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CHAPTER 7 OTHER FEDERAL REQUIREMENTS

This chapter addresses other federal requirements that apply to CDBG program activities and beneficiaries. Construction-related requirements are covered in Chapter 6. This chapter addresses other requirements not related to construction, including civil rights, non-procurement conflicts of interest, income eligibility, and displacement and relocation requirements.

I. CIVIL RIGHTS

A. Introduction

The U.S. Department of Housing and Urban Development (HUD) and the State of New York are committed to assuring that NYS CDBG Recipients take positive steps to ensure equal access to housing, employment, public facilities/services, contracting and business opportunities, NYS CDBG benefits/services, and displacement protection. In addition to equal access, Recipients must affirmatively further fair housing and accessibility for persons with disabilities.

Recipients are responsible for implementing their projects in compliance with all state and federal laws and regulations regarding civil rights, fair housing, and equal opportunity. The grant agreement itself certifies that you will actively enforce the provisions of these statutes and regulations and develop strategies for addressing these requirements. To ensure compliance, attention to the civil rights, fair housing, and equal opportunity components of your NYS CDBG projects must be all-inclusive, from the project design phase to the final progress report.

Recipients and NYS CDBG funded contractors must:

1. Demonstrate that they afford equal employment opportunities to all persons;
2. Take affirmative steps to ensure that minority groups are informed of grant opportunities;
3. Demonstrate that their program benefits are not awarded in ways that discriminate; and
4. Take affirmative steps to promote fair and equal access to housing, regardless of the type of grant.

Recipients and all contractors on NYS CDBG projects must comply with civil rights regulations in the following five areas. Compliance in these areas should be documented during implementation of your NYS CDBG project in order to demonstrate a good faith effort to comply with federal civil rights requirements:

- Program Benefit (Section 3): efforts to ensure that economic opportunities arising through HUD-assisted projects are directed toward low- and very low-income residents living in the project area;
- Recipient Hiring and Employment Practices: the community's affirmative action plan and activities initiated to extend employment opportunities to minorities and women;

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- Contractor Affirmative Action: actions by contractors and subcontractors to employ minorities and women;
- Fair Housing: compliance with the federal mandate to administer all programs so as to affirmatively further housing availability and to prevent discrimination in federally-assisted housing; and
- Accessibility: actions taken to ensure access by persons with physical and mental disabilities to federally assisted programs and activities.

B. Section 3

Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the great extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents and business concerns in connection with projects and activities in their neighborhood.

Section 3 residents are defined as:

- Residents of public housing, or,
- Low- or very-low income residents of the project area.

Section 3 business concerns are businesses that can provide evidence that they meet one of the following:

- Are 51 percent or more owned by Section 3 residents; or
- At least 30 percent of its full time, permanent employees include persons that are currently Section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents or
- A business that commits to award subcontracts in excess of 25 percent of the dollar award of all subcontracts to businesses that meet at least one of the qualifications for business concerns.

Section 3 requirements apply to the entire project or activity funded with NYS CDBG assistance, regardless of whether the project or activity is fully or partially funded with NYS CDBG assistance.

Section 3 requirements apply to recipients that are awarded NYS CDBG grants in excess of \$200,000 and contractors and subcontractors with construction contracts or subcontracts in excess of \$100,000 that are funded in part or whole with NYS CDBG funds.

If a recipient receives a NYS CDBG award in excess of \$200,000, but construction contracts do not exceed \$100,000, Section 3 requirements only apply to the Recipient.

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Recipients whose projects do not fall under Section 3 are nonetheless encouraged to comply with the Section 3 preference requirements.

Recipients, contractors and subcontractors must demonstrate compliance with the “greatest extent feasible” requirement of Section 3 by meeting the numerical goals set forth in 24 CFR Part 135.30 which are:

- 30% of the new hires be Section 3 residents;
- 10% of the total dollar amount of all Section 3 covered contracts in housing rehabilitation, housing construction and other public construction be awarded to Section 3 business concerns.

To aid in accomplishing the Section 3 requirements, Recipients should:

- Develop a list of Section 3 businesses and residents to be advised of opportunities for participation in project contracts or job opportunities. The Chamber of Commerce or similar business association in an area can often provide the names of eligible firms;
- Demonstrate compliance with Section 3 requirements by publishing a notice in the area newspaper before, as well as include in, advertising for construction bids. Such notices should be placed in publications having a circulation in the immediate area of the project. This will ensure that potential contractors are aware that whenever possible they should be hiring and buying locally, thus extending NYS CDBG benefits into the Recipient’s community;
- Include a notation of “An Equal Opportunity Employer” on your letterhead when it is used for NYS CDBG project-related correspondence;
- Include the following language in all requests for proposals, bid documents, contracts and sub-contracts: “The contractor will ensure that to the greatest extent feasible opportunities for training and employment arising in connection with this NYS CDBG-assisted project will be extended to lower-income project area residents. Further, the contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.”

In addition to maintaining records of compliance, Recipients who meet the Section 3 thresholds, must report annually on their hiring and contracting with Section 3 residents. HCR’s Office of Fair Housing and Equal Opportunity (OFHEO) is responsible for distributing and collecting the Section 3 Reporting Form (available from <https://www.nyshcr.org/AboutUs/Offices/FairHousing/>). The data collected in these forms is also used to satisfy HCR’s annual reporting to HUD for compliance with Section 3 and MBE/WBE. Following the award and execution of the grant agreement, OFHEO will contact Recipients and provide the reporting instructions and forms that are intended to track Recipients efforts to comply with the Section 3 requirements.

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C. Recipient Hiring and Employment Practices

Recipients are responsible for ensuring that individuals will not be discriminated against. They are required to establish affirmative action plans that promote equal employment opportunity by including data concerning the Recipient's affirmative actions for equal employment opportunity, recruitment advertising, hiring, promotions, layoffs or terminations, pay, and recruitment for training. These plans must be consistent with federal and state EEO laws when applicable.

In order to meet Title VI obligations, several steps should be taken by the Recipient to increase employment opportunities for protected groups when hiring for the NYS CDBG program. Efforts should include advertisements in minority newspapers. Any employment advertisements could include the following statement, "The (Name of Recipient) is an Equal Opportunity Employer."

Employment recruitment records should include a summary of the number of applicants for each position relating to the NYS CDBG Program, and the number of applicants who are minorities, women, and handicapped persons. There should also be documentation by race, gender, and handicap of the number of persons interviewed and the reasons for the hiring decisions. In addition to the above, Recipients with more than 100 employees are required to provide the civil rights information on the EEO4 form (<https://egov.eeoc.gov/eeo4/>). This form must be maintained in the Recipients files and be available for review at the time of monitoring.

D. Minority and Women's Business Enterprises

Recipients must ensure that contractors take affirmative steps to ensure fair treatment in employment upgrading, transfer, recruitment, layoffs, rate of pay and selection for training. Recipients should encourage the prime contractors on their projects to utilize M/WBE firms to the maximum extent possible.

At a minimum, Recipients must establish and oversee a minority and women business outreach program that is designed to be:

- A good faith, comprehensive and continuing endeavor;
- Supported by a statement of public policy and commitment published in the electronic and print media of widest local circulation;
- Supported by an office and/or a key, ranking staff person with oversight responsibilities and access to the chief elected official; and
- Designed to utilize all available and appropriate public and private sector local resources.

The following guidelines should be used to provide assistance in implementing outreach programs to ensure the inclusions, to the maximum extent possible, of entities owned by minorities and women. Each participating Recipient should:

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- Develop a systematic method for identifying and maintaining an inventory of certified minority and women's business enterprises (MBEs and WBEs) including their services, supplies and/or products offered;
- Utilize the local media, electronic and print, to market and promote contract and business opportunities for MBEs and WBEs; directly state in published notice that MBE's and WBE's are encouraged to submit.
- Develop informational and documentary materials (fact sheets, program guides, procurement forecasts, etc.) on contract/subcontract opportunities for MBEs and WBEs;
- Develop procurement procedures that facilitate opportunities for MBEs and WBEs to participate as vendors and suppliers of goods and services;
- Perform direct outreach to MBEs and WBEs when procuring for good and services;
- Sponsor business opportunity-related meetings, conferences, seminars, etc. with minority and women business organizations; and
- Maintain centralized records with statistical data on the utilization and participation of MBEs and WBEs as contractors/subcontractors in all HUD-assisted program contracting activities.

These above items represent basic outreach-related activities and are not all-inclusive actions a participating Recipient may undertake.

Under the terms of Executive Order 11246, NYS CDBG Recipients are required to:

1. Include the equal opportunity clause in all non-exempt federally-assisted contracts for more than \$10,000, as set forth in 202 of Executive Order 11246; and
2. Ensure that all federally-assisted construction contractors and subcontractors on a NYS CDBG-assisted construction project take affirmative actions to ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, or national origin.

The Empire State Development Corporation publishes a directory of minority and women-owned businesses and maintains a list of firms that have been certified through the State Certification Program. You may obtain a copy by contacting: Empire State Development Corporation, Affirmative Action Unit, 633 Third Avenue, 32nd Floor, New York, NY 10017, 212-803-3226

Recipients must report if contractors and sub contractors are a Minority and Women's Business Enterprise information as part of the Section 3 reporting requirements mentioned above. As with Section 3, following the award and execution of the grant agreement OFHEO will contract you with reporting instructions and the Section 3 & M/WBE reporting form. The forms are intended to track the inclusion of M/WBE contractors on CDBG funded projects. OFHEO's

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Section 3 and MBE/WBE forms are available on HCR's website at <https://hcr.ny.gov/fair-and-equitable-housing-office>. Each Recipient must submit the Utilization of Section 3 Residents and Businesses form, and the respective Section 3 and M/WBE form.

E. Fair Housing

NYS CDBG Recipients are responsible for taking specific actions to affirmatively further fair housing practices in their community. Participants in the NYS CDBG program will be required to affirmatively further fair housing related to soliciting renters, determining eligibility, and in the conduct of all transactions.

Fair housing provisions apply to the community as a whole, not just to NYS CDBG-supported housing projects, and they are an essential part of the community's responsibilities under the NYS CDBG program. No person shall be subjected to discrimination because of race, color, religion, sex, disability, age, familial status, or national origin.

Fair housing actions should increase housing opportunities and affirmatively promote fair housing throughout the entire housing market at all income levels. These activities may include independent actions by the Recipient or cooperative ventures with housing related industries, such as mortgage lenders, home builders, and local non-profits working in housing. The Recipient is expected to take progressive actions to further fair housing with each CDBG project.

The first step in developing a local fair housing program is to look closely at the community to identify areas of particular concern. In order to analyze whether a fair housing problem might exist within a community, Recipients should ask themselves the following questions:

- Does it appear that realtors are hesitant to show minorities rental or ownership units in certain areas of town or in certain apartment buildings or subdivisions?
- Is there evidence that local banks and savings and loans consistently fail to provide mortgage money or NYS CDBG improvement loans in certain areas of town?
- Do landlords rent to single parent households with children?
- Does the community actively assist people who believe they have encountered housing discrimination?

A "good faith effort" to affirmatively further fair housing should:

- Review project activities to ensure that they serve low and very low-income minority residents as well as non-minorities;
- Develop a public information network using local newspapers, radio stations, bulletin boards, churches, and property tax mailings to ensure that all segments

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- of the community are aware of fair housing requirements, especially realtors, landlords, financial institutions, and minority households;
- Develop a fair housing assistance program to make housing opportunities known to minorities, to monitor compliance, and to refer discrimination complaints to the proper authorities;
 - Use the “Equal Housing Opportunity” slogan and logo on Recipient letterhead; and

Recipients are required to:

- Promote maximum choice within the community’s total housing supply;
- Lessen racial, ethnic, and economic concentrations;
- Facilitate desegregation and racially inclusive patterns in the occupancy and use of public facilities;
- Display Fair Housing Posters and distribute a Fair Housing Handout and Complaint Pamphlet to explain fair housing rights, practices and statutory requirements.
- Pass a fair housing resolution that demonstrates a “good faith effort” in complying with fair housing requirements. The fair housing resolution adopted by the Recipient must also be publicized and promoted within the community; and
- Designate a Fair Housing Officer who is familiar with the fair housing regulations to be the primary point of contact for all fair housing related issues.

In addition to the abovementioned required activities, the Recipient must identify which of the below activities will also be undertaken and provide to HCR’s Office of Community Renewal within forty-five (45) days of a new award of funds, the activities it will undertake. Additionally, the Recipient shall carry out the AFFH actions within one (1) year of the award of funds and provide to HCR’s Office of Community Renewal proof of the activities undertaken as a record of the municipality’s activities to satisfy its AFFH requirements.

The below checklist does not include every fair housing activity that a municipality could or should undertake. It is however a good starting point of increasing community awareness, ensuring that clear procedures exist for addressing fair housing complaints, expanding the types of housing choice within the municipality, and generally providing all people with the opportunity to live in a community of their choice without discrimination.

If a Recipient intends to complete an action not included in the AFFH Checklist to satisfy one of the categories from the AFFH Checklist, it must apply to Fair and Equitable Housing Office (FEHO) for permission to do so. Questions related to fair housing obligations and/or the AFFH Checklist must be addressed to HCR’s Fair and Equitable Housing Office at (518) 473-3089 or FEHO@nyshcr.org.

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Recipients must be prepared to report on efforts to Affirmatively Further Fair Housing on an annual basis. Reporting will occur on an annual basis through the OCR Annual Performance Report that is due in January of every year.

I. *Encourage community input on fair housing matters*

1. Hold an annual public meeting on fair housing. Provide to HCR an agenda, meeting notes, and reports concerning the steps that will be taken to address fair housing issues raised at these meetings. Include list of attendees/sign-in sheet, location and date.

II. *Ensure public policy affirmatively furthers fair housing*

1. Sponsor, or work with a community development/planning organization, rural/neighborhood preservation, or fair housing organization to conduct a survey to assess the community's housing needs, including barriers to fair housing choice.
2. Survey special housing needs of minorities and women to determine possible effects of discrimination.

III. Promote fair housing education

1. Elected officials, municipality staff in charge of planning, zoning, building, housing, community and economic development, and their third-party consultants attend a fair housing training program.
2. Expert provides a fair housing education and training program for real estate professionals, including developers, sales and rental agents, lenders, and property managers.
3. Conduct a meeting with financial institutions that serve the community to discuss the importance of providing financial assistance for housing in all geographic areas and to all residents in the community.

When developing a fair housing/affirmative marketing program, it is very important that the Recipient document all of the actions taken, as well as the results of those actions. If these efforts are not documented, OCR will be unable to demonstrate to HUD that Recipients are meeting their fair housing obligations. For rental rehabilitation activities, OCR and the Recipient will assess affirmative marketing efforts of owners by comparing predetermined occupancy goals (based on the area from which potential tenants will come) to actual occupancy data the owner is required to maintain. Outreach efforts on the part of the owner will also be evaluated by reviewing marketing efforts.

F. Accessibility

Recipients are required to take affirmative steps to ensure that qualified persons with disabilities are informed of the availability of program services and activities, and the Recipient's activities or services are readily accessible to, and usable by,

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individuals with disabilities. Recipients must provide handicapped persons with benefits and services that are as effective as those provided to non-handicapped individuals.

Recipients must ensure that NYS CDBG programs and activities are accessible, both structurally and administratively, to handicapped and disabled persons. Recipients are responsible for providing access to handicapped/disabled persons in four areas: communications, employment opportunities, program benefits, and physically accessible housing.

1. **Accessible Communications:** In order to ensure accessibility of program services and activities to persons with disabilities, Recipients must be aware of the possibility that individuals may need to use alternative forms of communication.
2. **Access to Employment:** Make reasonable accommodation to known physical or mental limitations of an otherwise qualified individual, unless to do so would impose an undue hardship on the employer. Cost alone does not necessarily constitute undue hardship. A person with a disability is otherwise qualified if they can satisfy the requisite skill, experience and education requirements for the position and can perform the essential functions of the job with or without reasonable accommodations.
3. **Program Accessibility:** All services, programs and activities be accessible to everyone, including people with disabilities, regardless of the accessibility of the Recipient's facilities.

The Recipient may not provide services or benefits to disabled persons through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits or services are equally effective. Even when separate programs are permitted, an individual with a disability must still have the right to choose to participate in the regular program, and the Recipient may not require an individual with a disability to accept a special accommodation or benefit if the person chooses not to accept it.

4. **Physical Accessibility to Programs:** The Recipient should be able to identify the primary access point to their office building and ensure that parking spaces are designated for people with disabilities displaying special permits on their vehicles. In addition, the Recipient needs to ensure that the accessible entrance to the building is kept accessible (i.e., free of snow and other blockage, with unauthorized persons not allowed to park in the handicap designated areas).

The regulations for meeting handicap accessibility requirements for housing facilities are complex and cannot be described concisely in this chapter. The Americans with Disabilities Act (ADA) generally does not cover private residential facilities. These facilities are addressed in the Fair Housing

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Amendments Act, which prohibits discrimination on the basis of disability in selling or renting housing. However, provisions of the Fire Administration Authorization Act of 1992, which became effective October 26, 1992, require that all housing units assisted with Federal funds be equipped with a hard-wired or battery-operated smoke detector that includes appropriate wiring that makes it possible to install visual and/or sensory alarm systems if the need arises. This requirement applies to all new construction, reconstruction, and rehabilitation projects on any multifamily or single family housing assisted with NYS CDBG funds. Further, where alarms already exist in common areas, visual and sensory alarms should be provided also, as a reasonable accommodation to persons with disabilities.

The following are highlights of other handicap accessibility requirements that apply to all facilities designed, constructed or altered after July 11, 1988:

1. New Construction, Acquisition or Rehab of Single-Family Dwellings. Single-family dwellings must be made handicap accessible upon request of the owner or prospective buyer. That cost may be included in the mortgage amount. If costs exceed the allowable mortgage limits, those costs may be passed on to the prospective NYS CDBG buyer. All handicap accessible dwelling units must be distributed throughout the housing project and the sites made available in a range of sizes and amenities. Generally, historic properties must be made accessible unless doing so would substantially impair the significant historic features of the property or result in an undue financial or administrative burden.
2. New Construction or Substantial Rehab of Multi-Family Dwelling Units. In addition to ADA requirements, residential structures (other than privately owned residential structures) are subject to requirements of the Architectural Barriers Act of 1968 [24 CFR Part 40]. Standards for the design, construction and alteration of publicly owned residential structures to ensure that physically handicapped persons have ready access to and the use of such structures can be met by following the Uniform Federal Accessibility Standards outlined in Appendix A of 24 CFR, Part 40.

HUD does not require Recipients to take actions that would result in a fundamental alteration of facilities or programs or that would impose an undue financial or administrative burden on the Recipient. However, if the public cannot access (or some group is not likely to access) the Recipient's NYS CDBG program, reasonable accommodations must be made so that the program can be brought to persons with disabilities. HUD recommends that administrative changes be considered before costly structural changes.

G. Section 504 Evaluation/Notification

Under Section 504 of the Rehabilitation Act and the ADA, state and local governments receiving federal assistance are required to make their programs,

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activities and services accessible to individuals with disabilities. Title II extends this requirement to all state and local governments, whether or not they receive Federal funds. Title II applies regardless of the public entity's size and seeks to ensure access to all publicly funded programs, services and agencies. Public entities that receive Federal funds are subject to the requirements of both the ADA and Section 504.

Public entities were required to conduct a self-evaluation (an informal accessibility survey) to determine whether their facilities and programs are in compliance with ADA requirements by January 26, 1993. The self-evaluation is a comprehensive review of the public entity's policies and practices. The self-evaluation includes communication and employment, as well as the policies and practices for all services, programs, and activities. The self-evaluation must identify any services, policies, or practices that discriminate against or exclude people with disabilities. Any discriminatory policies or practices that are identified must be modified immediately.

There are two additional requirements for Section 504 compliance for Recipients with fifteen or more full or part-time employees:

1. According to 24CFR8.53, a Recipient shall designate at least one person to coordinate 504 and related compliance efforts. This shall be designated in writing and identified in any written notices. Grievance procedures must be adopted incorporating appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by disability. Any individual or authorized representative who believes that they have been discriminated against may file a complaint, which may be filed as indicated.

2. According to 24CFR8.54, a Recipient shall take appropriate initial and continuing steps to provide notification to participants, beneficiaries, applicants and employees of their nondiscriminatory provisions. The notification shall state, where appropriate, that the Recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. Methods of notification include posting of notices, publication in newspapers and magazines, placement of notices in recipient's publications, and distribution of memoranda or other written communications

Additional information on compliance is also available from www.ada.gov.

H. Policy Adopted to Handle Complaints of Discrimination

Citizen complaint procedures are an integral part of civil rights activities. Every Recipient must establish a set of procedures for handling complaints of discrimination. These procedures, complaint forms, and other pertinent information should be contained within a file for public access. All complaints must

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remain confidential and information pertaining to the complaint cannot be disclosed to any entity except HUD.

Fair housing complaints must be submitted in writing, signed, addressed to the a responsible official (designee of the Recipient) and carbon copied to your OCR Community/Economic Developer, and filed with the Office of Fair Housing and Equal Opportunity at any HUD Office.

I. Limited English Proficiency – Executive Order 13166

Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency”, was created to improve access to federal and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP). As a result of this Executive Order, Federal agencies were directed to provide guidance and technical assistance to recipients of Federal funds as to how they can provide meaningful access to limited English proficient users of Federal programs. In addition, Federal agencies were told to look at how they served people who were limited in their English proficiency and to see what measures they could take in their direct contacts with LEP individuals that would increase meaningful access.

The basis for Executive Order 13166 is Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, (hereinafter Title VI), which provides that no person 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 receiving Federal financial assistance.” As a result, Recipients of Federal funding are required to take reasonable affirmative steps to provide non-English speakers with a meaningful opportunity to participate in the federally funded programs.

Recipients of CDBG funds are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP persons come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people’s lives; and (4) the resources available to the Recipient and costs. A sample self-assessment may be found at <https://www.lep.gov/resources/selfassesstool.htm>.

After applying the four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient’s activities will be more important than others and/or have greater impact on or contact with LEP

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persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. HUD recipients should apply the four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they could take to ensure meaningful access for LEP persons. Each Recipient of NYS CDBG funds is required to complete this assessment and maintain a copy in their program files along with any documentation of additional actions taken to comply with the requirements.

J. Violence Against Women Act

The U.S. Department of Housing and Urban Development's Violence Against Women Reauthorization Act of 2013 (VAWA) implemented several key changes related to housing protections for victims of domestic violence, dating violence, sexual assault, and/or stalking.

VAWA currently requires protections to victims who are applicants to or residents of any "covered housing program". Currently VAWA requirements do not apply to NYS CDBG programs.

However, in the event a "VAWA covered crime" occurs during the administration of a CDBG project you may refer to HCR's VAWA policy at <https://hcr.ny.gov/system/files/documents/2018/11/hcr-vawa-guidance.pdf> and use HCR's VAWA Local Service Provider List at <https://hcr.ny.gov/system/files/documents/2018/11/hcrvawaresourcelist.pdf> as a reference guide.

II. CONFLICT OF INTEREST: NON-PROCUREMENT

In addition to the provisions of New York State General Municipal Law Article 18 Conflicts of Interest of Municipal Officers and Employees, there are two sets of federal conflict of interest provisions applicable to state administered NYS CDBG non-entitlement funds. The first set, applicable to the procurement of goods and services, is located at 24 CFR 570.489 (g) and was included in Chapter 4 Procurement.

The second set of provisions applicable to state administered NYS CDBG non-entitlement funds is found at 24 CFR 570.489(h), which applies in all cases not governed by paragraph (g). Such cases include the acquisition and disposition of real property and the provision of assistance with NYS CDBG funds by the unit of general local government or its Subrecipients, to individuals, businesses and other private entities.

- (1) Conflicts prohibited. Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (3) of this section who

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exercise or have exercised any functions or responsibilities with respect to NYS CDBG activities assisted under this subpart or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

- (2) Persons covered. The conflict-of-interest provisions for paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or Subrecipients which are receiving NYS CDBG funds.
- (3) Exceptions: Threshold's requirements. Upon written request by the State, an exception to the provisions of paragraph (h)(2) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the state may be granted by HUD on a case-by-case basis. In all other cases, the state may grant such an exception upon written request of the unit of general local government provided the state shall fully document its determination in compliance with all requirements of paragraph (h)(4) of this section including the state's position with respect to each factor at paragraph (h)(5) of this section and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the state or unit of general local government as appropriate. An exception may be considered only after the state or unit of general local government, as appropriate, has provided the following:
 - (i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
 - (ii) An opinion of the attorney for the state or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate state or local law.
- (5) Factors to be considered for exceptions. In determining whether to grant a requested exception after the requirements of paragraph (h)(4) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:
 - (i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available.

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- (ii) Whether an opportunity was provided for open competitive bidding or negotiation.
- (iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class.
- (iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question.
- (v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (h)(3) of this section.
- (vi) Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict.
- (vii) Whether the Recipient can demonstrate that all other eligible persons have been assisted and that the request for waiver will not preclude anyone from eligibility or participation, and
- (viii) Any other relevant considerations.

To request an exception as authorized under 24 CFR 570.589(h)(4), the Recipient must submit the following documents to OCR:

1. A written request which:
 - a. Details the nature of the conflict; and
 - b. Specifically addresses each applicable factor enumerated in subparagraph (5) of 24 CFR 570.489(h); and
 - c. Is signed by the Recipient's chief elected official.
2. An opinion letter signed by the Recipient's legal counsel stating that the interest for which the exception is sought would not violate state or local law.
3. Minutes of the public meeting at which disclosure of the conflict was made. The public hearing must be held by the legislative body of the Recipient. This responsibility cannot be delegated to an agency or committee.
4. Conflict of Interest Disclosure (Refer to Exhibit 7-7)

Refer to Exhibit 7-8 for further guidance on the requirements for Conflict-of-Interest Submissions.

Upon the receipt and review of the forgoing documents, OCR will issue a written determination either granting or denying the requested exception.

III. INCOME ELIGIBILITY

CHAPTER 7 OTHER FEDERAL REQUIREMENTS

As noted in Chapter 5, the CDBG Program must primarily benefit persons of low and moderate incomes. To document LMI benefit for activities with identified clientele, housing or jobs, it is necessary to obtain income information about potential recipients. (Please note that LMA activities may be qualified through Census data and/or income surveys.)

HUD publishes the income limits applicable to CDBG annually. The current limits can be accessed at: <https://www.hudexchange.info/resource/5334/cdbg-income-limits/>.

For purposes of determining whether a family or household is low- and moderate-income, CDBG permits two definitions:

- Annual income as defined under the Section 8 Housing Assistance Payments program at 24 CFR 813.106 (ii); or
- Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.

Annual income is the total of all of the adult household members' gross income that is anticipated to be received during the coming 12-month period.

HUD provides an online calculator to assist with calculation of the income of beneficiary families. It can be accessed at: <https://www.hudexchange.info/incomecalculator/>.

Documentation of income is generally recommended, although CDBG allows a verifiable self-certification of income. CDBG allows income information to be up to 12 months old and allows the IRS 1040 long or short EZ form itself as the sole source documentation of income if the household composition and income sources will not change in the following 12 months. CDBG does not require that the IRS 1040 form be certified through the use of a 4506 form.

IV. DISPLACEMENT, RELOCATION AND ACQUISITION

Recipients who undertake NYS CDBG-assisted activities that involve displacement, permanent relocation, demolition or conversion of residential units occupied by low-income households are responsible for complying with all regulations under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), and Section 104(d) of the Housing and Community Development Act of 1974, as amended, and all implementing regulations.

The primary purpose of these laws is to ensure that when NYS CDBG-funded projects result in the demolition or conversion of units, all affected persons receive the proper relocation assistance and benefits. The acquisition requirements of the federal relocation and acquisition regulations apply in most instances, including when a

CHAPTER 7 OTHER FEDERAL REQUIREMENTS

property is acquired by a nonprofit or for-profit entity that has received a loan or grant from your NYS CDBG project.

To ensure compliance with the URA, recipients should reference the HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition (https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780) and 49 CFR Part 24 for detailed information on the specific displacement, relocation and acquisition requirements.

CHAPTER 7 OTHER FEDERAL REQUIREMENTS

V. EXHIBITS

Displacement, Relocation and Acquisition

- 7-1 Request for Acquisition Exemption
- 7-2 Acquisition Checklist

Other Resources

- 7-3 Links to Applicable Federal and State Regulations
- 7-4 Links to Outside Agency Forms

Accessibility

- 7-5 Sample Notice Under the Americans With Disabilities Act
- 7-6 Sample Grievance Procedure Under the Americans with Disabilities Act

Conflict of Interest

- 7-7 Conflict of Interest Disclosure
- 7-8 Conflict of Interest Waiver Request Checklist

EXHIBIT 7-1

REQUEST FOR ACQUISITION EXEMPTION

TO: Housing Trust Fund Corporation
Office of Community Renewal
Hampton Plaza
38 – 40 State Street, 4th Floor
Albany, New York 12207

FROM: _____ Project # _____
(City/County)

RE: _____
(Description of real property)

Please provide concurrence that the above property is exempt from the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).

This acquisition of real property is exempt as defined in 49 CFR 24.101 of the URA.

- (1) Voluntary transaction. All procurement requirements specified in OMB Circular 102 will be met and this transaction meets the requirements of ALL THREE of the following conditions:
 - (a) Not acquired under the threat of eminent domain. Advertisements and owners provided written notification to this effect.
 - (b) A specified site is not necessary and the property to be acquired is not part of a project where substantially all of the property within an area will be eventually acquired.
 - (c) The owner will be informed of the estimated fair market value of the property.

- (2) Property is to be acquired by private sector and before the seller enters into the contract of sale, the buyer informs the seller:
 - (a) That it does not have the power of eminent domain and should negotiations fail to result in an amicable agreement, the property will not be acquired; and
 - (b) The owner will be informed of the estimated fair market value of the property.

- (3) Property to be acquired is in government ownership and cannot be taken by eminent domain.

Property owner is _____

Supporting data attached _____

SIGNATURE: _____

(Chief Elected Official)

(Date)

NYS CDBG Program Use Only:

- Concurrence
- Nonconcurrence

Signed: _____

Title: _____

Date: _____

EXHIBIT 7-2

ACQUISITION CHECKLIST

City/County: _____ Project No.: _____

RE: _____
 (description of real property)

Owner (s)		Tenants	
Address		Address	

Procedure Implemented:	Date
(a) Official determination to acquire property (usually execution of Grant Agreement)	
(b) Preliminary Acquisition Notice mailed, and owner informed of basic rights	
(c) Enter into contract with appraiser	
(d) Owner provided to accompany appraiser	
(e) Property appraised	
(f) Appraisal report received	
(g) Enter into contract with review appraiser	
(h) Receipt of review appraisal report	
(i) Recipient establish purchase offer amount (offer must equal or be above approved appraisal value)	
(j) Owner provided written purchase offer and determination of offer	
(k) Settlement cost paid	
(l) Final contract entered (all parties)	
(m) Payment to owner	
(n) Title recorded/filed with court	
(o) Condemnation dates*	
(p) 90 days notice to vacate property	
(q) Condemnation proceeding instituted	
(r) Estimated just compensation deposited with courts	

Comments: _____

SIGNIFICANT DOLLAR AMOUNTS

Appraisals	First \$ _____	Second* \$ _____	Third* \$ _____	Review \$ _____
Compensation Amount:	Determined \$ _____	Initial \$ _____	Written Order \$ _____	Acquisition Price \$ _____
Settlement Costs	_____	_____	_____	_____

* If Applicable

EXHIBIT 7-3

LINKS TO APPLICABLE STATE AND FEDERAL REGULATIONS

Labor Standards: Federal Labor Standards Provisions (HUD 4010 Form):

<https://www.hud.gov/sites/documents/4010.PDF>

New York State Labor Standards:

<https://labor.ny.gov/workerprotection/publicwork/PWGenLawRegs.shtm>

Semi Annual Labor Standard Report to be submitted by Housing Agency (HUD 4710)

https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrform

Conflict of Interest: Conflict of Interest Regulations (24CFR570.611)

http://edocket.access.gpo.gov/cfr_2010/aprqtr/pdf/24cfr570.611.pdf

Displacement, Relocation and Acquisition: Uniform Relocation Act (40CFR Part 24):

<https://www.law.cornell.edu/cfr/text/49/part-24>

Real Estate Acquisition and Relocation Policy and Guidance (HUD Handbook 1378):

https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780

Lead Based Paint: Lead Based Paint Disclosure Rule:

https://www.hud.gov/sites/documents/DOC_25483.PDF

Lead Safe Housing Rule:

https://www.hud.gov/sites/documents/DOC_12311.PDF

Renovation Repair and Painting Rule:

<https://www.govinfo.gov/content/pkg/FR-2008-04-22/pdf/E8-8141.pdf>

HUD Lead Based Paint Field Guide:

https://www.hud.gov/sites/documents/DOC_11878.PDF

Property Management: Property Management and Acquisition (24CFR570.505)

<http://www.gpo.gov/fdsys/pkg/CFR-2010-title24-vol3/pdf/CFR-2010-title24-vol3-sec570-505.pdf>

Civil Rights: Section 3 Regulations:

[https://www.ecfr.gov/cgi-bin/text-](https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=8eb3688ebc1cf9df1e132f2152971777&rgn=div5&view=text&node=24:1.2.1.2.10&idno=24)

[idx?c=ecfr&SID=8eb3688ebc1cf9df1e132f2152971777&rgn=div5&view=text&node=24:1.2.1.2.10&idno=24](https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=8eb3688ebc1cf9df1e132f2152971777&rgn=div5&view=text&node=24:1.2.1.2.10&idno=24)

Equal Opportunity Requirements: Title VI of the Civil Rights Act of 1964

www.justice.gov/crt/grants_statutes/titlevi.txt

Section 109 of Title I of the Housing and Community Development Act

<https://www.hud.gov/programdescription/sec109>

Minority and Women's Business Enterprises Requirements 2 CFR 200.321
<https://www.law.cornell.edu/cfr/text/2/200.321>

Executive Order 11246
<https://www.dol.gov/ofccp/regs/statutes/eo11246.htm>

Fair Housing Requirements: Fair Housing Act
<https://www.justice.gov/crt/fair-housing-act-2>

Accessibility and Section 504 Requirements: Section 504 of the Rehabilitation Act of 1979
<https://www.dol.gov/oasam/programs/crc/sec504.htm>

Title II of the American's with Disabilities Act of 1990
https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm

Architectural Barriers Act of 1968
<http://www.access-board.gov/the-board/laws/architectural-barriers-act-aba>

Executive Order 11063
<https://www.law.cornell.edu/cfr/text/24/part-107>

Limited English Proficiency Requirements: Executive Order 13166
<https://www.lep.gov/13166/eo13166.html>

EXHIBIT 7-4

LINKS TO OUTSIDE AGENCY FORMS

Labor Standards

Request for Additional Classification and Wages (HUD 4230A):

https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrform

Record of Employee Interview (HUD 11):

https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrform

Payroll Forms (WH347): <http://www.dol.gov/whd/forms/wh347.pdf> and Form Instructions:

<https://www.dol.gov/whd/forms/wh347instr.htm>

Davis-Bacon Poster:

<http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>

Equal Employment Opportunity Poster and Required Supplement:

<http://www1.eeoc.gov/employers/poster.cfm>

Occupational Health and Safety Administration Job Safety and Health Poster:

<https://www.osha.gov/Publications/poster.html>

Displacement, Relocation and Acquisition

“When a Public Agency Acquires Your Property” brochure:

<https://www.hudexchange.info/programs/relocation/publications/>

Lead Based Paint

“Protect Your Family from Lead in Your Home” brochure:

<http://www.epa.gov/lead/pubs/leadpdf.pdf>

“EPA Renovate Right” pamphlet

<http://www2.epa.gov/lead/lead-safe-certified-guide-renovate-right>

Sample Lead Based Paint Disclosure Form for Sale of Housing:

https://www.hud.gov/sites/documents/DOC_12343.PDF

Sample Lead Based Paint Disclosure Form for Rental of Housing:

<https://www.ncagr.gov/property/documents/LeadBasedPaintDisclosure-Rental.pdf>

Civil Rights Section 3

Section3 Brochure:

https://www.hud.gov/program_offices/fair_housing_equal_opp/section3/section3brochure

Fair Housing

Fair Housing Brochure:

https://www.hud.gov/program_offices/fair_housing_equal_opp/marketing

Fair Housing Poster:

https://www.hud.gov/program_offices/fair_housing_equal_opp/marketing

AFFH Guidebook

<https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>

Fair Housing Assessment Tools

<https://www.hudexchange.info/programs/affh/resources/#assessment-tools>

Accessibility and Section 504

ADA Guide for Small Towns

<http://www.ada.gov/smtown.htm>

ADA Title II Technical Assistance Manual:

<http://www.ada.gov/taman2.html>

ADA Coordinator, Notice & Grievance Procedure: Administrative Requirements Under Title II of the ADA:

<http://www.ada.gov/pcatoolkit/chap2toolkit.htm>

Limited English Proficiency

Language Assistance and Self Assessment Planning Tool

<https://www.lep.gov/resources/selfassesstool.pdf>

EXHIBIT 7-5

Sample NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), the [Name of Recipient] will not discriminate against qualified individuals with disabilities on the basis of disability in its services, program, or activities.

Employment: [Name of Recipient] does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the ADA.

Effective Communication: [Name of Recipient] will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in [Name of Recipient] programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

Modifications to Policies and Procedures: [Name of Recipient] will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in [name of public entity] offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of [Name of Recipient], should contact the office of [name and contact information for ADA coordinator] as soon as possible but no later than 48 hours before the scheduled event.

The ADA does not require the [Name of Recipient] to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

Complaints that a program, service, or activity of [Name of Recipient] is not accessible to persons with disabilities should be directed to [name and contact information for ADA coordinator].

[Name of Recipient] will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

EXHIBIT 7-6

Sample GRIEVANCE PROCEDURE UNDER THE AMERICANS WITH DISABILITIES ACT

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990 (ADA). It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the [Name of Recipient]. Employment related complaints of disability discrimination are covered elsewhere, in policies available from the human resources office of the [Name of Recipient].

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date and description of the problem. No particular format of the complaint is required. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted in writing by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

[Designee for Reasonable Accommodation/ADA Coordinator's name]
ADA Coordinator [and other title if appropriate]
[Mailing address for Designee/ADA Coordinator]

Within 15 calendar days after receipt of the complaint, the ADA Coordinator or his/her designee will meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the meeting, the ADA Coordinator or his/her designee will respond in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the [Name of Recipient] and offer options for substantive resolution of the complaint.

If the response by the ADA Coordinator or his/her designee does not satisfactorily resolve the issue, the complainant and or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the agency head or his/her designee.

Within 15 calendar days after receipt of the appeal, the agency head or his/her designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with the agency's final resolution of the complaint, or indicating that the matter has been returned to the ADA Coordinator for further action. If further response is indicated, the complainant will be contacted within 15 calendar days.

All written complaints received by the ADA Coordinator or his/her designee, appeals to the agency head or his/her designee, and responses from these two offices will be retained by the [Name of Recipient] for at least three (3) years.

EXHIBIT 7-7

SAMPLE CONFLICT OF INTEREST DISCLOSURE

Under certain circumstances, an applicant for Community Development Block Grant (CDBG) program funds may have what is known as a "Conflict of Interest" and may need a waiver in order to participate in a CDBG funded activity. A conflict of interest may occur when if an applicant for participation in a CDBG funded activity is related to or has a business relationship with an employee, officer or elected official of the municipality that has been awarded the CDBG funds. If the municipality that has received CDBG assistance determines that a conflict of interest exists, a request for a waiver to the conflict of interest must be submitted by the local municipality that has been awarded the CDBG funds to the Office of Community Renewal prior to undertaking any activity funded with CDBG funds.

DISCLOSURE

Please answer all questions below to assist in deciding if a potential conflict of interest exists.

1. Yes No

Are you now, or have you been an employee, agent, consultant, officer, elected official, appointed official of the _____
(Full name of Local Municipality)

If yes, please identify: _____

2. Yes No

Are you related (including by marriage or domestic partnership) to an employee, agent, consultant, officer, elected or appointed official or any other local official involved in the CDBG Program for which assistance is being applied for of the _____
(Full name of Local Municipality)

If yes, please identify: _____

3. Yes No

Do you have a business or professional relationship with anyone identified under question #1 above?

If yes, please identify: _____

I/we, the undersigned, certify that the above information is true to the best of my/our knowledge:

Signed: _____ Date: _____

Typed Name: _____

Signed: _____ Date: _____

Typed Name: _____

For official use only

CDBG Project Number: _____

Municipality: _____

Conflict of Interest does not exist

CEO Signature: _____

A potential Conflict of Interest exists

Date: _____

Exhibit 7-8

Conflict of Interest Waiver Request Checklist

All Requests for a Conflict-of-Interest Waiver Request must include the following:

1. A written request which:
 - a. Details the nature of the conflict; and
 - b. Specifically addresses each applicable factor enumerated in subparagraph (5) of 24 CFR 570.489(h); and
 - c. Is signed by the Recipient's chief elected official.
 - d. Documentation that no other applicant will be precluded from eligibility or participation
2. An opinion letter signed by the Recipient's legal counsel stating that the interest for which the exception is sought would not violate state or local law.
3. Minutes of the public meeting at which disclosure of the conflict was made. Public disclosure is considered to be a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made. The public hearing must be held by the legislative body of the Recipient. This responsibility cannot be delegated to an agency or committee.
4. A completed Conflict of Interest Disclosure Exhibit 7-7