
 24.207 General requirements claims for relocation payments.
 24.208 Aliens not lawfully present in the United States.
 24.209 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

- 24.301 Payment for actual reasonable moving and related expenses.
 24.302 Fixed payment for moving expenses residential moves.
 24.303 Related nonresidential eligible expenses.
 24.304 Reestablishment expenses nonresidential moves.
 24.305 Fixed payment for moving expenses nonresidential moves.
 24.306 Discretionary utility relocation payments.

Subpart E—Replacement Housing Payments

- 24.401 Replacement housing payment for 180-day homeowner-occupants.
 24.402 Replacement housing payment for 90-day occupants.
 24.403 Additional rules governing replacement housing payments.
 24.404 Replacement housing of last resort.

Subpart F—Mobile Homes

- 24.501 Applicability.
 24.502 Replacement housing payment for 180-day mobile homeowner displaced from a mobile home, and/or from the acquired mobile home site.
 24.503 Replacement housing payment for 90-day mobile home occupants.

Subpart G—Certification

- 24.601 Purpose.
 24.602 Certification application.
 24.603 Monitoring and corrective action.
 Appendix A to Part 24—Additional Information
 Appendix B to Part 24—Statistical Report Form

Authority: 42 U.S.C. 4601 *et seq.*; 49 CFR 1.48(cc).

Subpart A—General

§ 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et*

seq.) (Uniform Act), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

§ 24.2 Definitions and acronyms.

(a) *Definitions.* Unless otherwise noted, the following terms used in this part shall be understood as defined in this section:

(1) *Agency.* The term *Agency* means the Federal Agency, State, State Agency, or person that acquires real property or displaces a person.

(i) *Acquiring Agency.* The term *acquiring Agency* means a State Agency, as defined in paragraph (a)(1)(iv) of this section, which has the authority to acquire property by eminent domain under State law, and a State Agency or person which does not have such authority.

(ii) *Displacing Agency.* The term *displacing Agency* means any Federal Agency carrying out a program or project, and any State, State Agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(iii) *Federal Agency.* The term *Federal Agency* means any department, Agency, or instrumentality in the executive branch of the government, any wholly owned government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(iv) *State Agency.* The term *State Agency* means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the

authority to acquire property by eminent domain under State law.

(2) *Alien not lawfully present in the United States.* The phrase “alien not lawfully present in the United States” means an alien who is not “lawfully present” in the United States as defined in 8 CFR 103.12 and includes:

(i) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) and whose stay in the United States has not been authorized by the United States Attorney General; and

(ii) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

(3) *Appraisal.* The term *appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(4) *Business.* The term *business* means any lawful activity, except a farm operation, that is conducted:

(i) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property;

(ii) Primarily for the sale of services to the public;

(iii) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(iv) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(5) *Citizen.* The term *citizen* for purposes of this part includes both citizens of the United States and noncitizen nationals.

(6) *Comparable replacement dwelling.* The term *comparable replacement dwelling* means a dwelling which is:

(i) Decent, safe and sanitary as described in paragraph 24.2(a)(8) of this section;

(ii) Functionally equivalent to the displacement dwelling. The term *functionally equivalent* means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal

features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling (See appendix A, § 24.2(a)(6));

(iii) Adequate in size to accommodate the occupants;

(iv) In an area not subject to unreasonable adverse environmental conditions;

(v) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(vi) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 24.403(a)(2));

(vii) Currently available to the displaced person on the private market except as provided in paragraph (a)(6)(ix) of this section (See appendix A, § 24.2(a)(6)(vii)); and

(viii) Within the financial means of the displaced person:

(A) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in § 24.401(c), all increased mortgage interest costs as described at § 24.401(d) and all incidental expenses as described at § 24.401(e), plus any additional amount required to be paid under § 24.404, Replacement housing of last resort.

(B) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at § 24.402(b)(2).

(C) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-

occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in § 24.402(b)(2). Such rental assistance must be paid under § 24.404, Replacement housing of last resort.

(ix) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply. (See appendix A, § 24.2(a)(6)(ix).)

(7) *Contribute materially*. The term *contribute materially* means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(i) Had average annual gross receipts of at least \$5,000; or

(ii) Had average annual net earnings of at least \$1,000; or

(iii) Contributed at least 33 $\frac{1}{3}$ percent of the owner's or operator's average annual gross income from all sources.

(iv) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(8) *Decent, safe, and sanitary dwelling*. The term *decent, safe, and sanitary dwelling* means a dwelling which meets local housing and occupancy codes. However, any of the following standards which are not met by the local code shall apply unless waived for good cause by the Federal Agency funding the project. The dwelling shall:

(i) Be structurally sound, weather tight, and in good repair;

(ii) Contain a safe electrical wiring system adequate for lighting and other devices;

(iii) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;

(iv) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the policies of the displacing Agency. In

addition, the displacing Agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of such Agencies;

(v) There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator;

(vi) Contains unobstructed egress to safe, open space at ground level; and

(vii) For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. (See appendix A, § 24.2(a)(8)(vii).)

(9) *Displaced person*. (i) *General*. The term *displaced person* means, except as provided in paragraph (a)(9)(ii) of this section, any person who moves from the real property or moves his or her personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at § 24.401(a) and § 24.402(a));

(A) As a direct result of a written notice of intent to acquire (see § 24.203(d)), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;

(B) As a direct result of rehabilitation or demolition for a project; or

(C) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302 or § 24.303.

(ii) *Persons not displaced*. The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(A) A person who moves before the initiation of negotiations (see § 24.403(d)), unless the Agency determines that the person was

displaced as a direct result of the program or project;

(B) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

(C) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(D) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal Agency funding the project (See appendix A, § 24.2(a)(9)(ii)(D));

(E) An owner-occupant who moves as a result of an acquisition of real property as described in §§ 24.101(a)(2) or 24.101(b)(1) or (2), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.);

(F) A person whom the Agency determines is not displaced as a direct result of a partial acquisition;

(G) A person who, after receiving a notice of relocation eligibility (described at § 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such written notification shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

(H) An owner-occupant who conveys his or her property, as described in §§ 24.101(a)(2) or 24.101(b)(1) or (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part;

(I) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency;

(J) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Pub. L. 93-477, Appropriations for National Park System, or Pub. L. 93-303, Land and Water Conservation Fund, except that such owner remains a displaced person for purposes of subpart D of this part;

(K) A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law, as provided for in

§ 24.206. However, advisory assistance may be provided to unlawful occupants at the option of the Agency in order to facilitate the project;

(L) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with § 24.208; or

(M) Tenants required to move as a result of the sale of their dwelling to a person using downpayment assistance provided under the American Dream Downpayment Initiative (ADDI) authorized by section 102 of the American Dream Downpayment Act (Pub. L. 108-186; codified at 42 U.S.C. 12821).

(10) *Dwelling*. The term *dwelling* means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(11) *Dwelling site*. The term *dwelling site* means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area. (See appendix A, § 24.2(a)(11).)

(12) *Farm operation*. The term *farm operation* means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(13) *Federal financial assistance*. The term *Federal financial assistance* means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(14) *Household income*. The term *household income* means total gross income received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full time students under 18 years of age. (See appendix A, § 24.2(a)(14) for examples of exclusions to income.)

(15) *Initiation of negotiations*. Unless a different action is specified in

applicable Federal program regulations, the term *initiation of negotiations* means the following:

(i) Whenever the displacement results from the acquisition of the real property by a Federal Agency or State Agency, the *initiation of negotiations* means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal Agency or State Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the *initiation of negotiations* means the actual move of the person from the property.

(ii) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal Agency or a State Agency), the *initiation of negotiations* means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(iii) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or Superfund) (CERCLA) the *initiation of negotiations* means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(iv) In the case of permanent relocation of a tenant as a result of an acquisition of real property described in § 24.101(b)(1) through (5), the initiation of negotiations means the actions described in § 24.2(a)(15)(i) and (ii), except that such initiation of negotiations does not become effective, for purposes of establishing eligibility for relocation assistance for such tenants under this part, until there is a written agreement between the Agency and the owner to purchase the real property. (See appendix A, § 24.2(a)(15)(iv)).

(16) *Lead Agency*. The term *Lead Agency* means the Department of Transportation acting through the Federal Highway Administration.

(17) *Mobile home*. The term *mobile home* includes manufactured homes and recreational vehicles used as residences. (See appendix A, § 24.2(a)(17)).

(18) *Mortgage*. The term *mortgage* means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real

property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(19) *Nonprofit organization.* The term *nonprofit organization* means an organization that is incorporated under the applicable laws of a State as a nonprofit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(20) *Owner of a dwelling.* The term *owner of a dwelling* means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

- (i) Fee title, a life estate, a land contract, a 99 year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or
- (ii) An interest in a cooperative housing project which includes the right to occupy a dwelling; or
- (iii) A contract to purchase any of the interests or estates described in § 24.2(a)(1)(i) or (ii) of this section; or
- (iv) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(21) *Person.* The term *person* means any individual, family, partnership, corporation, or association.

(22) *Program or project.* The phrase *program or project* means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.

(23) *Salvage value.* The term *salvage value* means the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.

(24) *Small business.* A *small business* is a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of § 24.304.

(25) *State.* Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the

United States, or a political subdivision of any of these jurisdictions.

(26) *Tenant.* The term *tenant* means a person who has the temporary use and occupancy of real property owned by another.

(27) *Uneconomic remnant.* The term *uneconomic remnant* means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Agency has determined has little or no value or utility to the owner.

(28) *Uniform Act.* The term *Uniform Act* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894; 42 U.S.C. 4601 *et seq.*), and amendments thereto.

(29) *Unlawful occupant.* A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under State law. An Agency, at its discretion, may consider such person to be in lawful occupancy.

(30) *Utility costs.* The term *utility costs* means expenses for electricity, gas, other heating and cooking fuels, water and sewer.

(31) *Utility facility.* The term *utility facility* means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(32) *Utility relocation.* The term *utility relocation* means the adjustment of a utility facility required by the program or project undertaken by the displacing Agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on a new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

(33) *Waiver valuation.* The term *waiver valuation* means the valuation process used and the product produced when the Agency determines that an appraisal is not required, pursuant to § 24.102(c)(2) appraisal waiver provisions.

(b) *Acronyms.* The following acronyms are commonly used in the

implementation of programs subject to this regulation:

- (1) BCIS. Bureau of Citizenship and Immigration Service.
- (2) FEMA. Federal Emergency Management Agency.
- (3) FHA. Federal Housing Administration.
- (4) FHWA. Federal Highway Administration.
- (5) FIRREA. Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
- (6) HLR. Housing of last resort.
- (7) HUD. U.S. Department of Housing and Urban Development.
- (8) MIDP. Mortgage interest differential payment.
- (9) RHP. Replacement housing payment.
- (10) STURAA. Surface Transportation and Uniform Relocation Act Amendments of 1987.
- (11) URA. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- (12) USDOT. U.S. Department of Transportation.
- (13) USPAP. Uniform Standards of Professional Appraisal Practice.

§ 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, local law, or insurance proceeds which is determined by the Agency to have the same purpose and effect as such payment under this part. (See appendix A, § 24.3).

§ 24.4 Assurances, monitoring and corrective action.

(a) *Assurances.* (1) Before a Federal Agency may approve any grant to, or contract, or agreement with, a State Agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State Agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing Agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring Agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to §§ 301 or 302 of the Uniform Act. If, in the judgment of the Federal Agency, Uniform Act compliance will be served, a State Agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency, which both acquires real

property and displaces persons, may combine its section 210 and section 305 assurances in one document.

(2) If a Federal Agency or State Agency provides Federal financial assistance to a "person" causing displacement, such Federal or State Agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal Agency may provide Federal financial assistance to a State Agency after it has accepted a certification by such State Agency in accordance with the requirements in subpart G of this part.

(b) *Monitoring and corrective action.* The Federal Agency will monitor compliance with this part, and the State Agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal Agency may also apply sanctions in accordance with applicable program regulations. (Also see § 24.603, of this part).

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§ 24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 24.6 Administration of jointly-funded projects.

Whenever two or more Federal Agencies provide financial assistance to an Agency or Agencies, other than a Federal Agency, to carry out functionally or geographically related activities, which will result in the acquisition of property or the displacement of a person, the Federal Agencies may by agreement designate one such Agency as the cognizant Federal Agency. In the unlikely event that agreement among the Agencies cannot be reached as to which Agency

shall be the cognizant Federal Agency, then the Lead Agency shall designate one of such Agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally-assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal Agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally-assisted activities under the agreement shall be deemed a project for the purposes of this part.

§ 24.7 Federal Agency waiver of regulations.

The Federal Agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 24.8 Compliance with other laws and regulations.

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

(a) Section I of the Civil Rights Act of 1966 (42 U.S.C. 1982 *et seq.*).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

(f) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234).

(g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

(h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12892.

(i) Executive Order 11246—Equal Employment Opportunity, as amended.

(j) Executive Order 11625—Minority Business Enterprise.

(k) Executive Orders 11968—Floodplain Management, and 11990—Protection of Wetlands.

(l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(m) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.

(n) Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).

(o) Executive Order 12892—Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (January 17, 1994).

§ 24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding Agency, whichever is later.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal Agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding Agency shows good cause. The report shall be prepared and submitted using the format contained in appendix B of this part.

§ 24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal

counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review of the Agency decision.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.

(a) *Direct Federal program or project.* (1) The requirements of this subpart apply to any acquisition of real property for a direct Federal program or project, except acquisition for a program or project that is undertaken by the Tennessee Valley Authority or the Rural Utilities Service. (See appendix A, § 24.101(a).)

(2) If a Federal Agency (except for the Tennessee Valley Authority or the Rural Utilities Service) will not acquire a property because negotiations fail to result in an agreement, the owner of the property shall be so informed in writing. Owners of such properties are not displaced persons, (see §§ 24.2(a)(9)(ii)(E) or (H)), and as such, are not entitled to relocation assistance benefits. However, tenants on such properties may be eligible for relocation assistance benefits. (See § 24.2(a)(9)).

(b) *Programs and projects receiving Federal financial assistance.* The requirements of this subpart apply to any acquisition of real property for

programs and projects where there is Federal financial assistance in any part of project costs except for the acquisitions described in paragraphs (b)(1) through (5) of this section. The relocation assistance provisions in this part are applicable to any tenants that must move as a result of an acquisition described in paragraphs (b)(1) through (5) of this section. Such tenants are considered displaced persons. (See § 24.2(a)(9).)

(1) The requirements of Subpart B do not apply to acquisitions that meet all of the following conditions in paragraphs (b)(1)(i) through (iv):

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly. (See appendix A, § 24.101(b)(1)(i).)

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner in writing of what it believes to be the market value of the property. (See appendix A, § 24.101(b)(1)(iv) and (2)(ii).)

(2) Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property if negotiations fail to result in an agreement; and

(ii) Inform the owner in writing of what it believes to be the market value of the property. (See appendix A, § 24.101(b)(1)(iv) and (2)(ii).)

(3) The acquisition of real property from a Federal Agency, State, or State Agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(5) Acquisition for a program or project that receives Federal financial assistance from the Tennessee Valley Authority or the Rural Utilities Service.

(c) *Less-than-full-fee interest in real property.*

(1) The provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent and/or temporary easements necessary for the project. However, the Agency may apply these regulations to any less-than-full-fee acquisition that, in its judgment, should be covered.

(2) The provisions of this subpart do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached.

(d) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See § 24.4(a).)

§ 24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. (See § 24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.*

(1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in § 24.102 (c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if:

(i) The owner is donating the property and releases the Agency from its obligation to appraise the property; or

(ii) The Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data.

(A) When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation.

(B) The person performing the waiver valuation must have sufficient

understanding of the local real estate market to be qualified to make the waiver valuation.

(C) The Federal Agency funding the project may approve exceeding the \$10,000 threshold, up to a maximum of \$25,000, if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the Agency shall obtain an appraisal and not use procedures described in this paragraph. (See appendix A, § 24.102(c)(2).)

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An Agency official must establish the amount believed to be just compensation. (See § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. (See appendix A, § 24.102(d).)

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer.

(f) *Basic negotiation procedures.* The Agency shall make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with

§ 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation. (See appendix A, § 24.102(f).)

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. (See appendix A, § 24.102(i).)

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner. (See appendix A, § 24.102(j).)

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall

offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See § 24.2(a)(27).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term, or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy. (See appendix A, § 24.102(m).)

(n) *Conflict of interest.*

(1) The appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the Agency.

Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

(2) No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal funding Agency may waive this requirement if it determines it would create a hardship for the Agency.

(3) An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000, or less. (See appendix A, § 24.102(n).)

§ 24.103 Criteria for appraisals.

(a) *Appraisal requirements.* This section sets forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs. Appraisals are to be prepared according to these requirements, which are intended to be consistent with the Uniform Standards of Professional

Appraisal Practice (USPAP).¹ (See appendix A, § 24.103(a).) The Agency may have appraisal requirements that supplement these requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).²

(1) The Agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem.

(2) The Agency has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal in § 24.2(a)(3) and the five following requirements: (See appendix A, §§ 24.103 and 24.103(a).)

(i) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property. (See appendix A, § 24.103(a)(1).)

(ii) All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value. (See appendix A, § 24.103(a).)

(iii) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and

verification by a party involved in the transaction.

(iv) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(v) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* The appraiser shall disregard any decrease or increase in the market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner. (See appendix A, § 24.103(b).)

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(a)(24)) of the retained improvement.

(d) *Qualifications of appraisers and review appraisers.*

(1) The Agency shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualifications shall be consistent with the scope of work for the assignment. The Agency shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and review appraisers, and use only those determined by the Agency to be qualified. (See appendix A, § 24.103(d)(1).)

(2) If the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 *et seq.*).

§ 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified review appraiser (see § 24.103(d)(1) and appendix A, § 24.104) shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103 and other applicable

requirements, including, to the extent appropriate, the UASFLA, and support the appraiser's opinion of value. The level of review analysis depends on the complexity of the appraisal problem. As needed, the review appraiser shall, prior to acceptance, seek necessary corrections or revisions. The review appraiser shall identify each appraisal report as recommended (as the basis for the establishment of the amount believed to be just compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted. If authorized by the Agency to do so, the staff review appraiser shall also approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), and, if also authorized to do so, develop and report the amount believed to be just compensation. (See appendix A, § 24.104(a).)

(b) If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring Agency that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with § 24.103 to support a recommended (or approved) value. (See appendix A, § 24.104(b).)

(c) The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the approved value, and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition. (See appendix A, § 24.104(c).)

§ 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the

¹Uniform Standards of Professional Appraisal Practice (USPAP). Published by The Appraisal Foundation, a nonprofit educational organization. Copies may be ordered from The Appraisal Foundation at the following URL: <http://www.appraisalfoundation.org/html/USPAP2004/toc.htm>.

²The "Uniform Appraisal Standards for Federal Land Acquisitions" is published by the Interagency Land Acquisition Conference. It is a compendium of Federal eminent domain appraisal law, both case and statute, regulations and practices. It is available at <http://www.usdoj.gov/enrd/land-ack/toc.htm> or in soft cover format from the Appraisal Institute at <http://www.appraisalinstitute.org/econom/publications/Default.asp> and select "Legal/Regulatory" or call 888-570-4545.

improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this subpart.

(c) *Appraisal and Establishment of Just Compensation for a Tenant-Owned Improvement.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the market value of the whole property, or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(a)(23).)

(d) *Special conditions for tenant-owned improvements.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement;

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this subpart shall be construed to deprive the tenant-owner of any right to reject payment under this subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 24.106 Expenses incidental to transfer of title to the Agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property;

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly to the

billing agent so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

§ 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation;

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ 24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the Agency as such owner shall determine. The Agency is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in § 24.102(c)(2).

Subpart C—General Relocation Requirements

§ 24.201 Purpose.

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§ 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 24.2(a)(9). Any person who qualifies as a displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by the Uniform Act and this regulation. (See appendix A, § 24.202.)

§ 24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing Agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of

eligibility, and the procedures for obtaining the payment(s);

(2) Informs the displaced person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate;

(3) Informs the displaced person that he or she will not be required to move without at least 90 days advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available;

(4) Informs the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in § 24.208(h); and

(5) Describes the displaced person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of a notice of intent to acquire (described in § 24.203(d)), the initiation of negotiations (defined in § 24.2(a)(15)), or actual acquisition, whichever occurs first. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice.* (1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing Agency may issue the notice 90 days or earlier before it expects the person to be displaced.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be

required to vacate the property on less than 90 days advance written notice if the displacing Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

(d) *Notice of intent to acquire.* A notice of intent to acquire is a displacing Agency's written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that the Agency intends to acquire the property. A notice of intent to acquire establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance. (See § 24.2(a)(9)(i)(A).)

§ 24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2 (a)(6)) has been made available to the person. When possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

- (1) The person is informed of its location;
- (2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
- (3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal Agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

- (1) A major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122);
- (2) A presidentially declared national emergency; or
- (3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a

substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person to be displaced is required to relocate from the displacement dwelling for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

- (1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling;
- (2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and
- (3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

§ 24.205 Relocation planning, advisory services, and coordination.

(a) *Relocation planning.* During the early stages of development, an Agency shall plan Federal and federally-assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study, which may include the following:

- (1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable.
- (2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, the

Agency should consider housing of last resort actions.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

(5) Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating Agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the Lead Agency will establish criteria and procedures for such use upon the request of the Federal Agency funding the program or project.

(c) *Relocation assistance advisory services.* (1) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offer the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

- (i) Determine, for nonresidential (businesses, farm and nonprofit organizations) displacements, the relocation needs and preferences of each business (farm and nonprofit organization) to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for

obtaining such assistance. This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:

(A) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

(B) Determination of the need for outside specialists in accordance with § 24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

(C) For businesses, an identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.

(D) An estimate of the time required for the business to vacate the site.

(E) An estimate of the anticipated difficulty in locating a replacement property.

(F) An identification of any advance relocation payments required for the move, and the Agency's legal capacity to provide them.

(ii) Determine, for residential displacements, the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person.

(A) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(B) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(C) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 24.2(a)(8).) If such an inspection is not made, the Agency shall

notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(D) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See appendix A, § 24.205(c)(2)(ii)(D).)

(E) The Agency shall offer all persons transportation to inspect housing to which they are referred.

(F) Any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (see § 24.2(a)(6)(ix)), as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

(iii) Provide, for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (See § 24.6.)

(e) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the

occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

§ 24.206 Eviction for cause.

(a) Eviction for cause must conform to applicable State and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:

(1) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

(2) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(3) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

(b) For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project. (See appendix A, § 24.206.)

§ 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advanced payments.* If a person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* (1) All claims for a relocation payment shall be filed with the Agency no later than 18 months after:

(i) For tenants, the date of displacement.

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) The Agency shall waive this time period for good cause.

(e) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

(f) *No waiver of relocation assistance.* A displacing Agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation.

(g) *Expenditure of payments.* Payments, provided pursuant to this part, shall not be considered to constitute Federal financial assistance. Accordingly, this part does not apply to the expenditure of such payments by, or for, a displaced person.

§ 24.208 Aliens not lawfully present in the United States.

(a) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(1) In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.

(2) In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

(3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

(4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

(b) The certification provided pursuant to paragraphs (a)(1), (a)(2), and

(a)(3) of this section shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule shall be within the discretion of the Federal funding Agency and, within those parameters, that of the displacing Agency.

(c) In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

(d) The displacing Agency shall consider the certification provided pursuant to paragraph (a) of this section to be valid, unless the displacing Agency determines in accordance with paragraph (f) of this section that it is invalid based on a review of an alien's documentation or other information that the Agency considers reliable and appropriate.

(e) Any review by the displacing Agency of the certifications provided pursuant to paragraph (a) of this section shall be conducted in a nondiscriminatory fashion. Each displacing Agency will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

(f) If, based on a review of an alien's documentation or other credible evidence, a displacing Agency has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination:

(1) If the Agency has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the displacing Agency shall obtain verification of the alien's status from the local Bureau of Citizenship and Immigration Service (BCIS) Office. A list

of local BCIS offices is available at <http://www.uscis.gov/graphics/fieldoffices/alpha.htm>. Any request for BCIS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. (If an Agency is unable to contact the BCIS, it may contact the FHWA in Washington, DC, Office of Real Estate Services or Office of Chief Counsel for a referral to the BCIS.)

(2) If the Agency has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the displacing Agency shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

(g) No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the displacing Agency's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

(h) For purposes of paragraph (g) of this section, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

(1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;

(2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or

(3) Any other impact that the displacing Agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

(i) The certification referred to in paragraph (a) of this section may be included as part of the claim for relocation payments described in § 24.207 of this part.

(Approved by the Office of Management and Budget under control number 2105-0508.)

§ 24.209 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose

of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 (Title 26, U.S. Code), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U.S. Code 301 *et seq.*) or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D—Payments for Moving and Related Expenses

§ 24.301 Payment for actual reasonable moving and related expenses.

(a) *General.* (1) Any owner-occupant or tenant who qualifies as a displaced person (defined at § 24.2(a)(9)) and who moves from a dwelling (including a mobile home) or who moves from a business, farm or nonprofit organization is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary.

(2) A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under § 24.301 to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at § 24.502(a)(3), the home-owner occupant is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

(b) *Moves from a dwelling.* A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the following methods: (Eligible expenses for moves from a dwelling include the expenses described in paragraphs (g)(1) through (g)(7) of this section. Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.)

(1) *Commercial move*—moves performed by a professional mover.

(2) *Self-move*—moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule.* (Described in § 24.302.)

(ii) *Actual cost move.* Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the

equipment but not exceed the cost paid by a commercial mover.

(c) *Moves from a mobile home.* A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the following methods: (self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section. Eligible expenses for moves from a mobile home include those expenses described in paragraphs (g)(1) through (g)(7) of this section. In addition to the items in paragraph (a) of this section, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in paragraphs (g)(8) through (g)(10) of this section.)

(1) *Commercial move*—moves performed by a professional mover.

(2) *Self-move*—moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule.* (Described in § 24.302.)

(ii) *Actual cost move.* Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

(d) *Moves from a business, farm or nonprofit organization.* Personal property as determined by an inventory from a business, farm or nonprofit organization may be moved by one or a combination of the following methods: (Eligible expenses for moves from a business, farm or nonprofit organization include those expenses described in paragraphs (g)(1) through (g)(7) of this section and paragraphs (g)(11) through (g)(18) of this section and § 24.303.)

(1) *Commercial move.* Based on the lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(2) *Self-move.* A self-move payment may be based on one or a combination of the following:

(i) The lower of two bids or estimates prepared by a commercial mover or qualified Agency staff person. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

(ii) Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a

commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover.

(e) *Personal property only.* Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization include those expenses described in paragraphs (g)(1) through (g)(7) and (g)(18) of this section. (See appendix A, § 24.301(e).)

(f) *Advertising signs.* The amount of a payment for direct loss of an advertising sign, which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

(g) *Eligible actual moving expenses.*

(1) Transportation of the displaced person and personal property.

Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the property in connection with the move and necessary storage.

(6) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(7) Other moving-related expenses that are not listed as ineligible under

§ 24.301(h), as the Agency determines to be reasonable and necessary.

(8) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hookup" charges.

(9) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

(10) The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

(11) Any license, permit, fees or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.

(12) Professional services as the Agency determines to be actual, reasonable and necessary for:

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(13) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(14) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value in place of the item, as is for continued use, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling prices.); or

(ii) The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. (See appendix A, § 24.301(g)(14)(i) and (ii).) If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.

(15) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(16) *Purchase of substitute personal property.* If an item of personal property, which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(17) Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$2,500, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation;

(ii) Meals and lodging away from home;

(iii) Time spent searching, based on reasonable salary or earnings;

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites;

(v) Time spent in obtaining permits and attending zoning hearings; and

(vi) Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings.

(18) *Low value/high bulk.* When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing Agency, the allowable moving cost payment shall not exceed the lesser of: The amount which would be received if the property were sold at the site or the replacement cost of a comparable quantity delivered to the new business location. Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the Agency.

(h) *Ineligible moving and related expenses.* A displaced person is not entitled to payment for:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved

ownership. (However, this part does not preclude the computation under § 24.401(c)(2)(iii));

(2) Interest on a loan to cover moving expenses;

(3) Loss of goodwill;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in § 24.304(a)(6);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency;

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§ 24.301(g)(3) and 24.304(a);

(11) Costs for storage of personal property on real property already owned or leased by the displaced person, and

(12) Refundable security and utility deposits.

(i) *Notification and inspection (nonresidential).* The Agency shall inform the displaced person, in writing, of the requirements of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided the displaced person as set forth in § 24.203. To be eligible for payments under this section the displaced person must:

(1) Provide the Agency reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(2) Permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(j) *Transfer of ownership (nonresidential).* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

§ 24.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses under § 24.301. This payment shall be determined according

to the Fixed Residential Moving Cost Schedule³ approved by the Federal Highway Administration and published in the **Federal Register** on a periodic basis. The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by an Agency at no cost to the person shall be limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule.

§ 24.303 Related nonresidential eligible expenses.

The following expenses, in addition to those provided by § 24.301 for moving personal property, shall be provided if the Agency determines that they are actual, reasonable and necessary:

(a) Connection to available nearby utilities from the right-of-way to improvements at the replacement site.

(b) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the Agency a reasonable pre-approved hourly rate may be established. (See appendix A, § 24.303(b).)

(c) Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the Agency.

§ 24.304 Reestablishment expenses—nonresidential moves.

In addition to the payments available under §§ 24.301 and 24.303 of this subpart, a small business, as defined in § 24.2(a)(24), farm or nonprofit organization is entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

³ The Fixed Residential Moving Cost Schedule is available at the following URL: <http://www.fhwa.dot.gov/realstate/fixsch96.htm>. Agencies are cautioned to ensure they are using the most recent edition.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs for exterior signing to advertise the business.

(4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

(5) Advertisement of replacement location.

(6) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:

- (i) Lease or rental charges;
- (ii) Personal or real property taxes;
- (iii) Insurance premiums; and
- (iv) Utility charges, excluding impact fees.

(7) Other items that the Agency considers essential to the reestablishment of the business.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interest on money borrowed to make the move or purchase the replacement property.

(4) Payment to a part-time business in the home which does not contribute materially (defined at § 24.2(a)(7)) to the household income.

§ 24.305 Fixed payment for moving expenses—nonresidential moves.

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§ 24.301, 24.303 and 24.304. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move and, the business vacates or relocates from its displacement site;

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage;

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others; and

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement. (See § 24.2(a)(7).)

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(a)(12)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may

choose a fixed payment of \$1,000 to \$20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (See appendix A, § 24.305(d).)

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence, which the Agency determines is satisfactory. (See appendix A, § 24.305(e).)

§ 24.306 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by a displacing Agency causes the relocation of a utility facility (see § 24.2(a)(31)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing Agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way;

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted

through a franchise, use and occupancy permit, or other similar agreement;

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing Agency;

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing Agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing Agency is in accordance with State law.

(b) For the purposes of this section, the term extraordinary expenses means those expenses which, in the opinion of the displacing Agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally-assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing Agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See appendix A, § 24.306.)

Subpart E—Replacement Housing Payments

§ 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court; or

(ii) The date the displacing Agency's obligation under § 24.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22,500. (See also § 24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section;

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential.* (1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling and site (see § 24.2(a)(11)) to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 24.2(a)(8)); and

(iii) The current market value for residential use of the replacement

dwelling site (*see* appendix A, § 24.401(c)(2)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing Agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d)(1) through (d)(5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. (See appendix A, § 24.401(d).) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Professional home inspection, certification of structural soundness, and termite inspection.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, *e.g.*, title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determine to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is

computed in accordance with § 24.402(b)(1), except that the limit of \$5,250 does not apply, and disbursed in accordance with § 24.402(b)(3). Under no circumstances would the rental assistance payment exceed the amount that could have been received under § 24.401(b)(1) had the 180-day homeowner elected to purchase and occupy a comparable replacement dwelling.

§ 24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling; or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment.* (1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance. (See § 24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement

dwelling for a reasonable period prior to displacement, as determined by the Agency (for an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances);

(ii) Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs⁴. The base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or,

(iii) The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(3) *Manner of disbursement.* A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) *Downpayment assistance payment.*—(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the Agency's discretion, a downpayment assistance payment that is less than \$5,250 may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under § 24.401(b) if he or she met the 180-day occupancy requirement. If the Agency elects to provide the maximum payment of \$5,250 as a downpayment, the Agency shall apply this discretion in a uniform and consistent manner, so that

eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(a) is not eligible for this payment. (See appendix A, § 24.402(c).)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 24.2(a)(6)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(5) Multiple occupants of one displacement dwelling. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have

separate entitlements to relocation payments.

(6) Deductions from relocation payments. An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(7) Mixed-use and multifamily properties. If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing the initial payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 24.2(a)(8).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- (1) Purchases a dwelling;
- (2) Purchases and rehabilitates a substandard dwelling;
- (3) Relocates a dwelling which he or she owns or purchases;
- (4) Constructs a dwelling on a site he or she owns or purchases;
- (5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or
- (6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

- (1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the displacing Agency; or
- (2) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under

⁴The U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits are updated annually and are available on FHWA's Web site at <http://www.fhwa.dot.gov/realstate/ua/ualic.htm>.

§ 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(g) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (See § 24.3.)

§ 24.404 Replacement housing of last resort.

(a) *Determination to provide replacement housing of last resort.* Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in § 24.401 or § 24.402, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable replacement housing in the program or project area;

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person, or

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole;

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

(b) *Basic rights of persons to be displaced.* Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) *Methods of providing comparable replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in § 24.401 or § 24.402. A replacement housing payment under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing Agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers for persons with disabilities.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see appendix A, § 24.404(c)), including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with § 24.2(a)(6)(ii) of this part.

(3) The Agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§ 24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the displaced person's financial means. (See § 24.2(a)(6)(viii)(C).) Such assistance shall cover a period of 42 months.

Subpart F—Mobile Homes

§ 24.501 Applicability.

(a) *General.* This subpart describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with subpart D of this part and a replacement housing payment in accordance with subpart E of this part to the same extent and subject to the same requirements as persons displaced from conventional dwellings. Moving cost payments to persons occupying mobile homes are covered in § 24.301(g)(1) through (g)(10).

(b) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the occupant of the mobile home shall be considered to be a displaced person

who is entitled to relocation payments and other assistance under this part.

§ 24.502 Replacement housing payment for 180-day mobile homeowner displaced from a mobile home, and/or from the acquired mobile home site.

(a) *Eligibility.* An owner-occupant displaced from a mobile home or site is entitled to a replacement housing payment, not to exceed \$22,500, under § 24.401 if:

(1) The person occupied the mobile home on the displacement site for at least 180 days immediately before:

(i) The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property;

(ii) The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site; or

(iii) The date of the Agency's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home as described in paragraphs (a)(3)(i) through (iv) of this section.

(2) The person meets the other basic eligibility requirements at § 24.401(a)(2); and

(3) The Agency acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not, and cannot economically be made decent, safe, and sanitary;

(ii) Cannot be relocated without substantial damage or unreasonable cost;

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) *Replacement housing payment computation for a 180-day owner that is displaced from a mobile home.* The replacement housing payment for an eligible displaced 180-day owner is computed as described at § 24.401(b) incorporating the following, as applicable:

(1) If the Agency acquires the mobile home as real estate and/or acquires the owned site, the acquisition cost used to compute the price differential payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and/or site, if owned by the displaced mobile homeowner.

(2) If the Agency does not purchase the mobile home as real estate but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment based on paragraph (a)(1)(iii) of this section, the eligible price differential payment for the purchase of a comparable replacement mobile home, is the lesser of the displaced mobile homeowner's net cost to purchase a replacement mobile home (*i.e.*, purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or, the cost of the Agency's selected comparable mobile home less the Agency's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

(3) If a comparable replacement mobile home site is not available, the price differential payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(c) *Rental assistance payment for a 180-day owner-occupant that is displaced from a leased or rented mobile home site.* If the displacement mobile home site is leased or rented, a displaced 180-day owner-occupant is entitled to a rental assistance payment computed as described in § 24.402(b). This rental assistance payment may be used to lease a replacement site; may be applied to the purchase price of a replacement site; or may be applied, with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home or conventional decent, safe and sanitary dwelling.

(d) *Owner-occupant not displaced from the mobile home.* If the Agency determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described at § 24.301 and any replacement housing payment for the purchase or rental of a comparable site as described in this section or § 24.503 as applicable.

§ 24.503 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, not to exceed \$5,250, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days

immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the Agency determines that the occupant is displaced from the mobile home because of one of the circumstances described at § 24.502(a)(3).

Subpart G—Certification

§ 24.601 Purpose.

This subpart permits a State Agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by § 24.4 of this part.

§ 24.602 Certification application.

An Agency wishing to proceed on the basis of a certification may request an application for certification from the Lead Agency Director, Office of Real Estate Services, HEPR-1, Federal Highway Administration, 400 Seventh St., SW., Washington, DC 20590. The completed application for certification must be approved by the governor of the State, or the governor's designee, and must be coordinated with the Federal funding Agency, in accordance with application procedures.

§ 24.603 Monitoring and corrective action.

(a) The Federal Lead Agency shall, in coordination with other Federal Agencies, monitor from time to time State Agency implementation of programs or projects conducted under the certification process and the State Agency shall make available any information required for this purpose.

(b) The Lead Agency may require periodic information or data from affected Federal or State Agencies.

(c) A Federal Agency may, after consultation with the Lead Agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State Agency fails to comply with its certification or with applicable State law and regulations. The Federal Agency shall initiate consultation with the Lead Agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The Lead Agency will also inform other Federal Agencies, which have accepted a certification under this subpart from

the same State Agency, and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the Lead Agency report biennially to the Congress on State Agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the Lead Agency may require periodic information or data from affected Federal or State Agencies.

Appendix A to Part 24—Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A—General

Section 24.2 Definitions and Acronyms

Section 24.2(a)(6) Definition of comparable replacement dwelling. The requirement in § 24.2(a)(6)(ii) that a comparable replacement dwelling be “functionally equivalent” to the displacement dwelling means that it must perform the same function, and provide the same utility. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is “adequate to accommodate” the displaced person) may be found to be “functionally equivalent” to a larger but very run-down substandard displacement dwelling. Another example is when a displaced person accepts an offer of government housing assistance and the applicable requirements of such housing assistance program require that the displaced person occupy a dwelling that has fewer rooms or less living space than the displacement dwelling.

Section 24.2(a)(6)(vii). The definition of comparable replacement dwelling requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

Section 24.2(a)(6)(ix). A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit. A privately owned dwelling with a housing program subsidy tied to the unit may qualify

as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing.

A housing program subsidy that is paid to a person (not tied to the building), such as a HUD Section 8 Housing Voucher Program, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing assistance program, the rules of that program governing the size of the dwelling apply, and the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 24.2(a)(8)(ii) Decent, Safe and Sanitary. Many local housing and occupancy codes require the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, in protecting the public health and safety. Where such standards exist, they must be honored. Even where local law does not mandate adherence to such standards, it is strongly recommended that they be considered as a matter of public policy.

Section 24.2(a)(8)(vii) Persons with a disability. Reasonable accommodation of a displaced person with a disability at the replacement dwelling means the Agency is required to address persons with a physical impairment that substantially limits one or more of the major life activities. In these situations, reasonable accommodation should include the following at a minimum: Doors of adequate width; ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access. The Agency shall also consider other items that may be necessary, such as physical modification to a unit, based on the displaced person's needs.

Section 24.2(a)(9)(ii)(D) Persons not displaced. Paragraph (a)(9)(ii)(D) of this section recognizes that there are circumstances where the acquisition, rehabilitation or demolition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered “displaced persons” under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary

relocation. These expenses may include moving expenses and increased housing costs during the temporary relocation.

Temporary relocation should not extend beyond one year before the person is returned to his or her previous unit or location. The Agency must contact any residential tenant who has been temporarily relocated for a period beyond one year and offer all permanent relocation assistance. This assistance would be in addition to any assistance the person has already received for temporary relocation, and may not be reduced by the amount of any temporary relocation assistance.

Similarly, if a business will be shut-down for any length of time due to rehabilitation of a site, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses or must be determined to be displaced at the Agency's option.

Any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with 49 CFR part 24.10 of this regulation.

Section 24.2(a)(11) Dwelling Site. This definition ensures that the computation of replacement housing payments are accurate and realistic (a) when the dwelling is located on a larger than normal site, (b) when mixed-use properties are acquired, (c) when more than one dwelling is located on the acquired property, or (d) when the replacement dwelling is retained by an owner and moved to another site.

Section 24.2(a)(14) Household income (exclusions). Household income for purposes of this regulation does not include program benefits that are not considered income by Federal law such as food stamps and the Women Infants and Children (WIC) program. For a more detailed list of income exclusions see Federal Highway Administration, Office of Real Estate Services Web site: <http://www.fhwa.dot.gov/realstate/>. (FR 4644-N-16 page 20319 Updated.) If there is a question on whether or not to include income from a specific program contact the Federal Agency administering the program.

Section 24(a)(15) Initiation of negotiations. This section provides a special definition for acquisition and displacements under Pub. L. 96-510 or Superfund. The order of activities under Superfund may differ slightly in that temporary relocation may precede acquisition. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert individual owners and tenants to potential health or safety threats and to offer to temporarily relocate them while additional information is gathered. If a decision is later made to permanently relocate such persons, those who had been temporarily relocated under Superfund authority would no longer be on site when a formal, written offer to acquire the property was made, and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition of initiation of negotiation, which is based on the date the Federal Government offers to temporarily relocate an owner or tenant from the subject property.

Section 24.2(a)(15)(iv) Initiation of negotiations (Tenants.) Tenants who occupy property that may be acquired amicably, without recourse to the use of the power of eminent domain, must be fully informed as to their eligibility for relocation assistance. This includes notifying such tenants of their potential eligibility when negotiations are initiated, notifying them if they become fully eligible, and, in the event the purchase of the property will not occur, notifying them that they are no longer eligible for relocation benefits. If a tenant is not readily accessible, as the result of a disaster or emergency, the Agency must make a good faith effort to provide these notifications and document its efforts in writing.

Section 24.2(a)(17) Mobile home. The following examples provide additional guidance on the types of mobile homes and manufactured housing that can be found acceptable as comparable replacement dwellings for persons displaced from mobile homes. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met: the recreational vehicle is purchased and occupied as the "primary" place of residence; it is located on a purchased or leased site and connected to or have available all necessary utilities for functioning as a housing unit on the date of the displacing Agency's inspection; and, the dwelling, as sited, meets all local, State, and Federal requirements for a decent, safe and sanitary dwelling. (The regulations of some local jurisdictions will not permit the consideration of these vehicles as decent, safe and sanitary dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.)

For HUD programs, mobile home is defined as "a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such terms shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act, provided by Congress in the original 1974 Manufactured Housing Act." In 1979 the term "mobile home" was changed to "manufactured home." For purposes of this regulation, the terms mobile home and manufactured home are synonymous.

When assembled, manufactured homes built after 1976 contain no less than 320 square feet. They may be single or multi-sectioned units when installed. Their designation as personalty or realty will be determined by State law. When determined to be realty, most are eligible for conventional mortgage financing.

The 1976 HUD standards distinguish manufactured homes from factory-built "modular homes" as well as conventional or "stick-built" homes. Both of these types of housing are required to meet State and local construction codes.

Section 24.3 No Duplication of Payments. This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment is computed.

Subpart B—Real Property Acquisition

Federal Agencies may find that, for Federal eminent domain purposes, the terms "fair market value" (as used throughout this subpart) and "market value," which may be the more typical term in private transactions, may be synonymous.

Section 24.101(a) Direct Federal program or project. All 49 CFR Part 24 Subpart B (real property acquisition) requirements apply to all direct acquisitions for Federal programs and projects by Federal Agencies, except for acquisitions undertaken by the Tennessee Valley Authority or the Rural Utilities Service. There are no exceptions for "voluntary transactions."

Section 24.101(b)(1)(i). The term "general geographic area" is used to clarify that the "geographic area" is not to be construed to be a small, limited area.

Sections 24.101(b)(1)(iv) and (2)(ii). These sections provide that, for programs and projects receiving Federal financial assistance described in §§ 24.101(b)(1) and (2), Agencies are to inform the owner(s) in writing of the Agency's estimate of the market value for the property to be acquired.

While this part does not require an appraisal for these transactions, Agencies may still decide that an appraisal is necessary to support their determination of the market value of these properties, and, in any event, Agencies must have some reasonable basis for their determination of market value. In addition, some of the concepts inherent in Federal Program appraisal practice are appropriate for these estimates. It would be appropriate for Agencies to adhere to project influence restrictions, as well as guard against discredited "public interest value" valuation concepts.

After an Agency has established an amount it believes to be the market value of the property and has notified the owner of this amount in writing, an Agency may negotiate freely with the owner in order to reach agreement. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount. Although not required by the regulations, it would be entirely appropriate for Agencies to apply the administrative settlement concept and procedures in § 24.102(i) to negotiate amounts that exceed the original estimate of market value.

Agencies shall not take any coercive action in order to reach agreement on the price to be paid for the property.

Section 24.101(c) Less-than-full-fee interest in real property. This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases.

Section 24.102(c)(2) Appraisal, waiver thereof, and invitation to owner. The purpose of the appraisal waiver provision is to provide Agencies a technique to avoid the costs and time delay associated with appraisal requirements for low-value, non-complex acquisitions. The intent is that non-appraisers make the waiver valuations, freeing appraisers to do more sophisticated work.

The Agency employee making the determination to use the appraisal waiver process must have enough understanding of appraisal principles to be able to determine whether or not the proposed acquisition is low value and uncomplicated.

Waiver valuations are not appraisals as defined by the Uniform Act and these regulations; therefore, appraisal performance requirements or standards, regardless of their source, are not required for waiver valuations by this rule. Since waiver valuations are not appraisals, neither is there a requirement for an appraisal review. However, the Agency must have a reasonable basis for the waiver valuation and an Agency official must still establish an amount believed to be just compensation to offer the property owner(s).

The definition of "appraisal" in the Uniform Act and appraisal waiver provisions of the Uniform Act and these regulations are Federal law and public policy and should be considered as such when determining the impact of appraisal requirements levied by others.

Section 24.102(d) Establishment of offer of just compensation. The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures. An offer should be adequately presented to an owner, and the owner should be properly informed. Personal, face-to-face contact should take place, if feasible, but this section does not require such contact in all cases.

This section also provides that the property owner be given a reasonable opportunity to consider the Agency's offer and to present relevant material to the Agency. In order to satisfy this requirement, Agencies must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but thirty (30) days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.

In some jurisdictions, there is pressure to initiate formal eminent domain procedures at the earliest opportunity because completing the eminent domain process, including gaining possession of the needed real

property, is very time consuming. These provisions are not intended to restrict this practice, so long as it does not interfere with the reasonable time that must be provided for negotiations, described above, and the Agencies adhere to the Uniform Act ban on coercive action (section 301(7) of the Uniform Act).

If the owner expresses intent to provide an appraisal report, Agencies are encouraged to provide the owner and/or his/her appraiser a copy of Agency appraisal requirements and inform them that their appraisal should be based on those requirements.

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including review appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession. It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental. Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value of the property to a short-term occupier." Generally, the Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.102(n) Conflict of interest. The overall objective is to minimize the risk of fraud while allowing Agencies to operate as efficiently as possible. There are three parts to this provision.

The first provision is the prohibition against having any interest in the real property being valued by the appraiser (for an appraisal), the valuer (for a waiver estimate) or the review appraiser (for an appraisal review.)

The second provision is that no person functioning as a negotiator for a project or program can supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work for that project or program. The intent of this provision is to ensure appraisal/valuation independence and to prevent inappropriate influence. It is not intended to prevent Agencies from providing appraisers/valuers with appropriate project information and participating in determining the scope of work for the appraisal or valuation. For a program or project receiving Federal financial assistance, the Federal funding

Agency may waive this requirement if it would create a hardship for the Agency. The intent is to accommodate Federal-aid recipients that have a small staff where this provision would be unworkable.

The third provision is to minimize situations where administrative costs exceed acquisition costs. Section 24.102(n) also provides that the same person may prepare a valuation estimate (including an appraisal) and negotiate that acquisition, if the valuation estimate amount is \$10,000 or less. However, it should be noted that this exception for properties valued at \$10,000 or less is not mandatory, e.g., Agencies are not required to use those who prepare a waiver valuation or appraisal of \$10,000 or less to negotiate the acquisition, and, all appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at \$10,000 or less.

Section 24.103 Criteria for Appraisals. The term "requirements" is used throughout this section to avoid confusion with The Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP) "standards." Although this section discusses appraisal requirements, the definition of "appraisal" itself at § 24.2(a)(3) includes appraisal performance requirements that are an inherent part of this section.

The term "Federal and federally-assisted program or project" is used to better identify the type of appraisal practices that are to be referenced and to differentiate them from the private sector, especially mortgage lending, appraisal practice.

Section 24.103(a) Appraisal requirements. The first sentence instructs readers that requirements for appraisals for Federal and federally-assisted programs or projects are located in 49 CFR part 24. These are the basic appraisal requirements for Federal and federally-assisted programs or projects. However, Agencies may enhance and expand on them, and there may be specific project or program legislation that references other appraisal requirements.

These appraisal requirements are necessarily designed to comply with the Uniform Act and other Federal eminent domain based appraisal requirements. They are also considered to be consistent with Standards Rules 1, 2, and 3 of the 2004 edition of the USPAP. Consistency with USPAP has been a feature of these appraisal requirements since the beginning of USPAP. This "consistent" relationship was more formally recognized in OMB Bulletin 92-06. While these requirements are considered consistent with USPAP, neither can supplant the other; their provisions are neither identical, nor interchangeable. Appraisals performed for Federal and federally-assisted real property acquisition must follow the requirements in this regulation. Compliance with any other appraisal requirements is not the purview of this regulation. An appraiser who is committed to working within the bounds of USPAP should recognize that compliance with both USPAP and these requirements may be achieved by using the Supplemental Standards Rule and the Jurisdictional Exception Rule of USPAP, where applicable.

The term "scope of work" defines the general parameters of the appraisal. It reflects

the needs of the Agency and the requirements of Federal and federally-assisted program appraisal practice. It should be developed cooperatively by the assigned appraiser and an Agency official who is competent to both represent the Agency's needs and respect valid appraisal practice. The scope of work statement should include the purpose and/or function of the appraisal, a definition of the estate being appraised, and if it is market value, its applicable definition, and the assumptions and limiting conditions affecting the appraisal. It may include parameters for the data search and identification of the technology, including approaches to value, to be used to analyze the data. The scope of work should consider the specific requirements in 49 CFR 24.103(a)(1) through (5) and address them as appropriate.

Section 24.103(a)(1). The appraisal report should identify the items considered in the appraisal to be real property, as well as those identified as personal property.

Section 24.103(a)(2). All relevant and reliable approaches to value are to be used. However, where an Agency determines that the sales comparison approach will be adequate by itself and yield credible appraisal results because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the sales comparison approach. This should be reflected in the scope of work.

Section 24.103(b) Influence of the project on just compensation. As used in this section, the term "project" means an undertaking which is planned, designed, and intended to operate as a unit.

When the public is aware of the proposed project, project area property values may be affected. Therefore, property owners should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(d)(1). The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively. Among other qualifications, State licensing or certification and professional society designations can help provide an indication of an appraiser's abilities.

Section 24.104 Review of appraisals. The term "review appraiser" is used rather than "reviewing appraiser," to emphasize that "review appraiser" is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. Federal Agencies have long held the perspective that appraisal review is a unique skill that, while it certainly builds on appraisal skills, requires more. The review appraiser should possess both appraisal technical abilities and the ability to be the two-way bridge between the Agency's real property valuation needs and the appraiser.

Agency review appraisers typically perform a role greater than technical appraisal review. They are often involved in early project development. Later they may be involved in devising the scope of work statements and participate in making

appraisal assignments to fee and/or staff appraisers. They are also mentors and technical advisors, especially on Agency policy and requirements, to appraisers, both staff and fee. Additionally, review appraisers are frequently technical advisors to other Agency officials.

Section 24.104(a). This paragraph states that the review appraiser is to review the appraiser's presentation and analysis of market information and that it is to be reviewed against § 24.103 and other applicable requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. The appraisal review is to be a technical review by an appropriately qualified review appraiser. The qualifications of the review appraiser and the level of explanation of the basis for the review appraiser's recommended (or approved) value depend on the complexity of the appraisal problem. If the initial appraisal submitted for review is not acceptable, the review appraiser is to communicate and work with the appraiser to the greatest extent possible to facilitate the appraiser's development of an acceptable appraisal.

In doing this, the review appraiser is to remain in an advisory role, not directing the appraisal, and retaining objectivity and options for the appraisal review itself.

If the Agency intends that the staff review appraiser approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), or establish the amount the Agency believes is just compensation, she/he must be specifically authorized by the Agency to do so. If the review appraiser is not specifically authorized to approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), or establish the amount believed to be just compensation, that authority remains with another Agency official.

Section 24.104(b). In developing an independent approved or recommended value, the review appraiser may reference any acceptable resource, including acceptable parts of any appraisal, including an otherwise unacceptable appraisal. When a review appraiser develops an independent value, while retaining the appraisal review, that independent value also becomes the approved appraisal of the fair market value for Uniform Act Section 301(3) purposes. It is within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on the property.

Section 24.104(c). Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and analysis of that data, demonstrates the soundness of the appraiser's opinion of value. For the purposes of this part, an acceptable appraisal is any appraisal that, on its own, meets the requirements of § 24.103. An approved appraisal is the one acceptable appraisal that is determined to best fulfill the requirement to be the basis for the amount believed to be just compensation. Recognizing that appraisal is not an exact

science, there may be more than one acceptable appraisal of a property, but for the purposes of this part, there can be only one approved appraisal.

At the Agency's discretion, for a low value property requiring only a simple appraisal process, the review appraiser's recommendation (or approval), endorsing the appraiser's report, may be determined to satisfy the requirement for the review appraiser's signed report and certification.

Section 24.106(b). *Expenses incidental to transfer of title to the agency.* Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. Such expenses must be reasonable and necessary.

Subpart C—General Relocation Requirements

Section 24.202 Applicability and Section 205(c) Services to be provided. In extraordinary circumstances, when a displaced person is not readily accessible, the Agency must make a good faith effort to comply with these sections and document its efforts in writing.

Section 24.204 Availability of comparable replacement dwelling before displacement.

Section 24.204(a) General. This provision requires that no one may be required to move from a dwelling without a comparable replacement dwelling having been made available. In addition, § 24.204(a) requires that, "where possible, three or more comparable replacement dwellings shall be made available." Thus, the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 24.205 Relocation assistance advisory services. Section 24.205(c)(2)(ii)(D) emphasizes that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 24.206 Eviction for cause. An eviction related to non-compliance with a requirement related to carrying out a project (e.g., failure to move or relocate when instructed, or to cooperate in the relocation process) shall not negate a person's entitlement to relocation payments and other assistance set forth in this part.

Section 24.207 General Requirements—Claims for relocation payments. Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated nonresidential moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in § 24.301(d)(1).

While § 24.207(f) prohibits an Agency from proposing or requesting that a displaced

person waive his or her rights or entitlements to relocation assistance and payments, an Agency may accept a written statement from the displaced person that states that they have chosen not to accept some or all of the payments or assistance to which they are entitled. Any such written statement must clearly show that the individual knows what they are entitled to receive (a copy of the Notice of Eligibility which was provided may serve as documentation) and their statement must specifically identify which assistance or payments they have chosen not to accept. The statement must be signed and dated and may not be coerced by the Agency.

Subpart D—Payment for Moving and Related Expenses

Section 24.301. Payment for Actual Reasonable Moving and Related Expenses.

Section 24.301(e) Personal property only.

Examples of personal property only moves might be: personal property that is located on a portion of property that is being acquired, but the business or residence will not be taken and can still operate after the acquisition; personal property that is located in a mini-storage facility that will be acquired or relocated; personal property that is stored on vacant land that is to be acquired.

For a nonresidential personal property only move, the owner of the personal property has the options of moving the personal property by using a commercial mover or a self-move.

If a question arises concerning the reasonableness of an actual cost move, the acquiring Agency may obtain estimates from qualified movers to use as the standard in determining the payment.

Section 24.301 (g)(14)(i) and (ii). If the piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment shall be based on the cost to install the equipment as it currently exists, and shall not include the cost of code-required betterments or upgrades that may apply at the replacement site. As prescribed in the regulation, the allowable in-place value estimate (§ 24.301(g)(14)(i)) and moving cost estimate (§ 24.301(g)(14)(ii)) must reflect only the "as is" condition and installation of the item at the displacement site. The in-place value estimate may not include costs that reflect code or other requirements that were not in effect at the displacement site; or include installation costs for machinery or equipment that is not operable or not installed at the displacement site.

Section 24.301(g)(17) Searching expenses.

In special cases where the displacing Agency determines it to be reasonable and necessary, certain additional categories of searching costs may be considered for reimbursement. These include those costs involved in investigating potential replacement sites and the time of the business owner, based on salary or earnings, required to apply for licenses or permits, zoning changes, and attendance at zoning hearings. Necessary attorney fees required to obtain such licenses or permits are also reimbursable. Time spent in negotiating the purchase of a replacement business site is also reimbursable based on a reasonable salary or earnings rate. In those instances when such additional costs to

investigate and acquire the site exceed \$2,500, the displacing Agency may consider waiver of the cost limitation under the § 24.7, waiver provision. Such a waiver should be subject to the approval of the Federal-funding Agency in accordance with existing delegation authority.

Section 24.303(b) Professional Services. If a question should arise as to what is a "reasonable hourly rate," the Agency should compare the rates of other similar professional providers in that area.

Section 24.305 Fixed Payment for Moving Expenses—Nonresidential Moves.

Section 24.305(d) Nonprofit organization. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising, and other like items as well as fundraising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public Agencies.

Section 24.305(e) Average annual net earnings of a business or farm operation. If the average annual net earnings of the displaced business, farm, or nonprofit organization are determined to be less than \$1,000, even \$0 or a negative amount, the minimum payment of \$1,000 shall be provided.

Section 24.306 Discretionary Utility Relocation Payments. Section 24.306(c) describes the issues that the Agency and the utility facility owner must agree to in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement Housing Payment for 180-day Homeowner-Occupants.

Section 24.401(a)(2). An extension of eligibility may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction, or physical modifications required for reasonable accommodation of a replacement dwelling, or other like circumstances causes a delay in occupying a decent, safe, and sanitary replacement dwelling.

Section 24.401(c)(2)(iii) Price differential. The provision in § 24.401(c)(2)(iii) to use the current market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the market value may be used.

Section 24.401(d) Increased mortgage interest costs. The provision in § 24.401(d) sets forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to

the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the "buydown."

The Agency must know the remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

SAMPLE COMPUTATION

Old Mortgage:	
Remaining Principal Balance	\$50,000
Monthly Payment (principal and interest)	\$458.22
Interest rate (percent)	7
New Mortgage:	
Interest rate (percent)	10
Points	3
Term (years)	15

Remaining term of the old mortgage is determined to be 174 months. Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee. However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of \$458.22 at 10% = \$42,010.18.

Calculation:	
Remaining Principal Balance	\$50,000.00
Minus Monthly Payment (principal and interest)	-42,010.18
Increased mortgage interest costs	7,989.82
3 points on \$42,010.18	1,260.31
Total buydown necessary to maintain payments at \$458.22/month	9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage (\$42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were \$35,000, the buydown payment would be \$7,706.57 (\$35,000 divided by \$42,010.18 = .8331; \$9,250.13 multiplied by .83 = \$7,706.57).

The Agency is obligated to inform the displaced person of the approximate amount

of this payment and that the displaced person must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this payment. The Agency must advise the displaced person of the interest rate and points used to calculate the payment.

Section 24.402 Replacement Housing Payment for 90-day Occupants

Section 24.402(b)(2) Low income calculation example. The Uniform Act requires that an eligible displaced person who rents a replacement dwelling is entitled to a rental assistance payment calculated in accordance with § 24.402(b). One factor in this calculation is to determine if a displaced person is "low income," as defined by the U.S. Department of Housing and Urban Development's annual survey of income limits for the Public Housing and Section 8 Programs. To make such a determination, the Agency must: (1) Determine the total number of members in the household (including all adults and children); (2) locate the appropriate table for income limits applicable to the Uniform Act for the state in which the displaced residence is located (found at: <http://www.fhwa.dot.gov/realstate/ua/ualic.htm>); (3) from the list of local jurisdictions shown, identify the appropriate county, Metropolitan Statistical Area (MSA)*, or Primary Metropolitan Statistical Area (PMSA)* in which the displacement property is located; and (4) locate the appropriate income limit in that jurisdiction for the size of this displaced person/family. The income limit must then be compared to the household income (§ 24.2(a)(15)) which is the gross annual income received by the displaced family, excluding income from any dependent children and full-time students under the age of 18. If the household income for the eligible displaced person/family is less than or equal to the income limit, the family is considered "low income." For example:

Tom and Mary Smith and their three children are being displaced. The information obtained from the family and verified by the Agency is as follows:

Tom Smith, employed, earns \$21,000/yr.
Mary Smith, receives disability payments of \$6,000/yr.

Tom Smith Jr., 21, employed, earns \$10,000/yr.

Mary Jane Smith, 17, student, has a paper route, earns \$3,000/yr. (Income is not included because she is a dependent child and a full-time student under 18)

Sammie Smith, 10, full-time student, no income.

Total family income for 5 persons is: \$21,000 + \$6,000 + \$10,000 = \$37,000

The displacement residence is located in the State of Maryland, Caroline County. The low income limit for a 5 person household is: \$47,450. (2004 Income Limits)

This household is considered "low income."

* A complete list of counties and towns included in the identified MSAs and PMSAs can be found under the bulleted item "Income Limit Area Definition" posted on the FHWA's Web site at: <http://www.fhwa.dot.gov/realstate/ua/ualic.htm>.

Section 24.402(c) Downpayment assistance. The downpayment assistance provisions in § 24.402(c) limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance that exceeds the computed rental assistance payment, up to the \$5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing Agency should develop a policy that affords equal treatment for displaced persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects.

For the purpose of this section, should the amount of the rental assistance payment exceed the purchase price of the replacement dwelling, the payment would be limited to the cost of the dwelling.

Section 24.404 Replacement Housing of Last Resort.

Section 24.404(b) Basic rights of persons to be displaced. This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at § 24.2(a)(20). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing comparable replacement housing. This Section emphasizes the use of cost effective means of providing comparable replacement housing. The term "reasonable cost" is used to highlight the fact that while innovative means to provide housing are encouraged, they should be cost-effective. Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller, decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of

which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

Appendix B to Part 24—Statistical Report Form

This Appendix sets forth the statistical information collected from Agencies in accordance with § 24.9(c).

General

1. Report coverage. This report covers all relocation and real property acquisition activities under a Federal or a federally-assisted project or program subject to the provisions of the Uniform Act. If the exact numbers are not easily available, an Agency may provide what it believes to be a reasonable estimate.

2. Report period. Activities shall be reported on a Federal fiscal year basis, i.e., October 1 through September 30.

3. Where and when to submit report. Submit a copy of this report to the lead Agency as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15. Lead Agency address: Federal Highway Administration, Office of Real Estate Services (HEPR), Room 3221, 400 7th Street SW., Washington, DC 20590.

4. How to report relocation payments. The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. How to report dollar amounts. Round off all money entries in Parts of this section A, B and C to the nearest dollar.

6. Regulatory references. The references in Parts A, B, C and D of this section indicate the subpart of the regulations pertaining to the requested information.

Part A. Real property acquisition under The Uniform Act

Line 1. Report all parcels acquired during the report year where title or possession was vested in the Agency during the reporting period. The parcel count reported should relate to ownerships and not to the number of parcels of different property interests (such as fee, perpetual easement, temporary easement, etc.) that may have been part of an acquisition from one owner. For example, an acquisition from a property that includes a fee simple parcel, a perpetual easement parcel, and a temporary easement parcel should be reported as 1 parcel not 3 parcels. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.)

Line 2. Report the number of parcels reported on Line 1 that were acquired by condemnation. Include those parcels where compensation for the property was paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency through condemnation authority.

Line 3. Report the number of parcels in Line 1 acquired through administrative

settlement where the purchase price for the property exceeded the amount offered as just compensation and efforts to negotiate an agreement at that amount have failed.

Line 4. Report the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency in Line 1.

Part B. Residential Relocation Under the Uniform Act

Line 5. Report the number of households who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling. The term "households" includes all families and individuals. A family shall be reported as "one" household, not by the number of people in the family unit.

Line 6. Report the total amount paid for residential moving expenses (actual expense and fixed payment).

Line 7. Report the total amount paid for residential replacement housing payments including payments for replacement housing of last resort provided pursuant to § 24.404 of this part.

Line 8. Report the number of households in Line 5 who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling as part of last resort housing assistance.

Line 9. Report the number of tenant households in Line 5 who were permanently displaced during the fiscal year by project or program activities, and who purchased and moved to their replacement dwelling using a downpayment assistance payment under this part.

Line 10. Report the total sum costs of residential relocation expenses and payments (excluding Agency administrative expenses) in Lines 6 and 7.

Part C. Nonresidential Relocation Under the Uniform Act

Line 11. Report the number of businesses, nonprofit organizations, and farms who were permanently displaced during the fiscal year by project or program activities and moved to their replacement location. This includes businesses, nonprofit organizations, and farms, that upon displacement, discontinued operations.

Line 12. Report the total amount paid for nonresidential moving expenses (actual expense and fixed payment.)

Line 13. Report the total amount paid for nonresidential reestablishment expenses.

Line 14. Report the total sum costs of nonresidential relocation expenses and payments (excluding Agency administrative expenses) in Lines 12 and 13.

Part D. Relocation Appeals

Line 15. Report the total number of relocation appeals filed during the fiscal year by aggrieved persons (residential and nonresidential).

BILLING CODE 4910-22-P

FEDERAL FISCAL YEAR ENDING SEPT. 30, 20 _____
 REPORTING AGENCY: _____
 STATE: _____
 CITY/COUNTY (For Local Government Agencies): _____
 FEDERAL FUNDING AGENCY: _____

PART A. REAL PROPERTY ACQUISITION UNDER THE UNIFORM ACT	
1) Total Number of Parcels Acquired (Ownerships)	
2) Number of Parcels in Line 1 Acquired by Condemnation	
3) Number of Parcels in Line 1 Acquired by Administrative Settlement (Above initial offer - see 24.102(i))	
4) Compensation - Total Costs (Including 24.106; Excluding appraisal costs, negotiator fees and other administrative expenses)	
PART B. RESIDENTIAL RELOCATION UNDER THE UNIFORM ACT	
5) Total Number of Residential Displacements (Households)	
6) Residential Moving Payments - Total Costs	
7) Replacement Housing Payments - Total Costs	
8) Number of Last Resort Housing Displacements in Line 5 (Households)	
9) Number of Tenants converted to Homeowners in Line 5 (Households using 24.402(c))	
10) Total Costs for Residential Relocation Expenses and Payments (Sum of lines 6 and 7; excluding Agency Administrative Costs)	
PART C. NONRESIDENTIAL RELOCATION UNDER THE UNIFORM ACT	
11) Total Number of NonResidential Displacements	
12) NonResidential Moving Payments - Total Costs (Including 24.305)	
13) NonResidential Reestablishment Payments - Total Costs	
14) Total Costs for Nonresidential Relocation Expenses and Payments (Sum of lines 12 and 13; excluding Agency Administrative Costs)	
PART D. RELOCATION APPEALS UNDER THE UNIFORM ACT	
15) Total Number of Relocation Appeals (Residential & NonResidential)	

OKLAHOMA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

REQUIREMENT NO. 408
CIVIL RIGHTS, EQUAL OPPORTUNITY,
FAIR HOUSING, SECTIONS 3 & 504

Effective July 2007

I. **CONTRACTUAL REQUIREMENTS**

- A. Federal civil rights laws, whether they address hiring, housing, contracting or access, were enacted to ensure that no group or individual would be subject to any kind of discrimination, particularly when spending taxpayers' money, e.g., CDBG grants. Specific laws, the persons those laws cover and the types of discrimination prohibited are outlined at the end of this Requirement. **[Attachment 1]**
- B. Generally, these laws prohibit discrimination based on race, national origin, religion, age, sex, disability and family status. Identified groups included under these categories are:
1. Minorities, i.e., Blacks, African Americans, American Indians, Alaskan Natives, Asians, Native Hawaiians, Pacific Islanders, Hispanics and Latinos;
 2. Women;
 3. Age groups (specifically those over 40); and
 4. Handicapped persons (mental and/or physical).
- C. CDBG Grant Recipients and their subrecipients must comply with these laws, demonstrate efforts made to comply and document those efforts in various aspects of project activities
- D. Employment Practices:
1. The Grant Recipient's employment policies need to be examined (or re-examined) in light of the Civil Rights and non-discrimination statutes. Providing equal opportunity in the hiring process and in the evaluation of current employees is paramount. Grant Recipients are also required to make affirmative action (redress for past discrimination) a part of local policies.
 2. Evidence of efforts to provide equal opportunity and take affirmative action steps in the recruitment, selection and compensation of employees must be documented.

[Attachment 4] Other actions that can demonstrate non-discriminatory practices of the Grant Recipient as an employer include but are not limited to the following:

- a. Upgrading, demotions or transfers;
 - b. Recruitment and advertisements for employees;
 - c. Layoffs or terminations;
 - d. Changes in rates of pay or other forms of compensation;
 - e. Selection for training, including apprenticeships; and
 - f. Participation in recreational and educational activities.
3. All employment notices should be posted in conspicuous places available to both employees and applicants and must contain the following provisions of this discrimination clause:

"All qualified applicants will receive consideration for employment without regard to race, color, religion, creed, age, sex, national origin or disability."

ODOC will provide you with appropriate examples and posters.

4. It is important to remember that another part of the Civil Rights laws prohibits sex discrimination in the payment of wages to women and men performing substantially equal work in the same establishment. **[The Equal Pay Act of 1963]** One law prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam era veterans. **[Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974]** Special outreach should be made to notify minority or disadvantaged groups of employment opportunities. The Grant Recipient should have written employment and personnel policies and practices available for review by ODOC representatives. A Self-Evaluation Plan for Handicapped Accessibility, displaying the local government's current staffing arrangements, would supplement the written policies. A sample of a Transition Plan demonstrates format and how various programs might be addressed. **[Attachments 2 and 3]**

E. Contracts and Subcontracts [Executive Order 11246: Equal Employment Opportunity - Contracts and Subcontracts]:

1. Contracting is another part of your program, which must be non-discriminatory. You must ensure non-discrimination in the soliciting and awarding of contracts generated through CDBG funding. Advertisement and distribution of solicitation must not discriminate. Be sure to keep records of all contacts with minority- or women-owned firms. Bid specifications and/or evaluation criteria used to review bids must not be discriminatory. This is also an issue in the award of contracts. **[See Requirement 405.]**
2. It is also your responsibility to ensure that your Grant Recipients include equal opportunity provisions and certifications in their contracts. Language appropriate for use in contracts can be found in Requirement 406 for construction contracts.
3. Section 3:
 - a. You need to be aware that both you and some Grant Recipients should make a special effort to provide training and employment opportunities to lower-income residents and contract opportunities to businesses in the project area. **[Section 3 of the Housing and Urban Development Act of 1992]** This requirement applies to:
 - (1) A local government (Grant Recipient), including private entities receiving CDBG funds, if it receives CDBG funds for housing rehabilitation and/or public construction and the CDBG assistance exceeds \$200,000 for any one activity; and
 - (2) Construction contractors and subcontractors when the activity has been determined to be covered by Section 3 for the construction contractor and the construction contract or subcontract exceeds \$100,000. **[This language can be found at Attachment 8.]**
 - b. At a minimum, Contractors must include Specific Section 3 language in all solicitations (RFPs and bid documents). **[Housing and Community Development Act of 1992, as Amended; Title VIII of the Civil Rights Act of 1968, as Amended; 42 U.S.C 3601, et seq., also known as the Fair Housing Act of 1988]**

F. Affirmatively Furthering Fair Housing:

1. Fair housing is generally defined as the ability of persons of similar income levels to have available to them a like range of housing choices regardless of race, color, sex, religion, national origin, marital status, family status, age or mental or physical disability. Local governments, because of their influence and power, are in the most effective position to promote fair housing.
2. The Grant Recipient must provide documentation of steps taken to affirmatively further fair housing, regardless of the type of CDBG activity funded by ODOC, for each fiscal year the Grant Recipient has received a CDBG contract.
3. While the Grant Recipient has already certified that it practices fair housing, it must demonstrate that it is affirmatively furthering fair housing on a continual basis, not merely as a requirement of spending CDBG dollars. **[See Attachment 5 for suggested activities.]** Efforts should be made to identify discriminatory housing patterns and alleviate them by working with developers, landlords, realtors, residents and government agencies. **[Attachment 6 is a sample fair housing ordinance.]**
4. Both State and Federal laws should be cited in all applicable contracts dealing with housing. Efforts should be made and documented to end discriminatory housing policies and to provide information to the general public regarding fair housing matters. When rehabilitating investor-owned property, you should advise the owner of the requirements for fair housing/equal employment opportunity clauses in advertising for vacant units. In addition, when rehabilitating all housing units, making those units accessible to the disabled should be taken into consideration where applicable. **[Executive Order 11063: Equal Opportunity in Housing]**
5. ODOC requires all CDBG Grant Recipients to either adopt a Fair Housing Ordinance or pass a Fair Housing Resolution as the first step in affirmatively furthers fair housing. (Sample, **Attachment 6 and 7**).
6. In addition, ODOC requires the Grant Recipient to undertake at least one (1) new activity per year while any CDBG contract is open. The Grant Recipient is not required to undertake multiple fair housing activities if it has multiple CDBG contracts open.

G. Complaints:

1. Since the Grant Recipient may receive complaints related to the various aspects of civil rights, equal opportunity

and fair housing, a file to document such complaints must be established. **[It would be wise to appoint an individual who would be responsible for handling any complaints, doing necessary follow-up and maintaining documentation on complaints received and their resolutions.]** This file should contain any relevant paperwork as well as follow-up efforts (within 15 working days) and eventual resolution.

2. All complaints may not refer to a violation of a particular civil rights law or laws. A complaint should be viewed as a civil rights complaint when the complainant:
 - a. Indicates the belief that he/she has been denied benefits or opportunities, has been treated differently, etc.; and
 - b. Alleges his or her race, ethnicity, gender, status as a disabled person or age was the basis for his/her belief of discrimination.
3. Any person or specific class of persons who believes that he/she/they have been subject to any discrimination prohibited by the laws referenced in this Requirement may file a complaint. Advise your ODOC representative if you receive a civil rights complaint, as it will need to be referred to HUD's regional office, which deals directly with such complaints. **[The phone number for Region 6 is 405-609-8571.]** Since this Requirement only summarizes applicable laws and gives general guidance to aid in compliance with those laws, a Grant Recipient and its legal counsel may want to refer to the actual statute if questions about a specific regulation arise.

H. Evaluating Municipal Accessibility (Section 504):

1. Section 504 of the Rehabilitation Act of 1973, as amended, establishes policies, goals and procedures for assuring that no otherwise qualified individual with disabilities is, solely on the basis of the disability, denied benefits, subjected to discrimination or excluded from participation in any program or activity receiving Federal assistance. HUD has issued regulations to establish the manner in which recipients of CDBG funds are required to comply with the provisions of Section 504. **[24 CFR 8]**
2. Inasmuch as the law has been in effect for more than 25 years, it is possible that the Grant Recipient has already met many, if not all, of its requirements. If this is the case, providing evidence of meeting these requirements will be little more than providing documentation. However, it is almost always likely that there is more to be done in order to truly meet the

spirit, as well as the letter, of the law. CDBG Grant Recipients must conform to HUD's procedural requirements as a condition of receiving these Federal funds. There are ways your community may need to modify its customary way of doing business to ensure that all local services, not only grant-related activities, are accessible to your disabled citizens and that local programs do not discriminate against them. **[See also, Architectural Barriers Act of 1968, as amended; the Americans with Disabilities Act; and the Fair Housing Amendments Act of 1988.]**

3. Additional Actions:

a. All CDBG Grant Recipient must take the following actions regarding disabled persons, regardless of the number of persons employed by the Grant Recipient:

- (1) Establish effective communication methods, e.g., auxiliary aids, information regarding accessible services, activities and facilities;
- (2) Demonstrate non-discriminatory employment practices;
- (3) Conduct a self-evaluation of policies, practices and programs; and
- (4) Develop a Transition Plan for compliance.

b. Grant Recipients employing fifteen or more individuals must also:

- (1) Designate a "504 contact person" and publish a Notice of Non-Discrimination; and
- (2) Develop grievance procedures.

c. Though not required by either state or regulation, ODOC encourages all Grant Recipients to take these additional actions.

4. Summary of Requirements:

a. Effective Communication:

- (1) The Grant Recipient is required to take appropriate actions to ensure that applicants, participants and members of the general public with disabilities have communication access that is equally effective as that provided to people without disabilities. To overcome

communication barriers, equipment and other services are frequently used by individuals who are blind, visually impaired, hearing impaired, speech impaired or who have cognitive impairment. The Grant Recipient must furnish auxiliary aids and services as necessary, which may include:

(a) For Persons With Hearing Impairments:

- [1] Qualified sign language interpreters;
- [2] Note takers;
- [3] Telecommunication devices for deaf persons (TDDs);
- [4] Telephone handset amplifiers;
- [5] Assertive listening devices (devices that increase the sound in large group settings);
- [6] Flashing lights (where aural communication is used, such as warning bells);
- [7] Transcription services;
- [8] Closed and open captioning.

(b) For Persons With Vision Impairments:

- [1] Qualified readers;
- [2] Written materials translated into alternative formats, e.g., Braille, audio tape, large print, etc.
- [3] Aural communication (bells or other sounds used where visual cues are necessary).

- (2) The Grant Recipient must pay attention to the requests and needs of the disabled person(s) within the community when determining which auxiliary aids or services are necessary. For the purpose of Section 504 compliance, the target population includes: The hearing impaired, visually impaired, mobility impaired, developmentally disabled and those persons requiring in-home care or institutional care.

- (3) Grant Recipients are not required to provide individually prescribed devices such as glasses, hearing aids, readers for personal use or study or any other device of a personal nature.
- (4) When a Grant Recipient communicates by phone a TDD or other equally effective communication system must be used. Further, the Grant Recipient must communicate in such a manner that disabled persons may obtain the information they need regarding the Grant Recipient's programs. All public hearings must be held in locations accessible to the disabled. It is acceptable to require that persons with disabilities provide adequate advance notice that they may need a particular auxiliary aid or service. All communications must clearly outline the specific procedures, which must be followed if an individual with disabilities intends to request an auxiliary aid or service. **[See HUD Technical Guidance Memorandum 91-1.]**
- (5) If the requested aid or service cannot be provided as requested by the disabled individual, the Grant Recipient must advise the individual immediately of the specific reasons why the request cannot be granted and the reasons why the decision was made.
- (6) The Grant Recipient is not required to undertake any action which would, if taken, result in a fundamental alteration of the program or which would result in an undue financial and/or administrative burden. If it is determined this would be the case, you should contact ODOC for further advice.

b. Non-Discriminatory Employment Practices: The Grant Recipient must take the following actions or make the following assurances:

- (1) It will provide an assurance that no qualified individuals will, solely on the basis of disability, be subjected to discrimination in employment under any program or activity receiving Federal financial assistance;
- (2) It will not limit, segregate or classify applicants or employees in any way that adversely affects their opportunity or status because of a disability. The Grant Recipient must assure that this prohibition against

discrimination applies to the following activities: Recruitment, layoff, advertising, termination, employment application processing, right of return from layoff, hiring, upgrading, job assignments, promotion, job classifications, award of tenure, organizational structures, transfer, injury or compensation, position descriptions, lines of progression, seniority lists, leave, sick leave of absence, fringe benefits, selection and financial support for training, selection for leaves of action for training, employer-sponsored activities (recreational or social), other terms, conditions or privileges of employment.

- (3) It will not participate in a contractual or other relationship that has the effect of subjecting qualified applicants or employees with disabilities to discrimination;
- (4) It will provide reasonable accommodations for the known physical or mental limitations of an otherwise-qualified applicant with disability. Reasonable accommodations may include: Accessible facilities, job structuring, job relocation, part-time or modified work schedules, acquisition or modification of equipment or devices, provision of readers or interpreters.
- (5) It will make a determination of whether an individual with disability is qualified for the position at the time of the employment action. This involves two steps:
 - (a) Determine if the individual satisfies the prerequisites for the position in terms of appropriate education, skills, licenses, etc.;
 - (b) Determine whether the individual can perform the essential functions of the position held or desired, with or without reasonable accommodation. Essential functions are ones the individual who holds the position must be able to perform unaided or with the assistance of reasonable accommodation;
- (6) Reasonable Accommodation:
 - (a) It will make a reasonable accommodation to the known physical or mental limitations of an otherwise-qualified appli-

cant for employment or employee with a disability, unless the Grant Recipient can demonstrate the accommodation would impose an undue burden on its operations. There are three categories of reasonable accommodation:

- [1] Accommodations required to ensure equal opportunity in the application process;
- [2] Accommodations enabling the Grant Recipient's employees with disabilities to perform the essential functions of the position held or desired; or
- [3] Accommodations enabling the Grant Recipient's employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

(b) A reasonable accommodation in employment may include but is not limited to one or more of the following actions:

- [1] Making existing facilities used by employees readily accessible to and usable by individuals with disabilities;
- [2] Restructuring, including part-time or modified work schedules or reassignment to a vacant position;
- [3] Acquisition or modifications of devices or equipment;
- [4] Appropriate adjustment or modifications of examinations, training materials or policies; or
- [5] The provision of qualified readers or interpreters.

c. Self-Evaluation of Policies, Practices & Programs:

- (1) Each Grant Recipient must, after consulting with interested persons (including individuals with disabilities or organizations representing such individuals) evaluate its current policies and practices to determine

whether or not they constitute barriers to participation by the disabled. The self-evaluation process should be viewed as the starting point toward achieving compliance with Section 504 requirements. The self-evaluation process is a comprehensive review of all current policies and practices to determine whether or not there are barriers to participation by the disabled in programs or services. **[Attachment 2 is a highly simplified evaluation form.]**

- (2) The self-evaluation includes communication and employment, as well as the policies and practices for all services, programs and activities. Information to be included in the plan includes:
 - (a) A list of persons consulted about the self-evaluation;
 - (b) A description of the areas examined and any problems identified; and
 - (c) A description of any modifications made to the policies, procedures, services and programs.
- (3) Areas to be evaluated include but are not limited to:
 - (a) Buildings and/or facilities for physical accessibility;
 - (b) All programs, activities and services;
 - (c) All outreach and communications;
 - (d) Eligibility and admission criteria and practices;
 - (e) Employment practices and guidelines;
 - (f) Complaint processing procedures.
- (4) It should be noted that the self-evaluation must include all aspects of the Grant Recipient's organization and not just those portions that pertain or relate to the CDBG-funded program and its administration.
- (5) The self-evaluation may determine that some non-structural modifications may be necessary, along with staff training on how to make

reasonable modifications to achieve program accessibility. The self-evaluation may also determine that some structural modifications may be necessary. These should be identified early in the process so modifications can be budgeted for and completed on a timely basis.

- (6) The regulations also require the Grant Recipient to consult with persons with disabilities and/or representative organizations throughout the self-evaluation process. The regulations do not stipulate how many people to consult, how to select the members, whether there should be a group or individual consultation or how long the consultation process should take. ODOC recommends that no less than four and no more than seven individuals should comprise a citizens advisory committee. It is also recommended that the committee consist of a wide variety of members. Following are some suggestions for soliciting persons to compose the self-evaluation committee:

- (a) Solicit one or two local officials;
- (b) Draw upon local agencies or chapters of disability advocate organizations;
- (c) Check with local veterans' groups;
- (d) Publicize widely in appropriate media accessible to persons with disabilities;
- (e) Ask for the help of the local school system;
- (f) Include persons within the community known to have disabilities;
- (g) Check with the nearest vocational rehabilitation service;
- (h) Advertise on local radio and/or television;
- (i) Advertise in local and regional newspapers;
- (j) Contact appropriate State agencies, boards and commissions.

- (7) By establishing a citizens' advisory committee made up of the above types of individuals, the Grant Recipient will be able to:
 - (a) Ensure the most complete evaluation of programs and policies and uncover any impediments or barriers to participation by persons with disabilities;
 - (b) Receive information from persons or experts from organizations representing disabled individuals who are in an excellent position to recommend the least costly, most innovative solutions to accessibility problems;
 - (c) Demonstrate a commitment to the goals of Section 504 and ADA and help to foster support from all citizens for the handling of this compliance issue.
- (8) Records must be maintained for three years following final closeout of the contract.

d. Transition Plan for Compliance:

- (1) If your programs and activities cannot be made accessible by making administrative changes, structural changes will be necessary. Develop a Transition Plan for any structural changes. Interested citizens, especially disabled citizens, should be recruited to help develop the Plan. **[Attachment 3 is a sample Plan.]** A copy of the Plan must be made available for public inspection. The Plan should:
 - (a) Identify the physical obstacles that limit the program's accessibility to disabled persons. The Grant Recipient should consider utilizing the Uniform Federal Accessibility Standards (UFAS) Checklist;
 - (b) Describe in detail the method to be used in making the facilities in question accessible;
 - (c) Set forth the schedule of tasks, identifying actions to be taken within the first year, if the total project will exceed one year.
 - (d) Identify the official responsible for implementing the Plan; and

- (e) Identify those who assisted the Grant Recipient in preparing the Transition Plan.
- (2) The Grant Recipient must make reasonable accommodations to the known physical or mental impairments of an otherwise-qualified participant or employee with disabilities, unless the Grant Recipient can demonstrate that such accommodations would impose undue financial and/or administrative burdens. Accommodations could include but are not limited to:
- (a) Conducting home visits;
 - (b) Assigning aides to assist beneficiaries;
 - (c) Locating programs or services in accessible facilities;
 - (d) Adding or redesigning equipment or furnishings;
 - (e) Selectively altering existing facilities or acquiring or building new facilities;
 - (f) Changing management policies or procedures;
 - (g) Job restructuring;
 - (h) Modifying work schedules;
 - (i) Providing readers or interpreters.
- (3) If reasonable accommodation, as requested by an individual with disabilities, cannot be provided, the following steps should be taken:
- (a) Notify the individual immediately with the specific reasons why the request cannot be granted and the reasons why the decision was made;
 - (b) When claiming fundamental alteration or undue burden, document the basis for the decision in a written statement and demonstrate that all resources available for the funding and operation of the service, activity or program were taken into consideration;

- (c) Obtain the written concurrence of both the chief elected official and the chief executive officer.

e. Contact Persons and Notice of Non-Discrimination:

- (1) At least one individual should be designated as the Section 504 Coordinator and should be the single point of contact for all Section 504 activities. **[Americans with Disabilities Act of 1990, 42 USC 12131]** This individual should be a permanent, full-time employee of the Grant Recipient. Responsibilities of the Section 504 Coordinator include:

- (a) Overseeing formation of the citizens advisory committee;
- (b) Receiving and investigating grievances;
- (c) Organizing training activities;
- (d) Ensuring the recommendations identified in the self-evaluation and Transition Plan are implemented;
- (e) Serving as the single point of contact for individuals who are disabled; and
- (f) Keeping abreast of changes in laws and regulations.

- (2) The Grant Recipient must assure that appropriate initial and continuing steps are taken to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing and unions with professional agreements with the Grant Recipient, that it does not discriminate on the basis of disability.

- 3. The Grant Recipient must conspicuously post or publish in a newspaper of general circulation the notice "Policy of Non-Discrimination on the Basis of Disability Status". The Section 504 Compliance file should contain the printer's affidavit for the Notice and other evidence of compliance with the notification policy.

f. Development of a Grievance Procedure: The Grant Recipient must establish a grievance procedure that incorporates appropriate due process standards and procedures for the prompt and equitable resolution

of complaints alleging any discriminatory action against a disabled person. The grievance procedure must be a written description of the steps a citizen can use to resolve a complaint with the Grant Recipient. The grievance procedure must contain the following elements:

- (1) A detailed description of how to file a grievance;
- (2) At least a two-step review process that allows for appeal. It is recommended that a Grievance Committee be appointed by the chief elected official to handle complaints or grievances;
- (3) Reasonable timeframes for review and resolution of the grievance;
- (4) A statement that informs the public that alternative methods of filing complaints is acceptable, e.g., personal interview, tape recording, etc.;
- (5) Name, address, telephone number and TDD number of the person who will receive and process the grievance.

II. ATTACHMENTS

1. Compendium of Federal Civil Rights Laws
2. 504 Accessibility Self-Evaluation
3. 504 Transition Plan for Disabled Accessibility
4. Municipality/County Staff Composition Form
5. Suggested Fair Housing Activities
6. Fair Housing Ordinance
7. Sample Fair Housing Resolution
8. Section 3 Clause

COMPENDIUM OF FEDERAL CIVIL RIGHTS LAWS

LAW/EXECUTIVE ORDER	DISCRIMINATION PROHIBITED	COVERAGE
Title VI of the Civil Rights Act of 1964, 42 USC 2000D	No person shall be excluded from participation in, be denied the benefits of, including employment or selection of contractors, or be subjected to discrimination on the basis of handicap, i.e. physically disabled, speech or hearing impaired, or visually handicapped	Public building accessibility Communication aids Program policies and guidelines Grantees' activities shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship
Section 109 of Title I of the Housing and Community Development Act of 1992, as Amended	No person in the United States shall, on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part under this title.	Construction contracts (housing and non-housing) Non-construction contracts (e.g., professional services contracts) Recruitment Program policies and guidelines
Age Discrimination Act of 1975, as Amended	No persons shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Any prohibition against discrimination on the basis of age or with respect to an otherwise handicapped individual as provided in Section 504 of Rehabilitation Act of 1973 shall also apply to any such program or activity	Construction contracts of over \$10,000 (housing and non-housing) Non-construction contracts Program policies and guidelines
Section 504 of the Rehabilitation Act of 1973, as Amended	The grantees and subcontractors, if any, shall not discriminate against any employee or applicant for employment because of physical or mental handicap, if qualified. The grantee and any sub-contractors, shall take affirmative action to ensure that applicants are employed, and that employees are treated without discrimination based upon their physical or mental handicap	Contracts (housing and non-housing) Employee Recruitment Program policies and guidelines Grantees' activities shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship.

LAW/EXECUTIVE ORDER	DISCRIMINATION PROHIBITED	COVERAGE
<p>Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 402</p>	<p>No person shall be discriminated against because he or she is a disabled veteran or veteran of the Vietnam Era</p> <p>Discrimination because of race, color, creed, religion, sex or national origin</p>	<p>Construction contracts (housing and non-housing)</p> <p>Non-construction contracts</p> <p>Employee recruitment</p> <p>Program policies and guidelines</p>
<p>Executive Order 11246: Equal Opportunity</p>	<p>Discrimination because of race, color, creed, religion, sex or national origin.</p>	<p>Construction contracts (housing and non-housing)</p> <p>Non-construction contracts (e.g., professional services contracts)</p> <p>Recruitment</p> <p>Program policies and guidelines</p>
<p>Executive Order 11063: Equal Opportunity in Housing, as Amended by Executive Order 12259</p>	<p>Race, color, religion, creed, sex or national origin.</p>	<p>Construction contracts - housing</p> <p>Program policies and guidelines</p>
<p>Section 3 of the Housing and Community Development Act of 1968 as amended by the Housing and Community Development Act of 1992</p>		<p>Construction contracts (housing and non-housing)</p> <p>Employee recruitment</p> <p>Program policies and guidelines</p>
<p>Provides that to the greatest extent feasible training and employment opportunities shall be made available to lower-income residents of the unit of local government or metropolitan area (or non-metropolitan county) in which the project is located, and that contracts be awarded to small businesses located within, or owned in substantial part by residents of the same metropolitan (or non-metropolitan county) as the project.</p>		

LAW/EXECUTIVE ORDER

DISCRIMINATION PROHIBITED

COVERAGE

Fair Housing Amendments Act of 1988, Amends Title VIII of The Civil Rights Act of 1968

(to include prohibition against discrimination based on handicap and family status)

The Fair Housing Law provides protection against the following acts, if they are based on race, color, religion, sex, national origin, handicap 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 to persons of a certain race, color, religion, sex, national origin, handicap or family status.
- Denying that housing is available for inspection, sale or rent when it really is available.
- Persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood.
- Directing renters and prospective homebuyers to certain areas.

Race, color, religion, sex, national origin, handicap or family status

Construction contracts - housing.

Program policies and guidelines.

- Single-family housing owned by private individuals when:
 - A broker or other person in the business of selling or renting dwellings is used;
 - Discriminatory advertising is used;
- Single-family houses not owned by private individuals;
- Single-family houses owned by a private individual who owns more than three such houses or who, in any two-year period, sells more than one in which the individual was not the most recent resident;
- Multi-family dwellings of five or more units;
- Multi-family dwellings containing four or fewer units, if the owner does not reside in one of the units.
- **Not covered:** The sale or rental of single-family houses owned by a private individual of three or fewer such single-family housing with certain conditions:
- Rentals of rooms or units in owner-occupied multi-dwelling units for 2-4 families, if discriminatory advertising is not used.
- The sale, rental or occupancy of dwellings which a religious organization owns/operates for other than commercial purpose to persons of the same religion.
- Limit to its own members rental or occupancy of lodgings owned by a private club for other than commercial purposes

504 ACCESSIBILITY SELF-EVALUATION
CITY OF _____

Completion Date: _____

	ACCESSIBLE	NOT ACCESSIBLE	VISION IMPAIRED	HEARING IMPAIRED	MOBILITY IMPAIRED	SENIORS
CITY BUILDINGS						
City Hall	XXX		<i>Braille Elevator</i>	<i>TDD Number</i>	<i>Assistance</i>	<i>Assistance Number</i>
Police Station	XXX		NO	<i>TDD Number</i>	911	NO
Fire Station	XXX		NO	<i>TDD Number</i>	911	NO
Museum		XXX	NO	NO	NO	NO
Library		XXX	YES	NO	NO	<i>Bookmobile</i>
Community Center	XXX		NO	NO	YES	YES
PROGRAMS						
Library Transportation	YES		YES	YES	YES	YES
Youth Recreation Program	YES		NO	NO	YES	N/A
Meals on Wheels	YES		NO	NO	YES	YES
Child Care	YES		NO	NO	YES	N/A
Fuel Assistance	N/A		YES	NO	YES	YES
Housing Rehab (City Hall)	YES		YES	YES	YES	YES
POLICIES: <i>City Personnel /Employment Guidelines</i> <i>Most recent update was June 30, 1992. In the process of updating policies.</i> <i>Disabled groups contacted on a regular basis.</i>						

SAMPLE

City of _____
504 Transition Plan for Disabled Accessibility

Purpose: Section 504 of the Rehabilitation Act of 1973 and Americans with Disabilities Act provides that no otherwise qualified individuals with disabilities shall, solely on the basis of their disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program, activity or governmental unit that receives Federal financial assistance.

In its intent to comply with the terms of Section 504 and the American with Disabilities Act, the City of Westfield has conducted an evaluation of its buildings and policies. The evaluation was made to determine if any structures contained physical barriers to disabled persons. The evaluation also assessed what City-adopted policies might prevent disabled persons from fully participating in services, programs, government or employment opportunities.

City Buildings: City Hall, Police Station, Fire Station and the Community Center are all disabled accessible. There is also an operating TDD phone number available at the City Hall and the Police and Fire Stations. The only City buildings that are not accessible are the Museum and the Library.

- * Administrative actions to be taken in the interim (before City Meeting): A telephone number will be made available for persons who are disabled and wish to make use of the Library or the Museum. Assistance to these structures will be available.
- * A TDD machine will be made available for the Community Center.
- * Structural Actions to be taken: It is the ultimate goal of the City of Westfield to make all City buildings and programs accessible to all persons. A proposal will be put before the voters at City meeting (March 1993) that will include approximately \$50,000 to make both structures barrier free.

Programs: A Commission for the Disabled has been proposed by the City Council. It shall include at least one Council member and any interested persons for the City. Their purpose is to keep up to date on any changes in relevant laws that would affect the operations of the City and its residents. Their primary function shall be to contact groups that assist disabled persons, to assess whether their groups' needs are being met in relation to full participation in City functions and activities. The adoption of the new Commission shall be addressed at City Meeting.

Youth Recreation Program: These programs are held at the community center. A TDD phone will be made available. The Association for the Blind and The Association for the Deaf will be contacted for input on what programs can be made available to blind and deaf youth.

Meals on Wheels: Currently there is not an available TDD number. Arrangements will be made to either purchase a device or make the City Hall number a reference for this group. The Association for the Blind will be contacted so that if any member of their group wishes to participate in this program, arrangements can be made.

Child Care: Currently this program is being held at the Community Center. There are no blind or deaf children. The program is not licensed to accommodate the needs of these children.

Personnel Policies: The Selectmen have taken \$5,000 of miscellaneous revenues generated from a closed-out CDBG grant to contract with a Human Resources Consultant to generate a computer tracking system for its employees. This system will be tied into the payroll system so that reports can be generated that give a complete employment and demographic history for each employee. Included in this contract will be a completely revised set of Personnel Guidelines that will include such items as a Sexual Harassment Policy, Parental Leave Guidelines and Grievance Procedures.

This new system shall be available for use before the end of the reporting year

Suggested Fair Housing Activities

In order to ensure that all citizens in your community are aware that affirmatively furthering fair housing is a priority, you are encouraged to consider undertaking one or more of the following:

1. Enact or strengthen your Fair Housing Ordinance and/or publish it in a local newspaper. (A *sample ordinance can be found at Attachment 6.*)
 2. Require the use of affirmative marketing and advertising practices by private developers as a condition for obtaining local licenses and permits.
 3. Develop public awareness of Fair Housing during April, which is nationally recognized as Fair Housing Month.
 4. Sponsor a poster contest with a Fair Housing theme in your local schools.
 5. Disseminate information concerning housing services and activities through agencies and organizations that routinely provide services to protected groups.
 6. Review and propose revisions to contract instruments used by recipients and lending institutions participating in local programs, if the existing instruments imply discriminatory intent or practice.
 7. Evaluate criteria for selecting recipients of housing services or assistance for any discriminatory effect.
 8. Initiate a public education program on fair housing involving, for example, representatives of fair housing groups, human relations and minority organizations, members of the real estate industry, local government and the media.
 9. Evaluate, for discriminatory effect, policies guiding the provision of relocation housing and services for persons displaced by housing activities funded through the CDBG activities.
 10. Provide information and positive assistance to minority group persons in locating housing in non-minority areas of the community.
 11. Improve community facilities and public services in racially integrated neighborhoods to help preserve their mixed character.
- ✓ Be sure to *document* any activities undertaken and *file* them for both public review and ODOC monitoring.

FAIR HOUSING ORDINANCE

Sample

I. Policy

It is the policy of the [City/County] of _____ to provide, within constitutional limitations, for fair housing throughout the [City/County].

II. Definitions

- A. *Dwelling* means any building, structure or portion thereof which is occupied as or designed or intended for occupation as a residence by one or more families and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.
- B. *Family* includes a single individual.
- C. *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers and fiduciaries.
- D. *To rent* includes to lease, to sublease, to let or otherwise to grant for a consideration the right to occupy premises owned by the occupant.
- E. *Discriminatory housing practice* means an act that is unlawful under sections IV, V and VI.

III. Unlawful Practices

Subject to the provisions of subsection B and Section VII, the prohibitions against discrimination in the sale or rental of housing set forth in Section III shall apply to:

- A. All dwellings except as exempted by subsection B.
- B. Nothing in Section IV shall apply to:
 - 1. Any single-family house sold or rented by an owner, provided that such private individual owner does not own more than three such single-family houses at any one time; provided further that, in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period; provided further that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family houses at any one time; provided further that the sale or rental of any such single-family house shall be excepted from the application of this Title only if such house is sold or rented:
 - a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman or of such facilities or services of any person in the business of selling or renting dwellings or of any employee or agent of any such facilities or services of any person in the business of selling or renting dwellings or of any employee or agent of any such broker, agent, salesman or person; and,
 - b. Without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of Section IV.C of this Ordinance. However, nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as is necessary to perfect or transfer the title; or
 - 2. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

- C. For the purposes of subsection B, a person shall be deemed to be in the business of selling or renting dwellings if:
1. He has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;
 2. He has, within the preceding twelve months, participated as an agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or
 3. He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

IV. Discrimination in the Sale or Rental of Housing

As made applicable by Section III and except as exempted by sections III.B and VII, it shall be unlawful:

- A. To refuse to sell or rent after the making of a bona fide offer or to refuse to negotiate for the sale or rental of or otherwise make unavailable or deny a dwelling to any person because of race, sex, color, religion, national origin, disability or familial status.
- B. To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection therewith because of race, sex, color, religion, national origin, disability or familial status.
- C. To make, print or publish or cause to be made, printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, sex, color, religion, national origin, disability or familial status or an intention to make any such preference, limitation or discrimination.
- D. To represent to any person because of race, sex, color, religion, national origin, disability or familial status that any dwelling is not available for inspection, sale or rental when such dwelling is, in fact, so available.
- E. To induce or attempt to induce any person to sell or rent any dwelling, for profit, by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, sex, color, religion, national origin, disability or familial status.

V. Discrimination in Financing or Housing

It shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or to discriminate against him in the fixing of the amount, interest rate, duration or other terms or conditions of such loan or other financial assistance because of race, sex, color, religion, national origin, disability or familial status of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance or of the present or prospective owners, lessees, tenants or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given, provided that nothing contained in this section shall impair the scope or effectiveness of the exception contained in Section III.B.

VI. Discrimination in the Provision of Brokerage Services

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, rental or facility relating to the business of selling or renting dwellings or to discriminate against him in the terms or conditions of such access, membership or participation on account of race, sex, color, religion, national origin, disability or familial status.

VII. Exemption

Nothing in this Ordinance shall prohibit a religious organization, association or society or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a

commercial purpose to persons of the same religion or from giving preference to such persons, unless membership in such religion is restricted on account of race, sex, color, national origin, disability or familial status. Nor shall anything in this Ordinance prohibit a private club not, in fact, open to the public which, as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

VIII. Administration

- A. The authority and responsibility for administering the Ordinance shall be in the Chief Executive Officer of the City of _____.
- B. The Chief Executive Officer may delegate any of these functions, duties and powers to employees of the City or to boards of such employees, including functions, duties and powers, with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter under this Ordinance. The Chief Executive Officer shall, by rule, prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the City, to boards of officers or to himself, as shall be appropriate and in accordance with law.
- C. All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner to affirmatively further the purposes of this Ordinance and shall cooperate with the Chief Executive Officer to further such purposes.

IX. Education and Conciliation

Immediately after the enactment of this Ordinance, the Chief Executive Officer shall commence such educational and conciliatory activities as will further the purposes of this Ordinance. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this Ordinance and his suggested means of implementing it and shall endeavor, with their advice, to work out programs of voluntary compliance and of enforcement.

X. Enforcement

- A. Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter “person aggrieved”) may file a complaint with the Chief Executive Officer. Complaints shall be in writing and shall contain such information and be in such form as the Chief Executive Officer requires. Upon receipt of such a complaint, the Chief Executive Officer shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint or within thirty days after the expiration of any period of reference under subsection C, the Chief Executive Officer shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Chief Executive Officer decides to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion, nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this Ordinance without the written consent of the persons concerned. Any employee of the Chief Executive Officer who shall make public any information in violation of this provision shall, upon conviction, be fined not more than \$_____ or imprisoned not more than ____ days.
- B. A complaint under subsection A shall be filed within one hundred eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and, with the leave of the Chief Executive Officer which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.
- C. If, within thirty days after a complaint is filed with the Chief Executive Officer, the Chief Executive Officer has been unable to obtain voluntary compliance with this Ordinance, the person aggrieved may, within thirty days thereafter, file a complaint with the Secretary of the Department of Housing and Urban Development. The Chief Executive Officer will assist in this filing.

- D. If the Chief Executive Officer has been unable to obtain voluntary compliance within thirty days of the complaint, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate court against the respondent named in the complaint to enforce the rights granted or protected by this Ordinance insofar as such rights relate to the subject of the complaint. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.
- E. In any proceedings brought pursuant to this section, the burden of proof shall be on the complainant.
- F. Whenever an action by an individual shall come to trial, the Chief Executive Officer shall immediately terminate all efforts to obtain voluntary compliance.

XI. Investigations, Subpoenas, Giving of Evidence

- A. In conducting an investigation, the Chief Executive Officer shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy such materials and take and record the testimony or statement of such persons as are reasonably necessary for the furtherance of the investigation; provided, however, that the Chief Executive Officer first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The Chief Executive Officer may issue subpoenas to compel his access to or the production of such materials or the appearance of such persons and may issue interrogatories to a respondent to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States District Court for the district in which the investigation is taking place. The Chief Executive Officer may administer oaths.
- B. Upon written application to the Chief Executive Officer, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Chief Executive Officer to the same extent and subject to the same limitations as subpoenas issued by the Chief Executive Officer himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.
- C. Witnesses summoned by subpoena of the Chief Executive Officer shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States District Courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him. Within five days after service of a subpoena upon any person, such person may petition the Chief Executive Officer to revoke or modify the subpoena. The Chief Executive Officer shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous or for other good reason.
- D. In case of contumacy or refusal to obey a subpoena, the Chief Executive Officer or other person at whose request it was issued may petition for its enforcement in the Municipal or State Court for the District in which the person to whom the subpoena was addressed resides, was served or transacts business.
- E. Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Chief Executive Officer shall be fined not more than \$_____ or imprisoned not more than ____ days, or both. Any person who, with intent to mislead the Chief Executive Officer, shall make or cause to be made any false entry or statement of fact in any report, account, record or other document submitted to the Chief Executive Officer pursuant to his subpoena or other order or shall willfully neglect or fail to make or cause to be made full, true and correct entries in such reports, accounts, records or other documents or shall willfully mutilate, alter or by any other means falsify any documentary evidence shall be fined not more than \$_____ or imprisoned not more than ____ days, or both.
- F. The City Attorney shall conduct all litigation in which the Chief Executive Officer participates as a party or as amicus pursuant to this Ordinance.

XII. Enforcement by Private Persons

- A. The rights granted herein by Sections III, IV, V and VI may be enforced by civil actions in State or local courts of general jurisdiction. A civil action shall be commenced within one hundred eighty days after the alleged discriminatory housing practice occurred; provided, however, that the court shall continue such civil case brought pursuant to this Section or Section X.D from time to time before bringing it to trial if the court believes that the conciliation efforts of the Chief Executive Officer are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Chief Executive Officer and which practice forms the basis for the action in court; and provided, however, that any sale, encumbrance or rental consummated prior to the issuance of any court order issued under the authority of this Ordinance and involving a bona fide purchaser, encumbrancer or tenant, without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Ordinance, shall not be affected.
- B. The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order or other order and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney's fees in the case of a prevailing plaintiff, provided that the said plaintiff, in the opinion of the court, is not financially able to assume said attorney's fees.

XIII. Interference, Coercion or Intimidation

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of or on account of his having exercised or enjoyed or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by Sections III, IV, V or XI. This Section may be enforced by appropriate civil action.

XIV. Separability of Provisions

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

XV. Prevention of Intimidation in Fair Housing Cases

Whoever, whether or not acting under color of law, by force or threat of force, willfully injures, intimidates or interferes with or attempts to injure, intimidate or interfere with:

- A. Any person because of his race, sex, color, religion, national origin, disability or familial status and because he is or has been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling or applying for or participating in any service, organization or facility relating to the business of selling or renting dwellings; or,
- B. Any person because he is or has been or in order to intimidate such person or any other person or class of persons from:
1. Participating without discrimination on account of race, sex, color, religion, national origin, disability or familial status in any of the activities, services, organizations or facilities described in subsection XV.A; or
 2. Affording another person or class of persons opportunity or protection so to participate.
- C. Any citizen because he is or has been or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, sex, color, religion, national origin, disability or familial status, in any of the activities, services, organizations or facilities described in subsection XV.A or from participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate shall be fined not more than \$_____ or imprisoned not more than ____ days, or both; and if bodily injury results, shall be fined not more than \$_____ or imprisoned not more than ____ days, or both; and if death results, shall be subject to imprisonment for any term of years or for life.

**SAMPLE
FAIR HOUSING RESOLUTION**

LET IT BE KNOWN TO ALL PERSONS OF City/County of _____ that discrimination in the sale, rental, leasing, financing of housing or land to be used for construction of housing or in the provision of brokerage services because of race, color, religion, sex or national origin is prohibited by Title VIII of the 1968 Civil Right Act (Federal Fair Housing Law).

It is the policy of City/County of _____ to implement programs to ensure equal opportunity in housing for all persons regardless of race, color, religion, sex or national origin. The Fair Housing Amendments Act of 1988 expands coverage to include disabled persons and families with children. Therefore, the City/County does hereby pass the following Resolution.

BE IT RESOLVED that within available resources the City/County will assist all persons who feel they have been discriminated against because of race, color, religion, sex, national origin, disability or familial status to seek equity under federal and state laws by filing a complaint with the U. S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Compliance Division.

BE IT FURTHER RESOLVED that the City/County shall publicize this Resolution and through this publicity shall encourage owners of real estate, developers, and builders to become aware of their respective responsibilities and rights under the Federal Fair Housing Law and amendments and any applicable state or local laws or ordinances.

SAID PROGRAM will at a minimum include: 1) printing and publicizing of this policy and other applicable fair housing information through local media and community contacts; 2) distribution of posters, flyers and any other means that will bring to the attention of those affected, the knowledge of their respective responsibilities and rights concerning equal opportunity in housing; and 3) prepare an analysis of impediments to fair housing choices and actions to mitigate such impediments.

EFFECTIVE DATE:

This Resolution shall take effect this _____ day of _____, _____.

Chief Elected Official

ATTEST:

Section 3 Clause

24 CFR 135, §135.38. This clause must be included in all Section 3 covered contracts:

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u (Section 3). The purpose of Section 3 is to ensure that the employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very-low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of works with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions and the qualifications for each, the name and location of the person(s) taking applications for each of the positions and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed and (2) with persons other than those to whom the regulations of 24 CFR 135 required employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR 135.
- F. Non-compliance with HUD's regulations in 24 CFR 135 may result in sanctions, termination of this contract for default and department or suspension from future HUD-assisted contracts.
- G. With respect to work performed in connection with Section 3-covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible but not in derogation of compliance with section 7(b).

OKLAHOMA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

REQUIREMENT NO. 409
REPORTING AND MONITORING

Effective July 2007

I. REPORTS

A. Updated Disclosure Report:

1. Prior to signing your contract agreement, you completed an initial Disclosure Report [**Attachment 1**]. You either submitted a partial or full Report, depending on several factors. You are required to submit an updated Report if:
 - a. Omissions were made in the initial Disclosure Report;
 - b. Additional persons can be identified as interested parties who were not identified in the initial Disclosure Report;
 - c. There is an increase in the amount of pecuniary interest of a person or entity identified in the last report, if the total interest is more than \$50,000 or 10% of the contract amount, whichever is lower;
 - d. There is a change in the other governmental assistance previously reported by more than \$250,000 or 10%, whichever is lower; or
 - e. There is a change in the sources or uses of funds since the last report which exceeds the amount of all previously disclosed sources and uses of funds by more than \$250,000 or 10%, whichever is lower.
2. Updates must be submitted to ODOC within 30 days of the occurrence of any of these circumstances and as frequently as they occur throughout the life of the contract.

B. Job Creation and Beneficiaries Quarterly Report
[Attachment 2]:

1. This report provides information regarding the progress made by the Grant Recipient and benefiting business in creating the jobs for low- and moderate-income families

as projected in the Placement Plan. The report generates data on the number of jobs that were planned to be created during the reporting period compared to the number of jobs that have actually been created. **[See Requirement 401, Attachment 2.]**

2. As a condition of receiving CDBG financial assistance, the Grant Recipient and benefiting company agreed that at least 51% of all jobs created as a result of such assistance would be retained by, filled by or available to low- and moderate-income persons. In addition, the Grant Recipient and the company stipulated that a certain number of jobs would be created within a specific timeframe, which further justified the CDBG investment.
3. Grant Recipients are required to develop and maintain a Job Tracking Log, which provides detailed information about the income status, family size and other socio-economic characteristics of each new employee. The Log is included as **[Attachment 3]**.
4. In order to properly complete the Job Tracking Log, Grant Recipients must have a mechanism to collect and verify the income characteristics of the individuals who are employees as a result of the CDBG investment. This is accomplished by any combination of three means:
 - a. If the individual was referred by the Workforce Development Office, that individual is considered low- to moderate-income by definition. The Grant Recipient need only retain a referral slip or similar record to provide documentation of eligibility; and/or
 - b. The Grant Recipient may enter into an agreement with another public agency which provides assistance to low-income persons, such as a Community Action Agency or the Oklahoma Department of Human Services, to refer individuals who meet current HUD income guidelines for low- and moderate-income families. Documentation must be available to confirm the income levels of the individuals so referred; and/or
 - c. Every individual gaining employment may complete an Income Certification **[Attachment 4]**, which records the family size and income of each person in the individual's family.
5. The total number of entries on the Job Creation and Beneficiaries Quarterly Report must reconcile with the entries on the Job Tracking Log and will be monitored on-site by ODOC. **[See Attachment 5 for guidance on what to do when job creation fails to meet the 51% threshold.]**

- C. Annual and/or Final Audit: Depending on the amount of Federal funds received in a year, Grant Recipients and/or their subrecipients may be required to submit an annual audit that complies with the Single Audit Act. This requirement is in effect during the life of the contract. **[See Requirement 404 for further guidance.]**
- D. Closeout Report: The final step in every contract project is submission of the final Closeout Report. The specific forms and requirements of project closeout can be found in Requirement 410 of this Manual.

II. EVALUATING GRANT RECIPIENT PERFORMANCE (MONITORING)

- A. When the State agreed to assume administrative responsibilities for the CDBG Program, it certified that activities would be conducted in a manner consistent with all applicable Federal laws. The primary tool for confirming this assurance is being met is for the State to monitor the activities of its Grant Recipients, just as HUD monitors the State.
- B. ODOC has developed a monitoring strategy that targets a sampling of projects or activities. This sampling is based on risk factors associated with various types of projects and/or Grant Recipients. While every project receives some level of monitoring, priority for in-depth evaluation and review is given to projects that are:
 - 1. Multi-jurisdictional, i.e., involving more than one unit of local government;
 - 2. Economic development (EDIF);
 - 3. Involve some level of risk, as evidenced by:
 - a. Lack of recent history in administering a CDBG project;
 - b. Evidence of numerous accounting or financial tracking errors on current or previous projects;
 - c. A record of serious findings or sanctions in previous monitorings;
 - d. High staff turnover of administrative staff;
 - e. Delays in submitting required reports;
 - f. Prior violations of cash-on-hand or release of funds requirements;

- g. Failure to attend and participate in implementation workshops;
- h. Excessive tardiness in responding to prior monitoring findings.

By definition, economic development projects are considered high risk.

C. Monitoring is accomplished in two ways:

1. On-Site Monitoring: Certain activities can only be evaluated on-site. The most obvious of these include the examination of Grant Recipient files to ensure adequate documentation. The frequency and depth of such on-site monitoring is dependent on the risk factors cited above.
 - a. An on-site monitoring visit is a formal affair. It is scheduled in advance. The chief executive officer of the Grant Recipient and the project administrator are notified of the date, time, location and purpose of the visit. Upon arrival, ODOC Representatives will conduct an entrance interview (which is ordinarily quite brief), reiterating the purpose of the visit and outlining files and documentation needed. Utilizing appropriate checklists, the Representatives review the Grant Recipient files to determine if all requirements have been met. The primary issues that are being examined are consistency with the specific terms of the contract agreement and compliance with State and Federal requirements.
 - b. At the conclusion of the visit, the ODOC Representatives will conduct an exit interview, providing a tentative summary of the results of the visit. If there appear to be problems, the Grant Recipient has an opportunity to provide more information or clarification.
 - c. Within 30 days of the monitoring visit, the Grant Recipient will receive a formal monitoring results letter. This letter will summarize the area(s) reviewed, performance expectations, an analysis of what was discovered on-site, a conclusion or finding and, if necessary, required Grant Recipient responses or actions.
 - d. If there were some problems discovered during the monitoring, the Grant Recipient might receive a finding of non-compliance. A finding of non-compliance is a violation of law or regulation that must be remedied. A finding can result in an immediate sanction or threat of sanction if

corrective action (if appropriate and required) is not taken in a specified manner and/or timeframe. For each finding, ODOC will determine if a corrective action, either to correct a past problem or to avoid future problems, must be taken by the Grant Recipient.

- e. If the required corrective action is not addressed in an appropriate or timely manner, ODOC may impose a progressive level of sanctions, ranging from additional reporting to suspension of funding, additional special conditions, return of misspent funds, termination of the contract or even legal action.
- f. The monitoring letter may also include one or more concerns. These are matters that, if not properly addressed, can become findings and can ultimately result in sanctions. Concerns are often used to point out operational or management problems or patterns of performance that could lead to larger problems later, even if they are not evident at the time of monitoring. Concerns may require some form of response on the part of the Grant Recipient.

- 2. Desk Monitoring: ODOC places priority on this form of monitoring as a means of staying in touch with project progress and heading off problems early, thereby avoiding costly problems left unattended too long. This method of monitoring is the most efficient and cost-effective ODOC can employ to meet a portion of its oversight responsibilities.

III. ATTACHMENTS:

- 1. Applicant/Recipient Disclosure/Update Report
- 2. Jobs Creation and Beneficiaries Quarterly Report
- 3. Job Tracking Log
- 4. Income Certification
- 5. Job Creation Requirements

APPLICANT/RECIPIENT DISCLOSURE/UPDATE REPORT

Oklahoma Commerce Department

Community Development Block Grant Program

Part I. Applicant/Recipient Information Indicate whether this is an Initial Report or an Update Report

1. Applicant/Recipient Name, Address and Phone (include area code)	Social Security Number or Employer ID Number	
2. Project Assisted/to be Assisted (Project/Activity name and/or number and its location by Street address, City and State)		
3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received

Part II. Threshold Determinations - Applicants Only

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR 12, Subpart C, and have you received or can you reasonably expect to receive an aggregate amount of all forms of covered assistance from HUD, States and units of general local government in excess of \$200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? Yes No

If *Yes*, you must complete the remainder of this report.
If *No*, you must sign the certification below and answer the next question.
I hereby certify that this information is true. (Signature) _____ Date _____

2. Is this application for a specific housing project that involves other governmental assistance? Yes No

If *Yes*, you must complete the remainder of this report.
If *No*, you must sign this certification.
I hereby certify that this information is true. (Signature) _____ Date _____

If your answers to both questions are *No*, you do not need to complete Parts III, IV or V but you must sign the certification at the end of the report.

Part III. Other Governmental Assistance Provided/Requested

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount/Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V but that is reported only in Part V? Yes No

If there is no other government assistance, you must certify that this information is true.
I hereby certify that this information is true. (Signature) _____ Date _____

Part IV. Interested Parties Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	Social Security Number or Employee ID Number	Type of Participation in Project/Activity	Financial Interest in Project/Activity (\$ and %)

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____

Date

Part V. Report on Expected Sources and Uses of Funds

Source

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signed) _____

Date _____

Use

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____

Date _____

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed \$10,000 for each violation.

I certify that this information is true and complete.

Signature

Date

**Instructions for Completing
APPLICANT/RECIPIENT DISCLOSURE/UPDATE REPORT**

Part I. Applicant/Recipient Information

Since you submitted an Initial Report when you submitted your grant application, place a \checkmark or an **x** in the *Update Report* box.

Complete the remaining items in Part I the same way you did in your Initial Report, *except*:

- Include your contract agreement number in box 2; and
- Update box 5 to reflect the contract amount you were actually awarded plus program income dedicated to this project.

Part II. Threshold Determinations (*Do not complete this part.*)

Part III. Other Governmental Assistance Provided/Requested

You must complete this part if the cumulative total of *additional* governmental assistance (since you filed your last Disclosure Report) exceeds \$250,000 or 10% of the previously reported other assistance (whichever is *less*). In other words, if you previously reported \$20,000 in other governmental assistance and have since received an additional \$2,100, you must file an Updated Report and show the new total amount (\$22,100, in this example) in this section.

If these funds are more appropriately listed in Part V, do not list them here and check "No" in the box below the columns.

Include at least one organizational level below the agency name when completing column 1, e.g., U.S. Department of Commerce, Economic Development Administration. Enter the program name or Federal Domestic Assistance Catalog number or some other relevant identifying term for the program providing the assistance. Enter the type of assistance (grant, loan, loan guaranty, rebate, subsidy, tax credit or other benefit, etc.) from the Federal government, the State or a unit of general local government.

If there are no other covered funds in the project, the certification at the end of Part III must be signed and dated.

Part IV. Interested Parties

List any individual or entity, which has any financial interest in the project exceeding \$50,000 or 10% of the CDBG assistance (whichever is *less*). If an "entity" is reported, you must list each officer, director, principal stockholder or other official of the entity. Any consultant, developer or contractor involved in the planning, development or implementation of the project must be identified, *unless they were procured in a manner consistent with the requirements of 24 CFR 85.*

"Financial interest" (or *pecuniary* interest) means any financial involvement in the project, including situations involving equity interest, shares in any profit or resale or distribution of surplus cash or other assets of the project or receipt of compensation for any goods or services provided in connection with the project. The following are **not** considered to be interested parties for the purpose of this reporting: local CDBG administrative staff, recipients of housing rehabilitation assistance, rehabilitation contractors (provided the rehabilitation contract is between the property owner and the contractor) or contractors, consultants or developers procured in fair and open competition.

In column 2, provide the social security number or employee identification number for each person listed. In column 3, indicate that person's interest, e.g., contractor, planner, consultant, investor, etc. In column 4, enter the dollar value of that person's financial interest and the percentage of that amount divided by the total HUD assistance in the project.

If there are no interested parties subject to the requirements of this part, sign and date the certification at the end of Part IV.

Part V. Report on Sources and Uses of Funds

Sources: See the instructions for Part III. Any source listed here must indicate the *total* amount of funds received and must be listed in descending order, according to the amount indicated. If there are no reportable changes in the source of funds, sign and date the certification at the bottom of the Sources section.

Uses: List the major line items or activities and the *total* amount budgeted for each, in descending order. If there are no reportable changes in the Uses of funds, sign and date the certification at the bottom of the Uses section

Each part or section must be signed by the contractor's Chief Executive Officer, **only** if there is no reportable change relevant to that section or part.

The contractor's Chief Executive Officer must sign and date the final certification at the bottom of page 3.

**JOBS CREATION AND BENEFICIARIES
QUARTERLY REPORT**

Grant Recipient: _____ Report Period: _____

Business: _____ Contact Person: _____

Contract Number: _____ Telephone Number: _____

The Jobs Creation and Beneficiaries Report must be submitted to the Oklahoma Department of Commerce each calendar quarter. The reports are due on the 20th of January, April, July and October. Jobs must be reported on a full-time equivalent (FTE) basis. The average number of hours worked per week divided by forty equals full-time equivalence.

PART A: Jobs Created

-
1. Jobs existing prior to the start of the CDBG Program.
If the CDBG EDF financing was provided to accomplish an expansion of jobs, provide the number of existing jobs prior to the CDBG assistance. _____
 2. How many jobs (FTE) are currently filled?
Enter the number of employees at the end of this quarter. Employees that work less than forty hours per week should be converted to FTE. _____
 3. Total number of jobs created to date. *Subtract item 1 from item 2.* _____
 4. How many jobs were planned to be created? *From the Placement Plan (Form 1601-D [Requirement 1, Att. 2, P.6]) enter the cumulative number of jobs planned to be created through the current quarter ending date.*

PART B: Program Beneficiaries (Attach Job Tracking Log)

-
1. Total number of persons (FTE) hired this quarter. _____
 2. Number of low-/moderate-income persons (FTE) hired this quarter. _____
 3. Cumulative number of persons (FTE) hired. *Total of all FTE on the Job Tracking Log (1613-C [See Att 3])*

 4. Cumulative number of low-/moderate-income persons (FTE) hired. *Total of all LMI by FTE on the Job Tracking Log (Form 1613-C [See Att. 3])* _____
 5. Total number of persons hired this quarter receiving employee-sponsored health benefits. _____
 6. Total number of persons hired this quarter who were unemployed prior to employment with this company.

**Economic Development
Income Certification Form**

SECTION I

Business Name: _____ Applicant Name: _____
 Address: _____ Address: _____
 City: _____ Zip Code: _____ City: _____ Zip: _____
 Phone: _____ Fax: _____ Phone: _____
 Contact Person: _____ CDBG Contract No. _____

TO THE APPLICANT: *The company to which you are applying for a job has received Federal funds to assist its operations. A condition of receiving the funds is that family income information be collected from each applicant for employment and submitted on a quarterly basis. This information will not affect the hiring decision of the company. The information you provide will be kept **CONFIDENTIAL**.*

SECTION II

Please complete the following information in order for the company to meet its requirement. The information below is subject to verification by government officials.

(A)	(B)	(C)	
How many persons are in the applicant's family? (Circle One)	Family Income Levels For _____ County	Was the TOTAL family income for the last twelve (12) months ABOVE or BELOW the family size indicated in Column A? (Check the appropriate column below)	
		ABOVE	BELOW
1			
2			
3			
4			
5			
6			
7			
8+			

I _____ (**TYPED** Name of Applicant) I hereby certify that all the above information is correct and give the above-named business permission to verify the information on this form.

Signature of Applicant

Social Security Number

SECTION III

The following information is not required by law, but is needed for statistical purposes.

Please check one of the following ethnic categories that applies to you:

Hispanic or Latino Not Hispanic or Latino

Please check all of the following categories that apply to you:

White Asian Black or African American American Indian or Alaska Native
 Native Hawaiian or Other Pacific Islander Other Multi-Racial

Please check any of the following categories that may apply to you:

Elderly Handicapped Female Head of Household

OKLAHOMA DEPARTMENT OF COMMERCE
JOB CREATION REQUIREMENTS

If the business does not hire the required percentage (51%) of low- and moderate-income persons, the requirement may be considered to be met if an adequate proportion of low- and moderate-income persons were given *first consideration* (usually meaning an interview). In order for a business to demonstrate first consideration as an alternative, it must meet the following criteria:

1. It must have written approval from ODOC to use this alternative.
2. It must maintain documentation for all low- and moderate-income persons interviewed but not hired, as stated above, for the Income Verification Form. (Individuals not hired would not be entered on the Job Tracking Log.)
3. Of all persons hired and interviewed for the CDBG/ED assisted positions, at least 51% low- and moderate-income persons for 100 created jobs is normally not sufficient unless only one person is considered/interviewed/hired for each job. For instance, if there are 100 jobs and one of three persons interviewed is hired, then 51% of all persons interviewed must be low- and moderate-income persons (153 persons).
4. It did not require substantial training or work experience or education beyond high school or the business agreed to hire unqualified persons and provide them training.
5. It took actions to ensure that low- and moderate-income persons received first consideration for filling jobs.
6. The distance and availability of transportation to the employment site is reasonable for low- and moderate-income persons considered.

OKLAHOMA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

REQUIREMENT NO. 410
CLOSEOUT

Effective July 2007

I. INTRODUCTION

Closing out an individual contract represents a confirmation that:

The intended benefits of providing the funding have been accomplished and that all of the legal requirements imposed on use of the funds have been examined. All Grant Recipients are expected and required to conduct an orderly and timely closeout of their contract with ODOC.

II. PROCEDURES

A. Closeout documents are to be submitted to ODOC within sixty (60) days after the contract expiration date. If the Grant Recipient cannot meet this requirement, a written request for an extension of time may be submitted to ODOC. Permission to extend the due date for submission of closeout documents will be granted for good and valid reasons.

B. ODOC will have no objections to a Grant Recipient initiating closeout procedures prior to the current expiration date, provided the following conditions can be met:

1. All final costs to be covered by the contract have been incurred or obligated, including payment of any unsettled third-party claims or contract commitments. This means no additional funds can or will be requested from ODOC. Costs are considered incurred when goods and services are received and contract work is performed. [24 CFR 85.50]

(Note: If you have funds that have not been drawn down as of the completion of the project, a request for payment of these contract funds must be submitted prior to submission of the closeout documents. Additional funds can only be requested for expenses incurred before the expiration date of the CDBG contract. However, they can be requested up to sixty (60) days after your CDBG contract expires.)

2. All project activities have been completed. This means that, depending on the project:

a. The community center has passed final inspection, the opening ceremonies have been conducted and the building is in use by the community's citizens;

- b. All infrastructure construction is complete, final inspection has been made, the project is operational and all beneficiaries are being served;
 - c. All persons being relocated have been relocated or provided cash assistance to relocate;
 - d. Planned job creation has occurred.
- 3. All leverage funds have been expended; and
 - 4. All issues from ODOC monitoring have been resolved.

III. REQUIRED DOCUMENTATION

- A. Grant Recipients will prepare and submit a Transmittal of Closeout Documents. This form is essentially a coversheet providing basic information regarding the Grant Recipient, contract number, contract period and the name and telephone number of the person who prepared the closeout documents. This documentation is comprised of five (5) parts:
 - 1. CDBG Final Expenditure Report;
 - 2. Contract Closeout Certifications;
 - 3. Program Beneficiary Report;
 - 4. Proof of Second Public Hearing;
 - 5. Final Wage Compliance Report;
 - 6. Proof of Insurance;
 - 7. Board Minutes; and
 - 8. Final Inspection Report.
- B. There are two versions of the closeout documents. The first is to be used for closeout of any CDBG project except economic development. It requires information for various community development projects, such as community facilities, basic infrastructure, etc. The second version is to be utilized for any economic development project. The format of this report is appropriate for any project involving job creation. The only difference between the two is the Final Expenditure Report. Use the correct form for the CDBG project being closed out. Submission of the wrong form will result in unnecessary delay and extra work.
- C. The following is a description of the individual forms that make up the closeout documentation:

1. CDBG Final Expenditure Report: This is the final version of the Monthly Expenditure Report the Grant Recipient has been submitting throughout the life of the project. The primary difference is that the numbers of this report are final. One version is for community development and the other is for economic development. (**Note**: Any cash on hand, except for funds held to pay audit costs, must be returned to ODOC.)
 2. Contract Closeout Certifications: This is the form where the Grant Recipient certifies that all of the information provided is accurate and truthful. It also holds the State of Oklahoma, ODOC and its employees harmless from any liabilities or claims arising from the performance of the contract. It must be signed, dated and notarized.
 3. Program Beneficiary Report: This form is the cumulative total of all actual project beneficiaries. The ethnic origins total must equal the total number of beneficiaries.
 4. Proof of Publication of Notice of Second Public Hearing: The Grant Recipient must attach documentation that a public notice was posted/advertised informing citizens of the second public hearing to be held. A copy of the hearing minutes must also be included.
 5. Final Wage Compliance Report: This form is required to report any liquidated damages and/or wage restitution paid by the construction contractor.
 6. Proof of Insurance: The Grant Recipient must attach proof of insurance for any above-ground facilities built or renovated and/or for equipment purchased with the assistance of CDBG funds.
 7. Board Minutes Accepting Completed Project: A copy of the Board Minutes is required to be submitted to Acknowledge to ODOC that the project is complete and that final payment to the construction contractor has been authorized.
 8. Final Inspection Report: The Final Inspection Report is required to be submitted as proof that the project is complete and acceptable.
- E. When your Closeout Certifications form arrives at ODOC, your project representative will review it carefully. You may get a call if you have omitted required information.

IV. POST-CLOSEOUT RESPONSIBILITIES:

It is entirely possible that submission and acceptance of the Close-out documents doesn't signal the end of the Grant Recipient-ODOC relationship. There are several circumstances under which the Grant Recipient will have continuing responsibilities resulting from the closed project.

- A. Loans: Responsibility for loan administration and program income, as stipulated in the original contract, continues for as long as there are any funds flowing that can be attributable to the original disbursement of CDBG funds. Responsibilities include loan portfolio management, accounting and reporting;
- B. Audits: In some instances, the project may be conditionally closed out pending submission and acceptance of a final audit. The project is not technically closed until the final audit has been received and accepted. **Note**: Even though the Grant Recipient is eligible to submit an application for another project after closeout documents have been submitted and accepted, no new funding can be obligated until all audits due on previous projects have been submitted and accepted.
- C. Other Contract Requirements: Some contracts will have special conditions requiring post-closeout responsibilities. The most common of these involve annual reporting on job creation resulting from public improvement projects.
- D. Maintenance of Records: All project records must be maintained for three years after project closeout.

V. ATTACHMENTS

- 1. Closeout Documents

CDBG FINAL EXPENDITURE REPORT

Grant Recipient:

Contract Number:

Interest Reconciliation

Total Interest Earned \$ _____
 Total Interest Expended \$ _____
 Balance of Unexpended Interest \$ _____

LINE ITEM BUDGET 101061	CODE	EXPENDITURES TO DATE	BUDGET	REMAINING BALANCE
1. Planning	551020			
2. Engineering	551030			
3. Architecture	551031			
4. Inspection	551032			
5. Housing Rehabilitation	551049			
6. Acquisition & Disposition	551050			
7. Clearance/Demolition	551070			
8. Utilities	551080			
9. Water System	551090			
10. Sewer System	551091			
11. Solid Waste	551100			
12. Ambulance	551161			
13. Fire Protection	551160			
14. Handicap Accessibility	551044			
15. Community Facility	551110			
16. Senior Citizens Center	551112			
17. Parks	551150			
18. Streets	551180			
19. Flood & Drainage	551190			
20. Other (Specify)	551210			
21. SUB-TOTAL (Lines 1 thru 20)				
22. Direct Grantee Admin.	551018			
23. Public Facilities Admin.	551010			
24. TOTAL ADMIN (Lines 22 + 23)				
25. TOTAL CDBG COSTS (Lines 21 + 24)				
26. Other Federal Funds				
27. State/Local Funds				
28. Private Funds				
29. Other Funds				
30. TOTAL MATCH FUNDS (Lines 26 thru 29)	555230			
31. GRAND TOTAL (Lines 25 + 30)				

**CDBG FINAL EXPENDITURE REPORT
(ECONOMIC DEVELOPMENT)**

Grant Recipient:

Contract Number:

Interest Reconciliation

Total Interest Earned \$ _____
 Total Interest Expended \$ _____
 Balance of Unexpended Interest \$ _____

COST CATEGORY	CODE	TOTAL EXPENDITURES	BUDGET	REMAINING BALANCE
1. Facility Construction Loans	551200			
2. Infrastructure Improvements	551201			
3. Equipment/Inventory Loans	551202			
4. Commercial Rehabilitation Loans	551203			
5. Industrial Rehabilitation Loans	551204			
6. Other	551205			
7. Furniture & Fixtures	551206			
8. Land & Building	551207			
9. Machinery & Equipment	551208			
10. Inventory	551209			
11. Working Capital	551240			
12. Engineering, Legal, & Other Professional	551241			
13. TOTAL CDBG PROJECT COST (Lines 1 thru 12)				
14. CDBG Administration	551010			
15. TOTAL CDBG COST (Lines 13 + 14)				
16. Other Federal Funds				
17. State/Local Funds				
18. Private Funds				
19. Other Funds				
20. TOTAL MATCH FUNDS (Lines 16 thru 19)	555230			
21. GRAND TOTAL (Lines 15 + 20)				

Grant Recipient:	Contract Number:
CDBG PROGRAM BENEFICIARY REPORT – PROGRAM BENEFITS	

<i>PROGRAM ACTIVITY</i>	Units Completed	Total # of Beneficiaries	Low-and Mod Income	Race Black or African Amer.	Race Amer. Indian or Alaska Native	Race Asian	Race Native Hawaiian or Pacific Islander	Race White	Race Black/ African American/ White	Ethnicity Hispanic or Latino	Ethnicity Not Hispanic Or Latino	Dis-abled	Female Head of House-hold
1. Housing Rehabilitation													
2. Housing Support													
3. Rehabilitation – Rental Demo													
4. Acquisition and Disposition													
5. Relocation													
6. Clearance													
7. Utilities													
8. Water System													
9. Sewer System													
10. Solid Waste													
11. Community Facilities													
12. Neighborhood Facilities													
13. Senior Citizens Center													
14. Other Facilities/Center													
15. Removal of Arch. Barriers													
16. Public Services													
17. Code Enforcement													
18. Recreation													
19. Fire Protection													
20. Parking													
21. Streets													
22. Flood and Drainage													
23. ED – Facility Construction Loans													
24. ED – Infrastructure Improvement													
25. ED – Equipment/Inventory Loans													
26. ED – Commercial Rehab. Loans													
27. ED – Industrial Rehab. Loans													
28. ED – Other													

NUMBER OF BENEFICIARIES BY CATEGORY SHOULD BE REPORTED FOR EACH PROGRAM ACTIVITY BUDGETED.

If any beneficiaries fit into any of the categories listed below, please report them here:

American Indian/Alaskan Native & White _____

Asian & White _____

American Indian/Alaskan Native and Black _____

Other Multi-racial _____

CONTRACT CLOSEOUT CERTIFICATIONS

Grant Recipient Name: _____	Contract Number: _____
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I. FINAL CASH RECONCILIATION

- A. Total Cash Received Under This Contract (Include Cash in Transit) \$ _____
- B. Less: Total Expenditures This Contract \$ _____
- C. Excess Cash on Hand to be Refunded to ODOC \$ _____
- D. I certify that the expenditures reported are taken from the original books of account and that such expenditures are valid and consistent with the terms of this contract.
- E. I further certify that the attached check in the amount of \$ _____ fully represents all money received for but not expended in performance of this contract. (Same as Line C above).
- F. This amount is refunded to ODOC in accordance with the terms of the contract.

II. RELEASE

- A. Pursuant to the terms of this contract and in consideration of the Total Accrued Expenditures referred to in Line B above which have been paid or will be paid to the Grant Recipient, upon payment of any remaining balance to ODOC), the Grant Recipient does hereby remise, release, and discharge the State of Oklahoma (ODOC), and their officers, agents, and employees of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the performance of this contract.
- B. I understand that the Total Accrued Expenditures certified I-D above will become the final total obligated amount of this contract.

III. ASSIGNMENT OF REFUNDS REBATES, AND CREDIT

Pursuant to the terms of this contract and in consideration of payment of costs as provided in said contract, Grant Recipient does hereby:

- A. Assign, transfer, set over and release to ODOC all right, title, and interest to all refunds, rebates and credits or other amounts, including any interest thereon, arising out of the performance of this contract, together with all rights of action accrued or which may accrue thereunder.
- B. Agree to take whatever action may be necessary to effect prompt collection of all such refunds, rebates, credits or other amounts, including any interest thereon, due or which may become due, and to forward promptly by check made payable to ODOC any proceeds so collected.
- C. Agree to cooperate fully with ODOC as to any claim or suit in connection with such refunds, rebates, credits or other amounts due, including any interest thereon; to execute any protest, pleading, application, power of attorney or documents in connection therewith; and to permit ODOC to represent it at any hearing, trial or other proceeding arising out of such claim or suit.

This Closeout was completed by:

Name of Preparer

Title of Preparer

Phone Number

Signature of Preparer

I Certify the information contained in this closeout is true and accurate to the best of our knowledge:

Clerk / Accountant

Chief Elected Official

Typed Name and Title

Typed Name and Title

Date

Date

FINAL WAGE COMPLIANCE REPORT

Grant Recipient Name:	Contract Number:
Contact Person:	Telephone No.:
Project Name:	Project Location:
Construction Completion Date:	Contract Amount: \$
Prime Contractor:	
Subcontractors	

1. Were any workers paid less than the specified Davis-Bacon rates that applied to this project?

- Yes No

2. If YES:

a. What was the total amount of restitution paid? \$ _____

b. What was the method of restitution?

- Paid by the Contractor
 Paid by Grant Recipient with funds withheld from payment to the Contractor

Firm	Affected Employees	Amount of Restitution Paid	Nature of Violations

(Attach additional pages if necessary.)

3. Were any workers not paid the correct overtime payments? Yes No

If YES: Liquidated damages at the rate of \$10 for each calendar day for each worker must be calculated and the Contractor notified of his liability, and

4. Provide information concerning the nature of the overtime violations. This should include:

a. Firm's Name, Address and Phone Number: _____

b. Date Contractor was notified in writing of the amount of liquidated damages which could be assessed: _____

c. Date the Contractor responded to the written notice: (must be within 30 days of the receipt of notification): _____

d. Did the Contractor seek a reduction or waiver of the liquidated damages?

- Yes No

e. If YES: Was the requested approved and for what

- Yes - Reduction. Yes - Waiver. No.

f. On what grounds was HUD's or USDOL's response based? _____

g. Total amount of Liquidated Damages paid: \$ _____

h. What was the method of payment of the Liquidated Damages?

- Paid by the Contractor
- Paid by the Grant Recipient with funds withheld from payment to the Contractor.

i. Did the Contractor appeal the final decision to assess Liquidated Damages to the Wage Appeals Board?

- Yes No

j. Attach copies of all correspondence relative to any Liquidated Damages.

5. If appropriate, attach a recommendation of and justification for sanctions against the Contractor.

Submitted by:

Signature

Date

Typed Name

Title

OKLAHOMA DEPARTMENT OF COMMERCE (ODOC)

Community Development

INSTRUCTIONS FOR COMPLETING CLOSE OUT DOCUMENTS

All original signed documents including the Transmittal must be submitted within sixty days after the contract ending date or upon completion of the project whichever comes first. For Economic Development contracts, the project must be complete and all jobs as set out in the application for funding must be created before the project can be closed out.

All contracts with open loans are not considered closed out until the loans are paid in full, however, closeout documents must still be submitted to our office in accordance with the instructions above. Upon receipt of the final loan payment municipalities/counties that have previously submitted closeout documents accepted by our office will automatically be considered closed out. Municipalities/counties that have submitted closeout documents on projects with open loans will be eligible to apply for future funding.

The Contract Period listed on each document must correspond to the dates listed on the contract and subsequent modifications. If the ending date was changed, the latest modification date must be used.

Note: The Final Expenditure Report is for contract closeout only. If additional funds are due you as the Grant Recipient, the proper Request for Funds must be submitted prior to submission of the closeout documents.

1. Final Expenditure Report: Enter the correct total expenditures by line item in the appropriate column. All matching final expenditures must be reported and broken down in dollar amounts by category (i.e. federal, state, etc.) The Budget column must reflect the latest approved budget amounts for the contract. "Remaining Balance" is the budget less expenditures year-to-date. The interest reconciliation is for interest earned on deposits of CDBG funds only. Any unexpended interest must be returned to ODOC with the check made payable to HUD. NOTE: Matching expenditures must be reported by type, i.e., federal, local, etc.

2. Contract Closeout Certifications: Total Cash Received/ Requested must be for the total contract period. **Total Accrued Expenditures** must be the total amount expended as shown on the Final Expenditure Report. The form must be signed, dated by the local official and the administrator or the preparer.

OKLAHOMA DEPARTMENT OF COMMERCE (ODOC)

Community Development

INSTRUCTIONS FOR COMPLETING CLOSE OUT DOCUMENTS

CONTINUED

3. **Program Beneficiary Report - Program Benefit:** For each Program Activity report on actual accomplishments. For **Units Completed**, enter the number of structures/parcels acquired or cleared. For economic development projects, enter the number of full-time positions created or retained. In ethnic, Female Head of Household and Disabled columns, enter actual information on the number of beneficiaries. The ethnic origins total must equal the Total Number of Beneficiaries.
4. **Proof of Publication of Notice of Second Public Hearing:** The Grant Recipient must attach documentation that a public notice was posted/advertised informing citizens of the second public hearing to be held. A copy of the hearing minutes must also be included.
5. **Final Wage Compliance Report:** Enter information on liquidated damages or wage restitution paid by the construction contractor.
6. **Proof of Insurance:** The Grant Recipient must attach proof of property coverage insurance for any above-ground facility built or renovated and/or for equipment purchased with CDBG funds.
7. **Board Minutes Accepting Completed Project:** The Grant Recipient must provide ODOC with Board Minutes acknowledging the project is complete and authorizing final payment to the Grant Recipient.
8. **Final Inspection Report:** The Grant Recipient must attach a certified copy of the final inspection report provided by the Engineer/Architect, indicating the project is complete and acceptable. **(NOTE): If no engineer/architect services are utilized, the Item #7 will suffice.**