CHAPTER 7
OTHER FEDERAL REQUIREMENTS

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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 (AFFH) 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 ensure compliance with 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 abided by, 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- income New Yorkers and the businesses that are hired or owned by them.;
- Recipient Hiring and Employment Practices: the community's plan and activities initiated to extend employment opportunities to minorities and women;
- Contractor MWBE Goals: actions by contractors and subcontractors to employ minorities and women;

- Fair Housing: compliance with the federal mandate to administer all programs in a manner that furthers 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

Housing construction and rehabilitation projects as well as public works projects that receive more than $300,000 in HOME Investment Partnership Program (HOME), Community Development Block Grant (CDBG), federal Housing Trust Fund or other funding from the U.S. Department of Housing and Urban Development (HUD) must comply with Section 3 of the Housing and Urban Development Act of 1968 ("Section 3") as implemented by regulations found at 24 CFR 75.

Section 3 requires that economic opportunities generated by HUD funds be prioritized for low-income individuals and the businesses that hire or are owned by them, particularly in the neighborhood surrounding the project. All entities involved in the Section 3 Project, consisting of the entity awarded the CDBG funds, the General Contractor, other contractors, and subcontractors must, to the greatest extent feasible, engage in efforts to achieve Section 3 goals and objectives.

The Benchmark Goals for each Section 3 Project are the following (definitions below):

25% of Total Labor Hours worked by Section 3 Workers, of which
5% of Total Labor Hours worked by Targeted Section 3 Workers.

Section 3 Worker is defined as:

An individual employed by Awardee or its Subs who works on the Section 3 Project and who currently meets, or when hired within the past 5 years met, at least one of the following rcriteria, as documented:

- Their income for the previous or annualized calendar year is categorized as low-income (80% AMI or less per the HUD dataset: https://www.huduser.gov/portal/datasets/il.html);
  - NOTE: Residents/recipients of the following benefits are likely to meet the low-income criteria: Medicaid, Public Assistance/TANF, SNAP/Food Stamps, Section 8-assisted housing, Public Housing.
- They are employed by a Section 3 Business (these are also Targeted Section 3 Workers); or
- They are a YouthBuild participant (these are also Targeted Section 3 Workers).

Targeted Section 3 Worker:

A Section 3 Worker who:

- Is employed by a Section 3 Business; or
- Currently meets or when hired within the last 5 years met at least one of the following criteria:
  - Lives within 1 mile of the Project or in areas where there are fewer than 5,000 people within 1 mile, an expanded circle around that Project that encompasses at least 5,000 people; or
  - A YouthBuild participant.

Section 3 Business:

A business that meets at least one of the following criteria, documented within the last 6-month period:

- At least 51% of the business is owned and controlled by low-income persons;
- Over 75% of the labor hours performed for the business over the prior three-month period are performed by Section 3 Workers; or
- At least 51% of the business is owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Awarded projects will be required to report on these numbers mid-year and end-year as well as at project close-out. All reporting must include Total Labor Hours, Section 3 Worker hours and Targeted Section 3 Worker hours for entities involved in the Project.

Failure to meet the Benchmark Goals requires a narrative and supporting documentation indicating what the Awardee, General Contactor and Subs did to ensure that economic opportunities were made available to low-income individuals and Section 3 Businesses. A non-exhaustive list of these efforts can be found at this link: https://hcr.ny.gov/S3SubReportingForm. Section 3 compliance is not optional, but it is flexible depending on the type of Project, location and needs of the local workforce.

More information and guidance on Section 3 compliance can be found in NYSHCR's Section 3 Policy Manual here: https://hcr.ny.gov/section-3-compliance. Required documents and useful resources can be found below (links available at the site above).

Document	Summary	Required for Use by:
Contract Clause	Mandatory language for all S3 projects	Awardee, GC, all Subs
Participation Plan	Outlines mandatory minimum efforts and sets forth Project's	Awardee & GC, Suggested for all Subs

	plan to meet S3 objectives. **Must be completed before funding contract execution.**	
Sub-Reporting Form & Greatest Extent Feasible Checklist	Form GC and Subs use to report S3 performance up to Awardee	GC and all Subs
Consolidated Awardee Reporting Form	Form Awardee uses to report consolidated S3 performance to NYSCHR	Awardee (consolidating Sub Reporting Forms)
Section 3 Business Self Certification	Forms businesses can use to self-certify that they meet the S3 definition for a S3 business	Awardee must have on file for all S3 Businesses on Project
Hiring Form	Form to be used to determine which employees/applicants are Section 3 Workers % Targeted Section 3 Workers	Awardee, GC, all Subs

C. Recipient Hiring and Employment Practices

Recipients are responsible for ensuring that individuals will not be discriminated against. They are required to establish plans that promote equal employment opportunity by including data concerning the Recipient's actions regarding 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. The steps undertaken must be consistent with any changes made to federal and state laws when applicable. Efforts should include advertisements in newspapers that are targeted to minorities. 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 people with disabilities. There should also be documentation by race, sex, and disability of the number of persons interviewed and the reasons for the hiring decisions. As required by law, 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.

Minority and Women's Business Enterprises

Recipients must ensure that contractors take 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. The steps undertaken must be consistent with any changes made to federal and state laws when applicable.

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:

- 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 supplies 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.

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. A directory of MWBEs is available from the Empire State Development Corporation site: https://esd.ny.gov/office-contractor-and-supplier-diversity.

Recipients must report annually if contractors and sub-contractors are a Minority and Women's Business Enterprise.

D. Fair Housing

NYS CDBG Recipients are responsible for taking actions to affirmatively further fair housing ("AFFH") practices in their community. Participants in the NYS CDBG program will be required to AFFH, as is detailed in the AFFH Guide for HCR-Funded Localities available here: https://hcr.ny.gov/affh. The actions include designating a fair housing officer, developing an AFFH plan, and annual reporting on actions taken related to the AFFH duty.

When developing a fair housing program or affirmative marketing of housing (as applicable), 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.

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. Under the federal Fair Housing Act and the New York State Human Rights Law, no person shall be subjected to discrimination because of race, color, religion, sex, disability, age, familial status, national origin, domestic violence status, source of income, sexual orientation, or being a member of another protected class.

Fair housing actions should increase housing opportunities and promote the removal of barriers to housing access 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.

Questions related to fair housing obligations detailed above must be addressed to HCR's Fair and Equitable Housing Office (FEHO) at feho@hcr.ny.gov.

E. 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, individuals with disabilities. Recipients must provide people with disabilities with benefits and services that are as effective as those provided to non-disability individuals.

Recipients must ensure that NYS CDBG programs and activities are accessible, both structurally and administratively, to disabled persons. Recipients are responsible for providing access to disability/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:**

   As applicable, Recipient will comply with design and construction requirements under the New York State Human Rights Law ("NYSHRL"), N.Y. Exec. Law §§ 290 et seq., the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601 et seq., Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. §§ 794 et seq., Title III of the Americans With Disabilities Act ("ADA") 42 U.S.C. §§ 12101 et seq., as well as any and all other federal, state and local accessibility provisions.

In addition, 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 disability designated areas).

The regulations for meeting disability accessibility requirements for housing facilities are complex and cannot be described concisely in this chapter. The ADA generally does not cover private residential facilities, although does cover common areas accessible by the public. These facilities are addressed in the Fair Housing Amendments Act, which prohibits discrimination on the basis of disability in selling or renting housing. However, provisions of the Fire Administration Authorization Act of 1992, which became effective October 26, 1992, require that all housing units assisted with Federal funds be equipped with a hard-wired or battery-operated smoke detector that includes appropriate wiring that makes it possible to install visual and/or sensory alarm systems if the need arises. This requirement applies to all new construction, reconstruction, and rehabilitation projects on any multifamily or single-family housing assisted with 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 disability 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 accessible for those with a mobility impairment 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 mobility disability 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 Fair Housing Amendment Act 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 disability 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.

F. 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, 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 are 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.

G. Policy Adopted to Handle Complaints of Discrimination

Discrimination 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.

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

H. Limited English Proficiency

Recipients of CDBG funds are required to take reasonable steps to ensure meaningful access to their programs and activities by limited English proficient ("LEP") persons. As a best practice, Recipients should apply 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.

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 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.

I. Violence Against Women Act

The Violence Against Women Reauthorization Act (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 by clicking here.

II. CONFLICT OF INTEREST

Grantees of state and federal funds have a responsibility to ensure that public resources are used in the best interest of the public and within the confines of the funding source. Conflicts of interest are strictly prohibited as addressed in the Conflict of Interest clause included in NYS Housing Trust Fund Corporation's Office of Community Renewal ("OCR") executed contracts.

A conflict of interest is a situation in which an individual's financial, familial, or personal interests come into actual or perceived conflict with their duties and responsibilities with respect to OCR-administered program activities or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from 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.

Defining a Covered Person: Who is subject to a conflict of interest policy is commonly referred to as a "Covered Person" and can be an employee, consultant, officer, board member or elected official of the OCR grantee and/or their sub grantee. (A sub grantee or subrecipient is an entity chosen by the OCR grantee to assist in the implementation of the OCR funded activity and may include an owner, developer and/or sponsor.) If the Covered Person and/or a family member or business associate has a financial or other interest in the OCR-administered funded activity a conflict of interest may exist.

There are two sets of conflict of interest provisions that may apply to OCR programs:

1. **Procurement** of supplies, equipment, construction, and services.
2. **Non-procurement** activities such as acquisition, disposition and rehabilitation of real property and the provision of assistance with OCR-administered funds by the grantee or the grantee's subrecipient, to individuals, businesses, and other private entities.

Requirements: All OCR-administered program grantees must maintain written standards of conduct governing the performance of their employees and contractors in the selection, award, administration and implementation of grant-funded activities including the contractor procurement process. All procurement transactions must be conducted in a manner providing full and open competition.

Disclosing a Conflict of Interest

Grantees should submit a Conflict of Interest Disclosure Form (https://hcr.ny.gov/conflict-interest-disclosure-form) as soon as they believe a conflict may exist. The disclosure should include the Covered Person and the family member and/or business associate. For the purposes of the OCR Conflict of Interest policy:

- A family member includes (whether by blood, marriage, or adoption) the spouse, parent (including a stepparent), child (including stepchild), sibling (including a stepsibling), grandparent, grandchild, and in-laws of a Covered Person.

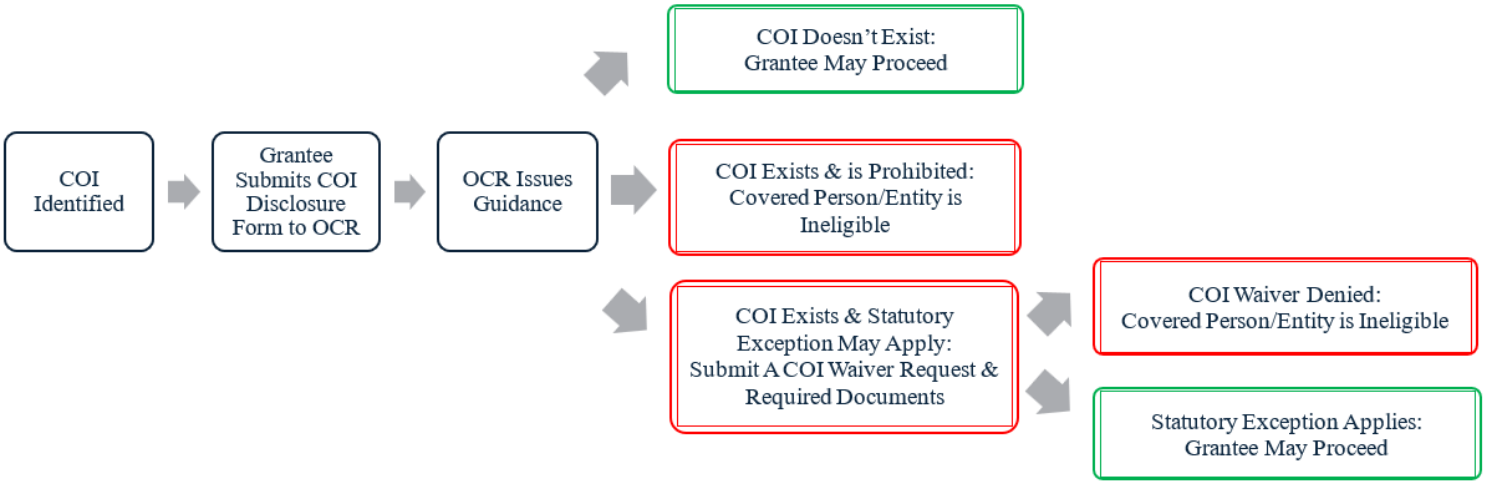
- A business associate includes an officer, director, employee, consultant, partner, or individual that directly or indirectly owns or controls any stock in a firm, partnership, association, limited liability corporation, or not-for-profit corporation.

Upon review of the disclosure, OCR will issue guidance specific to the OCR funding source, and if applicable, instructions and requirements on submitting a conflict of interest waiver request. OCR will review conflicts of interest on a case-by-case basis in accordance with program-specific policies and regulations.

If the conflict of interest has occurred prior to receiving OCR issued guidance and necessary steps were not completed, project costs may be disallowed, and funds may be recaptured.

Submit any Conflict of Interest Disclosure Forms to the OCR Project Manager.

Process Overview



III. INCOME ELIGIBILITY

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 clienteles, 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.

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 income calculator to assist with calculation of the income of beneficiary families.

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

TEMPORARY DISPLACEMENT

Under regulations at 24 CFR 570.606, single family projects or programs funded by NYS CDBG may provide optional relocation assistance to the owner-occupants of a single-family dwelling who are voluntarily displaced and /or temporarily relocated by an activity that is not otherwise covered by either the Uniform Relocation Act or section 104(d) relocation assistance.

In situations where households are involuntarily displaced by CDBG activities, households will be compensated in accordance with the Uniform Relocation Act or section 104(d). Recipients, LPAs, partner developers, and households shall comply with the applicable requirements of the New York State Homes and Community

Renewal Residential Anti-displacement and Relocation Assistance Plan (RARAP) (See below).

Participation in CDBG housing programs is voluntary, therefore relocation is also considered voluntary.

Recipients must structure and phase rehabilitation activities to minimize displacement and temporary relocation to the maximum extent practicable. However, certain CDBG-funded rehabilitation or reconstruction activities may require occupants to temporarily vacate the dwelling for documented health and safety reasons where program activities negatively impact the physical health and safety of the occupants or make the unit unlivable while work is progressing.

Recipients and Local Program Administrators (LPA's) should first determine whether temporary accommodation with friends or family members is available and acceptable to the household. Where no such option is available or appropriate, temporary lodging assistance may be provided in accordance with this policy.

Temporary relocation assistance provided pursuant to this policy is discretionary, subject to the availability of program funds, and determined on a case-by-case basis by the Recipient.

Nothing in this policy shall be construed as creating an entitlement to relocation payments or assistance beyond those otherwise required by applicable federal or state law or as determined by the terms of this policy.

The following are requirements and considerations for providing option relocation assistance.

Terms of Assistance

The following must be considered and documented when deciding if optional relocation is necessary and establishing how much funding may be used.

1. **Relocation Determination and Acknowledgement**

Prior to temporary relocation, the Recipient must demonstrate and document that relocation is voluntary and the homeowner acknowledged and agreed to the temporary relocation arrangement whether it be with family or friends or lodging paid for with grant funds. It is highly recommended that the Recipient or LPA execute a signed contract with the relocated occupants detailing all provisions of the plan. HTFC will not mediate disputes that arise from relocation terms or concerns.

Where a homeowner voluntarily applies for rehabilitation assistance and agrees to the approved scope of work, any temporary relocation necessary to complete the project may be considered, provided that:

- The homeowner is informed in writing that participation in the program is voluntary;

- The temporary relocation is necessary solely to complete rehabilitation or reconstruction activities funded through NYS CDBG;
- The occupant will be permitted to return to the dwelling upon completion of the work; and
- The activity does not otherwise constitute involuntary displacement under applicable federal law

2. Determination of Health and Safety Conditions

Temporary relocation assistance may only be provided when the Recipient or LPA determines that occupancy during rehabilitation or reconstruction would pose a documented, long-term health or safety risk to the occupants. Short-term work that can be completed within a day is not considered cause for temporary relocation.

Examples may include, but are not limited to:

- Lead hazard reduction or abatement activities
- Asbestos-related work
- Structural instability
- Electrical, plumbing, or mechanical hazards
- Lack of functional bathroom or kitchen facilities
- Continued interruption of water, sewer, heating, or electrical service or
- Other rehabilitation activities that render the dwelling unsuitable for safe occupancy during construction

The Recipient or LPA shall maintain documentation supporting the determination that temporary relocation was necessary.

3. Temporary Lodging Allowances

Temporary lodging costs will vary based on the activity, project scope of work, and household needs, but in all circumstances must be reasonable and necessary and fall within the program award budget and original contract amount.

Relocation payments can be charged as an eligible expense from program project funds, subject to the total grant award and HUD regulations. All anticipated temporary relocation costs must be incorporated into the approved project budget or approved budget amendment, as applicable.

Eligible temporary relocation costs are limited to reasonable and necessary lodging expenses directly related to the temporary relocation period. Temporary lodging need not be equivalent to the permanent residence being repaired/replaced, however must be functionally comparable. To that end, the temporary lodging must be:

- Decent, safe and sanitary with appropriate heating;
- Have a separate, ventilated functioning bathroom and kitchen facilities
- Contain unobstructed egress;

- Adequate in size to accommodate the occupants
- Reasonably accessible to the person's place of employment and where feasible should be in the same neighborhood as the homeowner's unit and
- Address any ADA needs of the occupants

Lodging to accommodate pets will be considered if it falls within the budgeted amount available, however it is not required or guaranteed.

The following conditions apply:

- Only reasonable, necessary, and adequately documented lodging costs shall be eligible
- Costs for temporary storage of furniture or personal belongings may be charged as project costs
- Payments must be made directly to the lodging provider, not the homeowner
- Payments to family members or friends providing accommodations are not allowed
- Costs unrelated to temporary lodging, including but not limited to meals, lost wages, transportation, cable, internet, toiletries, entertainment, or other personal expenses, are not be eligible
- Recipients and LPAs that use a rental unit they own and operate to house an occupant during temporary relocation are eligible for reimbursement assuming appropriate invoicing and cost reasonableness.

4. Eligibility Criteria

As detailed throughout this policy, to be eligible for optional temporary relocation assistance:

- Household income must be at or below eighty percent (80%) of Area Median Income (AMI), adjusted for household size, and the household must otherwise meet all applicable CDBG program eligibility requirements;
- The relocated individual(s) must live in the oner-occupied single-family dwelling receiving program assistance as their primary residence
- The Recipient or LPA must determine that temporary relocation is necessary due to documented long-term health or safety conditions
- The homeowner must voluntarily participate in the rehabilitation program and voluntarily agree to the approved scope of work

5. Documentation and Recordkeeping

Recipients and LPAs shall maintain complete records supporting all temporary relocation determinations above and assistance provided pursuant to this policy, including but not limited to:

- Documentation demonstrating the need for temporary relocation
- Written homeowner acknowledgment and voluntary agreement

- Copies of all notices and advisory communications
- Lodging invoices and proof of payment
- Dates of temporary relocation occupancy
- Documentation of OCR approval for any exceptions or extensions and
- Any additional documentation required to demonstrate compliance with applicable federal and state requirements

6. Reimbursement of Costs

Requests for reimbursement of eligible temporary relocation costs shall be submitted to OCR as part of a standard reimbursement request and must include all supporting documentation as proof of the relocation expenses and any additional records requested by OCR.

Costs that do not comply with the above requirements and fall within the project budget will not be reimbursed. Recipients and LPAs must submit support and justification of costs as requested.

Recipients and LPAs remain responsible for ensuring compliance with all applicable federal, state, and program requirements related to temporary relocation activities.

PERMANENT DISPLACEMENT

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 24 CFR 570.606, 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 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 recipients should reference the HOME, FHTF & CDBG Residential Antidisplacement & Relocation Assistance Plan.

V. EXHIBITS

Other Resources

7-1 Links to Applicable Federal and State Regulations
7-2 Links to Outside Agency Forms

Accessibility

7-3 Sample Notice Under the Americans With Disabilities Act
7-4 Sample Grievance Procedure Under the Americans with Disabilities Act

EXHIBIT 7-1

LINKS TO APPLICABLE STATE AND FEDERAL REGULATIONS

Recipients must adhere to any changes made to federal and state laws when applicable

Labor Standards:

Federal Labor Standards Provisions (HUD 4010 Form)

New York State Labor Standards

Semi Annual Labor Standard Report (HUD 4710)

Conflict of Interest:

Conflict of Interest Regulations (24CFR570.611)

Displacement, Relocation and Acquisition:

Uniform Relocation Act (40CFR Part 24)

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

Lead Based Paint:

HUD Lead Safe Housing Rule

Renovation Repair and Painting Rule:

HUD Lead-Based Paint Field Guide

EPA's Renovation, Repair, and Painting Rule

Property Management:

Property Management and Acquisition (24CFR570.505)

Civil Rights:

Section 3 Regulations

Equal Opportunity Requirements:

Title VI of the Civil Rights Act of 1964

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

Minority and Women's Business Enterprises Requirements 2 CFR 200.321

Executive Order 11063

Fair Housing Requirements:

Fair Housing Act

Accessibility and Section 504 Requirements:

Section 504 of the Rehabilitation Act of 1979

Title II of the American's with Disabilities Act of 1990

Architectural Barriers Act of 1968

Build America – Buy America (BABA)

https://www.hudexchange.info/programs/baba/

EXHIBIT 7-2

LINKS TO OUTSIDE AGENCY FORMS

Lead Based Paint
"Protect Your Family from Lead in Your Home" brochure

"EPA Renovate Right" pamphlet

Sample Lead Based Paint Disclosure Form for Sale of Housing

Sample Lead Hazard Evaluation notice

Section 3
Section3 Guidebook

Fair Housing
HUD Fair Housing Information
HCR Affirmatively Furthering Fair Housing guides

Accessibility and Section 504
ADA Guide for Small Towns

ADA Title II Technical Assistance Manual

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

Limited English Proficiency
Language Assistance and Self-Assessment Planning Tool

EXHIBIT 7-3

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 7-4

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.