

**CHAPTER 5
GENERAL PROVISIONS**

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CHAPTER 5 GENERAL PROVISIONS

I. LABOR STANDARDS

A. Introduction

Depending on the type of activity to be undertaken with New York State Community Development Block Grant (NYS CDBG) funding, Recipients may need to comply with either the State Labor Standards required by Article 8 of the New York State Labor Law and/or the Federal Labor Standards as required by the Davis-Bacon Act. **It is the Recipients' sole responsibility to fully understand and comply with the requirements of the labor laws that impact their project prior to implementation of their NYS CDBG Program.** Recipients should contact the appropriate State or Federal agency concerning any issues related to State and/or Federal Labor Standards.

Article 8 of the New York State Labor Law requires Department of Jurisdictions awarding a public work contract to request a state wage rate determination prior to the bidding of a contract. The wage rate determination must be included as part of the bid document.

A "Department of Jurisdiction" includes a state department agency, board or commission; a county, city, town or village; a school district, board of education or board of cooperative educational services; a sewer, water, fire, improvement and other district corporations; a public benefit corporation; and a public authority awarding a public work contract.

"Public work" is construction, reconstruction or maintenance conducted on behalf of the public. The project's primary objective must be to benefit the public and the Department of Jurisdiction is party to a contract involving the employment of laborers, workers or mechanics.

Davis-Bacon Act (40 USC 276a-276a-5) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Department of Labor and are issued in the form of federal wage decisions for each classification of work. **The law is applicable to all construction contracts awarded by Recipients or sub-recipients in excess of \$2,000. Residential rehabilitation contracts involving structures that contain fewer than eight (8) units are exempt from this requirement.** Multi-unit structures that contain eight (8) or more units within the structure regardless of the number of units being rehabilitated and mixed-use properties must comply with the Davis-Bacon Act (i.e. façade work).

For projects subject to the requirements of both Federal and State Labor Standards, both state and federal wage rate determinations must be obtained and included in the bid document for the project. In this case, the contractor is required to pay the higher of the two rates for the particular job classification.

B. Recipient Responsibility

Recipients should fully understand what is required for construction contracts before starting the implementation process for your NYS CDBG project:

- **Recipients must ensure that all construction contracts in excess of \$2,000 comply with all applicable Federal Labor Standards and provisions.**

- Recipients must ensure that all public works contracts awarded by a Department of Jurisdiction comply with all applicable State Labor Standards and provisions.

Recipients must include a copy of the current prevailing wage rate determination in each Request for Bids. **A copy of the bid specifications, proposed contract provisions and evidence that wage rates have been incorporated into the contract must be forwarded to the Recipient's OCR Community/Economic Developer prior to issuing the bids for construction.**

- Recipients may only award contracts to eligible contractors and subcontractors which have accepted the wage rate determination and signed a certification to pay wages on that basis and comply with other labor standards.
- Contractors and sub-contractors must pay the wage rate determined by the Secretary of Labor to be the prevailing rate in that labor market.
- Recipients are required to report all suspected, reported or confirmed violations of over \$1,000 and must require the contractor to prepare a supplemental payroll and make appropriate restitution to affected employees.
- Recipients must conduct confidential interviews with employees to assure compliance with the terms of the Copeland Anti-Kickback Act.
- Recipients must develop compliance and enforcement procedures that ensure all applicable labor standards requirements are met.
- Recipients must complete all required Federal and State Labor Standards compliance reports.
- Recipients must send a copy of the wage schedule and other related documents that were included in the construction contracts (for all prime contractors) to their Office of Community Renewal (OCR) Community/Economic Developer.
- Recipients must submit Semi-Annual Labor Standard Enforcement Reports to OCR. OCR is required to submit these reports to HUD for projects subject to Davis-Bacon.

C. Labor Standards Administration

In order to comply with labor standard requirements, Recipients must develop a compliance and enforcement procedure that ensures all applicable labor standard requirements are met. The following steps will assist Recipients in ensuring compliance with applicable labor standards provisions:

Step 1 - Determine Applicability

The first and sometimes most difficult step is determining whether and to what extent the NYS Labor Law and/or Davis-Bacon wage standards apply to a particular contract or project. Most HUD-assisted construction work is covered by Davis-Bacon but there are some exceptions. The best and safest approach is whenever the contract project involves construction work that is valued in excess of \$2,000 to assume that Davis-Bacon rates will be applicable and then look more closely to see if there's any reason for non-coverage.

Step 2 - Designate a Labor Standards Compliance Officer

Recipients must designate a Labor Standards Compliance Officer who will be responsible for prevailing wage compliance. This person will serve as liaison between the contractor, the project engineer, and OCR and have overall responsibility for coordinating and ensuring compliance with all appropriate labor standards regulations and ensuring that an accurate filing system is maintained. The officer's name must appear on all requests, notices and correspondence related to labor standards regulations and project compliance.

Step 3 - Request Wage Rate Determination

State Prevailing Rate Schedule

The Bureau of Public Works of the NYS Department of Labor issues New York State Prevailing Rate Schedules annually on July 1 for each locality within New York State. **Recipients must request a Prevailing Wage Schedule for their project from the appropriate regional office of the NYS Bureau of Public Works (www.labor.state.ny.us/workerprotection/publicwork/PWContactUs.shtm).** Request for wage determinations should be submitted to the NYS Department of Labor, Bureau of Public Works within 90 days prior to the scheduled bid opening date. Prevailing Rate Schedules list the hourly rates for the trades and occupations of the workers to be employed on the public work project. The Bureau of Public Works can provide additional guidance on the process and procedures required for compliance with NYS Labor Law.

Federal Wage Determinations – Davis-Bacon

Federal wage rate determinations are issued by the U.S. Department of Labor for each State by means of a general wage decision issued early each January and subsequent periodic modifications throughout the balance of the year, in the four basic categories within the construction industry: Heavy, Highway, Building, and Residential. These determinations are meant to be all-inclusive and representative of an area's (the area in which the project is located) prevailing basic wage and fringe benefits for every type of job classification of laborers and mechanics within their respective industry category. The bid specifications and/or the contract for each project subject to Davis-Bacon wage rates must contain both a Davis-Bacon wage decision and its own labor standards clauses. These are usually bound into the contract specifications.

Recipients must obtain a wage determination from the U.S. Department of Labor.

To obtain a wage determination from the U.S. Department of Labor, Recipients must access the Government Printing Office website at <http://www.wdol.gov/>. Recipients **must send a copy of the wage determination to their OCR Community/Economic Developer including evidence that the wage determination was verified prior to the bid opening.**

In most cases, NYS CDBG projects will only use the heavy prevailing wage rates. However, in certain cases, more than one wage determination should be included in the bid document by the project engineer. A guideline from the HUD Labor Relations Office, referred to as the 25% Test, can generally be followed to determine when more than one wage determination should be used for NYS CDBG-funded construction contracts. For instance, this "rule of thumb" provides that if building construction is a "significant component" of the project (the budget for building construction exceeds 25% of the total anticipated construction contract amount), then the project

engineer should include both Heavy and Building rates in the bid document. The same 25% Test concept would apply to a public facility project which is principally building construction, such as a sewage treatment plant, but which also includes more than 25% of non-building construction activity. In such cases, the project engineer should include both Building and Heavy prevailing wage rates in the bid document. This is a guideline, not a rigid requirement. If your project appears to fall under this 25% Test, consult your OCR Community/ Economic Developer for guidance.

For further information on this subject see: http://www.hud.gov/offices/olr/olr_9603.cfm

Unclassified Workers

In the event the construction project will involve laborers or mechanics with job classifications that do not appear on the wage determination provided, the recipient must make a request to OCR for an appropriate classification. The Report of Additional Classification and Wage Rate Form, HUD Form 4230A (www.hud.gov/offices/olr/olrform.cfm) must be used for this request.

Step 4 - Prepare the bid documents/contract

Both the federal and state labor standard regulations require specific language be included in all solicitations for bids and contracts for projects that must comply with labor standard regulations. Exhibit 5-12 provides a link to the Federal Labor Standards provisions and the State Labor Standards provisions. Additionally, each bidder and the contractor selected are required to provide specific certifications assuring the Recipient compliance with the prescribed labor standards requirements. In addition to the required labor provisions, all contracts must also include the required contract provisions as outlined in Chapter 4, Exhibit 4-1 and must comply with all required bonding provisions.

Step 4a. - Verify the Wage Rate in the Solicitation for Bids

A copy of the current wage rate determinations must be included in any solicitation for bids. **Recipients must verify that the determination is the most current available from the Department of Labor.**

Federal Wage Determinations have the following time limitations:

- a. If a contract is not executed within 90 days of the bid opening, any applicable later modifications to the original wage determination must be included in the contract; or
- b. If construction has not commenced within 90 days of the bid opening, any applicable later modifications to the original wage determination must be included in the contract.

According to the HUD Labor Relations Office, a Change Order, rather than rebidding, can incorporate the modifications under items a) and b) above.

Step 4b. - Verify Bidder Eligibility

Debarment, Suspended or Ineligible Contractors

Persons who have been declared debarred or suspended from participation in federally funded programs by a federal government agency are ineligible for participation in the NYS CDBG

program. The U.S. General Services Administration maintains the List of Parties Excluded from Federal Procurement and Non procurement Programs for the federal government (www.epls.gov/). This list includes contractors who have been found in serious violation of Federal Labor Standards or other requirements, and therefore have been debarred, suspended, or otherwise declared ineligible for participation in federally assisted construction projects. Use of this list is required for all HUD-financed programs to verify eligibility status of contractors.

Once bids are received for a project, Recipients must verify a contractor's eligibility by reviewing the List of Parties Excluded from Federal Procurement and Non procurement Programs to verify the eligibility status of the contractors. Persons who have been declared debarred or suspended from participation in New York State public works projects by the Bureau of Public Works are listed in the NYS Bureau of Public Work's List of Employers Ineligible to Bid on or Be Awarded Any Public Work Contract. This list can be obtained at <http://www.labor.state.ny.us>. All proposed prime contractors and consultants must be verified for eligibility, by the Recipient, prior to awarding any NYS CDBG-funded contracts. In addition, participants in contracts associated with a NYS CDBG project must certify they and their principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible. This step should take place as soon as possible following the bid opening, and before awarding any construction or consultant contract.

Recipients must not make any contract award or permit any contract award to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in NYS public works projects or federal assistance programs.

Step 4c. - Reverify the Wage Rate

For projects where Davis-Bacon is applicable, not less than 15 business days prior to the bid opening, the Recipient must contact the U.S. Department of Labor to determine whether the wage rate decisions included in the bid solicitation are still current. In those instances where the U.S. Department of Labor has issued a modification of the earlier wage determination, Recipients must provide the new rate decision to all potential bidders by addendum, if a reasonable amount of time is allowed for this procedure.

Step 5 - Evidence of Compliance

For projects where the Federal Labor Standards are applicable, Recipients must submit evidence that executed contracts for all contractors (prime and sub) contain federal labor standards provisions. **A copy of the bid specifications, proposed contract provisions, and evidence that the wage rates have been incorporated into the contract must be forwarded to the Recipient's OCR Community/Economic Developer prior to issuing the bids for construction.** Non-receipt of the required documents will delay and may eventually suspend the processing for request for funds.

Step 6 - Inform Contractors of Labor Standard Requirements by Conducting a Preconstruction Conference

Following the contract award for construction projects involving NYS CDBG funds, OCR recommends that the Recipient hold a pre-construction conference. The Recipient and prime contractor should include all subcontractors in the discussions to ensure that they are aware that they must also comply with the Labor Standards and equal employment opportunity provisions. The project architect and/or engineer (if applicable) should attend the conference to cover the technical or other contract related issues for the Recipients. The Recipient's project manager will cover the federal or state compliance issues.

The pre-construction conference represents a key opportunity prior to the beginning of project construction for giving instructions to the contractor. **A well-planned and executed conference can help prevent problems and misunderstandings that could delay the project at a later date.**

To assist Recipients in preparing for and conducting the pre-construction conferences for NYS CDBG-funded construction contracts, Federal Labor and Civil Rights Requirements Exhibit 5-2 and a Pre-construction Conference Planning Guide Exhibit 5-1, have been provided. The Guide provides a general format to be used as an agenda, supplemental information on labor standards and civil rights requirements, and a blank conference checklist and agenda, which should be followed to record minutes for the conference.

At a minimum, pre-construction conferences should include the following topics of discussion, which should outline the contractors or sub-contractors responsibilities:

- prevailing wage requirements, including posting prevailing wages continually at the job site;
- employment of apprentices or trainees;
- weekly pay for employees;
- submission of weekly payrolls Form WH-347, www.hud.gov/offices/olr/olrform.cfm;
- penalties if prevailing wage requirements and labor standards requirements are not complied with;
- payment of overtime;
- equal employment opportunity requirements;
- employment of minorities and local workers;
- Section 3 requirements;
- use of minority and women's business enterprises;
- notices that must be posted at the job site;
- the use of bona fide, registered subcontractors; and
- key responsibilities of the contractor, engineer/architect, and project manager.

In order to document discussions that occur during the pre-construction conference, the Recipient should prepare minutes of the conference. A verbatim record is not necessary, as the names of the persons who attend and a summary of the comments and issues covered is sufficient. If minutes are recorded, a copy of the minutes should be retained in the files. Recipients should provide copies of the minutes to each contractor representative who attends the pre-construction conference. This helps document that the key requirements have been covered.

Step 7 - Monitor Contractor Performance

It is the Recipient's responsibility to monitor construction activities to ensure that all required notices are posted prominently at the construction site, that the contractor's weekly payroll reports are accurate and submitted weekly as required, and that the contractor is complying with applicable labor standards. This monitoring function can be accomplished through the following activities:

- **conduct on-site inspections to ensure that required notices and copies of the applicable wage rates are posted at reasonably accessible locations for the workers to review;**
- **compare weekly payroll reports to the prevailing wage rate decision;**
- **conduct interviews with construction employees to confirm job classifications and pay rates (www.hud.gov/offices/olr/olrform.cfm). Interviews should be conducted at least once a month throughout the construction period with a representative of each classification of laborers involved in the construction and at least 10 percent of the workforce;**
- **initial and date each payroll to document that the payroll review has been completed on a weekly basis;**
- **implement a process that authorizes payment to the contractor after specific milestones are met; and**
- **certify that the contractor has complied with all labor and civil rights requirements.**

Use of Volunteers

The Housing and Community Development Act exempts "volunteers" from Davis-Bacon Act requirements on NYS CDBG program funded projects. Davis-Bacon wage rates shall not apply to any individual that:

- performs services for which the individual volunteered;
- does not receive compensation for such services, or is paid expenses, reasonable benefits, or a nominal fee for such services; and
- is not otherwise employed at any time in the construction work.

The Project Manager should use and obtain a signed Volunteer Certification Form, Exhibit 5-3, for each volunteer worker, other than the contractor's employees, performing work on NYS CDBG-funded project activities.

Step 8 - Investigate Labor Standards Violations

Violations of labor standards requirements may surface as the result of either monitoring or through a specific complaint by a construction worker. In either instance, the Recipient is responsible for thoroughly investigating and documenting the alleged violation.

If a violation is suspected, the Recipient should immediately notify their OCR Community/Economic Developer and work with the contractor on an informal basis to resolve the problem and allow a reasonable time for correction. Where the contractor refuses to address the violation or continues to violate labor standards provisions, your OCR Community/Economic Developer should be immediately notified in writing of the violation. The contractor should be informed that an unresolved finding of labor standards violation could result in disbarment and make the contractor ineligible for participation in NYS CDBG assisted construction projects in the future.

D. Davis-Bacon Reporting Requirements

Twice per year, Recipients undertaking activities that require compliance with Federal Labor Standards (Davis-Bacon and the related Acts) must submit a Semi-Annual Labor Standards Enforcement Report to OCR, who will notify Recipients directly if a report is due for a CDBG funded project. Reports are due within ten (10) days of the end of the reporting periods, which are October 1 through March 31 and April 1 through September 30. Information provided on this report will be submitted to HUD to demonstrate compliance with federal requirements. Recipients who fail to submit the reports in a timely manner are at risk of having funds suspended for all open grants until the report is received and approved by OCR.

II. CONFLICT OF INTEREST

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). This section states:

“When procuring property or services to be paid for in whole or in part with NYS CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts (Other conflicts of interest are covered by Sec. 570.489(h)). The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, executive orders and implementing regulations.”

OCR has elected to adopt the federal procurement standards implemented at 24 CFR part 85. Regarding conflict of interest issues, 24 CFR 85.36(b)(3) provides:

“Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,*
- (ii) Any member of his immediate family,*
- (iii) His or her partner, or*
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.*

The grantee’s or subgrantee’s officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or

conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest."

These provisions prohibiting conflicts arising out of procurement activities permit no exceptions and therefore, must be avoided. The second set of provisions applicable to state administered NYS CDBG non entitlement funds is found at 24 CFR 570.489(h), which provides:

(1) Applicability

- (i) In the procurement of supplies, equipment, construction, and services by the States, units of local general governments, and subrecipients, the conflict of interest provisions in paragraph (g) of this section shall apply.
- (ii) In all cases not governed by paragraph (g) of this section, this paragraph (h) shall apply. 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.

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

(3) 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.

(4) Exceptions: Thresholds 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;
 - (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; and
 - (vii) 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.
4. Conflict of Interest Disclosure (Refer to Exhibit 5-16)

Refer to Exhibit 5-17 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. PROJECT SIGNS

OCR requires a project sign at the site of all construction projects which involve more than \$50,000 in NYS CDBG funds. The expense associated with meeting this requirement is an eligible expense and may be charged as a construction or an administrative expense.

A. Sign Specifications

Installation

1. Install sign at the site within one week of the start of construction.
2. Erect sign in a prominent location, secure from vandalism.

Materials

1. Signboard: 4' X 8', 3/4" plywood, MDO B-B EXT-APA.
2. Primer: As recommended by finish coat manufacturer for the substrate and finish material.
3. Lettering and striping shall be uniform with sharp, neat profiles.
4. "Optional Information" included on sign shall be visually subordinate to other information provided.
5. Supports: Treated D.F. posts.

Maintenance and Removal

1. Maintain the sign plumb and level for the duration of the work.
2. The sign must be removed from the property 60 days after final payment or project completion, whichever is later.

B. Sign Design

The sign design layout must follow the specifications available on the HCR website, <http://www.nyshcr.org/Funding/SignSpec/>

C. Sign Placement

- With respect to placement, traffic control signs, regulatory, warning, and guide signs have a higher priority than OCR signage
- In no case shall these signs be placed such that they obscure road users' view of other traffic control devices.
- OCR signs should be placed where they can be easily identified with the corresponding projects.
- If the placement of OCR signs conflicts with newly installed higher priority signs, or traffic signals, or temporary traffic control devices, or other priority devices, the sign should be relocated.
- Due to public safety concerns, OCR signs should not be allowed at the following locations:
 - On the front, back, adjacent to or around any traffic control device, including traffic signs, signals, changeable message signs, traffic control device posts or structures, or bridge piers.
 - At key decision points where a driver's attention is more appropriately focused on traffic control devices, roadway geometry, or traffic conditions. These locations include, but are not limited to exit and entrance ramps, intersections controlled by traffic signals or by stop or yield signs, highway-rail grade crossings, and areas of limited sight distance.

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 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 (www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm) and 49 CFR Part 24 for detailed information on the specific displacement, relocation and acquisition requirements.

V. LEAD BASED PAINT

EFFECTIVE MAY 6, 2014, THE PRESUMPTION OF LEAD ON ANY NYS CDBG PROGRAM FUNDED HOUSING ACTIVITY WILL NO LONGER BE PERMITTED.

A. Renovation, Repair and Painting Rule

Common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children. To protect against this risk, on April 22, 2008, EPA issued a [rule \(40CFR745.80\) requiring the use of lead-safe practices](#) and other actions aimed at preventing lead poisoning. Under the rule, beginning April 22, 2010, and updated October, 2011, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 regardless of the source of funding must be certified and must follow specific work practices to prevent lead contamination.

EPA requires that firms performing renovation, repair, and painting projects that disturb lead-based paint in pre-1978 homes, child care facilities and schools be certified by EPA and that they use certified renovators who are trained by EPA-approved training providers to follow lead-safe work practices.

EPA and the HUD rules apply to all housing rehabilitation activities.

B. Lead Safe Housing Rule

All NYS CDBG-funded housing rehabilitation and home ownership projects must adhere to the Residential Lead-Based Paint Hazard Reduction Act of 1992 (24 CFR Part 35). These regulations must be carefully followed to ensure that exposure to lead hazards is reduced in any residential property to be rehabilitated or purchased. The regulations can be found at <http://www.hud.gov/offices/lead/enforcement/lshr.cfm>.

HUD has created an Interpretive Guidance that can be used to address many of the questions that have arisen as a result of the implementation of these new regulations. The Interpretive Guidance can be found at: <http://www.hud.gov/utilities/intercept.cfm?/offices/lead/library/enforcement/LSHRGuidance21June04.pdf>

For questions that cannot be answered through the regulations or Interpretive Guidance, Recipients should submit their questions in writing to their OCR Community/Economic Developer. OCR will respond in writing.

EPA and the HUD rules apply to all housing rehabilitation activities.

C. Types of Housing Covered

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

D. Types of Housing Not Covered

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

E. Notices and Pamphlets

As per 24CFR Part 35, Recipients undertaking housing rehabilitation and homeownership activities are required to provide appropriate lead hazard information pamphlets and notices to the owners and occupants of the residential structure. The ***Protect Your Family From Lead in Your Home*** pamphlet http://www.hud.gov/offices/lead/library/enforcement/pyf_eng.pdf and the ***EPA Renovate Right*** pamphlet <http://www2.epa.gov/lead/lead-safe-certified-guide-renovate-right> must be provided to all owners, potential owners, and occupants of the residential structure to be purchased or that is undergoing rehabilitation.

In addition to the lead hazard information pamphlet, Recipients are also required to provide specific notices when lead based paint evaluation and/or hazard reduction activities are being undertaken. Recipients must provide the appropriate notice(s) (Exhibit 5-8) to all owners and occupants of the residential structure where the activities are being undertaken.

F. Calculating Federal Rehabilitation Assistance

Prior to beginning any lead hazard evaluation or reduction activities, Recipients must determine the level of Federal assistance being provided to a specific unit. Lead-based paint requirements for rehabilitation vary based on the amount of federal rehabilitation assistance (as defined in 24 CFR 35.915), and the calculation can affect (1) the requirement for a risk assessment and (2) the type of lead hazard controls required.

The three categories are:

- Assistance of up to and including \$5,000 per unit;
- Assistance of more than \$5,000 per unit up to and including \$25,000 per unit; and
- Assistance of more than \$25,000 per unit.

The amount of federal rehabilitation assistance is based on two calculations, and the lesser of the two is used to determine the category. The two calculations are:

1. **The average Federal housing assistance per assisted dwelling unit** – Federal assistance includes all Federal funds that are assisting the project, regardless of the use of the funds. Federal funds being used for acquisition, construction and project soft costs are included.

The following are examples of programs that are considered Federal assistance:

- HUD grant programs, including CDBG, HOME, HOPE
- Special Needs programs such as HOPWA, ESG, Supportive Housing, Shelter Plus Care and other McKinney programs
- Section 8 and other HUD rental assistance programs
- Dept. of Agriculture's Rural Development funds

The following are examples that are not considered Federal assistance for the purpose of this calculation:

- Proceeds from the sale of Low-Income Housing Tax Credits
- Proceeds from FHA mortgage insurance, including rehab funds such as 203(k)
- Weatherization Assistance Program (separate guidance has been issued)
- Fannie Mae and Freddie Mac programs
- Federal Home Loan Bank programs

If you are using Federal funds on a project and the program is not clearly identified as included or excluded by these lists, contact OCR to determine applicability before proceeding.

2. **The average hard costs of rehabilitation per unit** – The hard costs of rehabilitation include all hard costs, regardless of source, except for the costs associated with lead-based paint hazard evaluation and hazard reduction activities (as explained below). All other hard costs of rehabilitation are to be included, regardless of whether the source of funds is Federal or non-Federal, public or private.

The following are not hard costs and need not be included in this calculation:

- Soft costs, including financing fees, credit reports, title binders and insurance, recordation fees, transaction taxes, impact fees, legal and accounting, appraisals, architectural and engineering fees
- Administrative costs
- Relocation costs
- Environmental review costs
- Acquisition costs
- Also, the costs of complying with the LBP Rule that are not normally incurred as part of rehabilitation may be excluded from this calculation, including such things as:
 - Lead evaluation costs (risk assessments, visual assessments or inspections)
 - Worksite preparation
 - Occupant protection, including relocation, storage or protection of belongings
 - Interim controls, standard treatments, or abatement activities that are being done only for purposes of lead hazard control and would not be done in the normal course of the rehabilitation except for the LBP requirements
 - The incremental costs of a rehab activity that are the result of safe work practice requirements (e.g., if the standard window replacement cost is \$275 per window without LBP, but \$310 when using safe work practices in an interim control job, the incremental cost of \$35 per window may be treated as an additional LBPH reduction cost and excluded from the calculation of rehabilitation hard costs)
 - Waste handling attributable to lead-based paint hazard reduction.
 - Specialized cleaning designed to remove LBP dust
 - Clearance activities, including visual assessments, dust wipes, and reports

These LBP hazard reduction costs may be excluded from the calculation of rehabilitation hard costs (the second of the two required calculations), but are not excluded from the calculation of Federal housing assistance (the first of the two calculations) if they are paid with Federal funds.

For a residential property that includes both federally assisted and non-assisted units, these calculations apply only to the federally assisted units. The rehabilitation costs and Federal assistance associated with non-assisted units are not included in the calculations of the average per unit hard costs of rehabilitation and the average Federal assistance per unit, but the pro rata share of the exterior, common area, and common systems costs are included. For multi-unit projects with both federally-assisted and non-assisted units, rehabilitation hard costs per unit are calculated as follows:

1. In-unit rehabilitation hard costs for assisted units divided by the number of federally-assisted units in the project; plus
2. Rehabilitation hard costs for common areas and exterior surfaces divided by the total number of units in the project.

Exhibit 5-9 is provided as the form for documenting the amount of Federal Rehabilitation Assistance and evidence of this calculation must be contained in every project file.

G. Lead Based Paint Evaluation and Hazard Reduction Requirements

For all residential properties receiving Federal housing rehabilitation assistance up to and including \$25,000, Recipients must complete the following activities:

1. Conduct lead based paint testing on the entire dwelling unit including surfaces to be disturbed, deteriorated surfaces and friction and impact surfaces and all surfaces expected to be disturbed or replaced during rehabilitation activities.
2. Perform a lead based paint risk assessment in the dwelling units receiving Federal assistance and in associated common areas and exterior painted surfaces in accordance with 24CFR35.1320(b) and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 before rehabilitation begins.
3. Risk assessors must use standards for determining dust-lead hazards and soil-lead hazards that are at least as protective as those promulgated by the EPA at 40 CFR 745.227(h).
4. If lead testing indicates the presence of lead based paint hazards, implement safe work practices during rehabilitation work in accordance with 24CFR35.1350 and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 and repair any paint that is disturbed and all lead based paint hazards.
5. After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the housing unit(s) in accordance with 24CFR35.1340.

For Residential property receiving more than \$25,000 per unit in Federal rehabilitation assistance, Recipients must complete the following:

1. Conduct lead based paint testing on the entire dwelling unit including surfaces to be disturbed, deteriorated surfaces and friction and impact surfaces and all surfaces expected to be disturbed or replaced during rehabilitation activities.
2. Perform a lead based paint risk assessment in the dwelling units receiving Federal assistance and in associated common areas and exterior painted surfaces in accordance with 24CFR35.1320(b) and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 before rehabilitation begins.
3. Risk assessors must use standards for determining dust-lead hazards and soil-lead hazards that are at least as protective as those promulgated by the EPA at 40 CFR 745.227(h).
4. If lead testing indicates the presence of lead based paint hazards, implement safe work practices during rehabilitation work in accordance with 24CFR35.1350 and EPA Renovator, Repair and Painting rules at 40 CFR Part 745 and abate any paint that is disturbed and all lead based paint hazards.
5. After completion of any rehabilitation disturbing or abating painted surfaces, perform a clearance examination of the housing unit(s) in accordance with 24CFR35.1340.

H. Lead Based Paint Inspections and Paint Testing

For projects requiring lead-based paint inspections and paint testing, Recipients must ensure that lead-based paint inspections and paint testing are performed in accordance with 40 CFR 745.324 or 40 CFR 745.227(b) and (h). For any paint inspections and paint testing on deteriorated paint surfaces or surfaces to be disturbed or replaced, Recipients must ensure that the paint inspection and paint testing is performed by an EPA certified lead-based paint inspector or risk assessor.

I. Risk Assessments

For projects requiring risk assessments, Recipients must ensure that risk assessments and lead-hazard screenings are performed in accordance with 40 CFR 745.227(c), (d), and (h). Risk assessors must use standards for determining dust-lead hazards and soil-lead hazards that are at least as protective as those promulgated by the EPA at 40 CFR 745.227(h). Recipients must ensure that lead-hazard screens are performed in accordance with 40 CFR 745.227(c). HUD strongly recommends that lead-based paint inspectors, risk assessors, and sampling technicians provide a plain-language summary of the results suitable for posting or distribution to occupants. Recipients must also be in compliance with HUD Risk Assessment requirements at 24 CFR 35.1320(b).

Recipients are responsible for reviewing the risk assessment report.

J. Interim controls.

Interim control measures include paint stabilization of deteriorated paint, treatments for friction and impact surfaces, dust control, and lead-contaminated soil control. When conducting interim controls, Recipients must ensure the following:

1. Only those interim control methods identified as acceptable methods in a current risk assessment report shall be used to control identified hazards.
2. Occupants of dwelling units where interim controls are being performed shall be protected during the course of the work in accordance with 24CFR35.1345.
3. Clearance testing shall be performed at the conclusion of interim control activities in accordance with 24CFR35.1340.
4. A person performing interim controls must be trained in accordance with the hazard communication standard for the construction industry issued by the Occupational Safety and Health Administration of the U.S. Department of Labor at 29 CFR 1926.59, and either be supervised by an individual certified as a lead-based paint abatement supervisor or have completed successfully an approved lead-safe work practices course.

K. Abatement

If a project meets the level of assistance that requires abatement of all interior lead hazards, abatement must be performed in accordance with 40 CFR 745.227(e) and must be completed by achieving clearance in accordance with 24CFR35.1340. If encapsulation or enclosure is used as a method of abatement, ongoing lead-based paint maintenance activities shall be performed in accordance with 24CFR35.1355. Abatement of an intact, factory-applied prime coating on metal surfaces is not required unless the surface is a friction surface.

L. Clearance

Recipients that conduct any form of lead hazard control work must ensure that the work is completed, cleaned, and that the unit meets the clearance requirements as outlined in 40CFR745.227 and 24CFR35.1340.

M. Allowances for presumption of lead

For Recipients which are undertaking well and septic replacement programs and that is the only activity that is undertaken, the OCR will allow presumption based on the following:

- Under 35.115(a)(8), “Any rehabilitation that does not disturb a painted surface” is exempt from the Rule. If no painted surface is disturbed by the scope of work, the Rule does not apply and no risk assessment is triggered, regardless of the cost.
- Well and septic activities and lateral connection assistance activities may qualify under this exemption, unless plumbing connections through painted surfaces are included in the scope of work.
- The “de minimis” exception in 35.1350(d) does not qualify the project as “exempt”. If any painted surface is disturbed or repaired, the Rule is triggered.
- Projects that involve well and septic or lateral connections only must clearly address this exception to the presumption standard in the approved Lead Based Paint Compliance Plan.

For Recipients which are undertaking any single housing rehabilitation project which results in a total project cost of less than \$5,000, the OCR **MAY** allow the presumption standard,

- In consultation with the OCR **PRIOR** to undertaking the activity.
- Further consultation with the assigned Community Developer may be warranted on a case-by-case basis.

N. Lead Based Paint Compliance Plan and Certification

Effective June 1, 2014, the OCR will require Recipients of any CDBG housing assistance to submit Lead Based Paint Compliance Plan and a Lead Based Paint Compliance Plan Certification that will assist to further assure compliance with all applicable lead based paint regulations at 24 CFR Part 35 and 40 CFR Part 745, EPA rules as adopted by HUD.

To assist with this, the OCR has provided two Certification Forms:

1. Form 5-1 CDBG LBP Compliance Plan Certification Rehabilitation or Homeownership/Acquisition Assistance with Rehabilitation
2. Form 5-2 CDBG LBP Compliance Plan Certification Homeownership/Acquisition Assistance (no rehabilitation of any form)

Forms are available on the OCR website, <http://www.nyshcr.org/Forms/NYS-CDBG/>.

Lead Based Paint Plan and Certifications must be submitted prior to undertaking any housing activity that is subject to lead based paint compliance.

VI. PROPERTY MANAGEMENT

A. Introduction

Recipients must comply with the federal requirements for the management and disposition of property acquired in whole or in part with NYS CDBG funds. The treatment and disposition of property purchased with NYS CDBG funds will depend on the type of property, personal or real.

Recipients are responsible for any property acquired in whole or in part with NYS CDBG funds. Recipients must:

- Maintain a physical inventory of all property, both real property and equipment;
- Reconcile property records at least once every two years;
- Maintain a control system to ensure safeguards to prevent loss, damage, or theft of property. Any loss, damage, or theft must be investigated;
- Develop adequate maintenance procedures to keep property in good condition; and
- Establish proper sales procedures that will ensure the highest possible return when the sale of real property is necessary.

B. Real Property

Real property is the land, including improvements to the land, structures, property and appurtenances. Real property does not include moveable machinery and equipment.

The regulations governing real property apply to real property within the Recipient's control which was acquired or improved in whole or in part using NYS CDBG funds in excess of \$25,000. These standards shall apply from the date NYS CDBG funds are first spent for the property until five years after closeout of the grant from which the assistance to the property was provided.

1. Title - Title to real property acquired under a grant will vest in the Recipient upon acquisition.
2. Use - Except as otherwise provided by federal statutes, real property will be used for the originally authorized purpose as long as needed for that purpose, and the Recipient shall not dispose of or encumber its title or other interests.
3. Disposition - When real property is no longer needed for the originally authorized purpose, the Recipient will request disposition instructions from the NYS CDBG program. The instructions will provide for one of the following alternatives:
 - a. Retention of Title - Retain title after compensation to the NYS CDBG program. The amount due the program will be computed by applying NYS CDBG's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a Recipient is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be issued as an offset to the cost of the replacement property.
 - b. Sale of Property - Sell the property and compensate the NYS CDBG program. The amount due the NYS CDBG program will be calculated by applying NYS CDBG's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a Recipient is directed to sell property, sales procedures shall be followed that provide competition to the extent practicable and result in the highest possible return.
 - c. Transfer of Title - Transfer title to the NYS CDBG program or to a third-party designated/approved by OCR. The Recipient shall be paid an amount calculated by

applying the Recipient's percentage of participation in the purchased of the real property to the current fair market value of the property.

C. Equipment

Equipment is tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

1. Title
Title to equipment acquired under a grant will vest in the Recipient upon acquisition.
2. Use
 - a. Equipment shall be used by the Recipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a federal agency.
 - b. The Recipient shall also make equipment available for use on other projects or programs currently or previously supported by the federal government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the NYS CDBG program. User fees should be considered, if appropriate.
 - c. The Recipient must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by federal statute.
 - d. When acquiring replacement equipment, the Recipient may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property subject to approval.
3. Management Requirements - Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, at a minimum, meet the following requirements:
 - a. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property, Real Property Register, Form 10-5.
 - b. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
 - c. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of property. Any loss, damage, or theft shall be investigated.
 - d. Adequate maintenance procedures must be developed to keep the property in good condition.

- e. If the Recipient is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
4. Disposition - When original or replacement equipment acquired under a grant is no longer needed for the original project or program or for other activities currently or previously supported by a federal agency, disposition of the equipment will be made as follows:
 - a. Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligations.
 - b. Items of equipment with a current per-unit fair market value in excess of \$5,000 may be retained or sold and the NYS CDBG program shall have a right to an amount calculated by multiplying the current market value or proceeds from sale, by NYS CDBG's share of the equipment.
 - c. In cases where a Recipient fails to take appropriate disposition actions, the NYS CDBG program may direct the Recipient to take excess and disposition actions.
5. Federal Equipment - In the event a Recipient is provided federally-owned equipment:
 - a. Title will remain vested in the federal government.
 - b. Recipients will manage the equipment in accordance with federal agency rules and procedures and submit an annual inventory listing.
 - c. When the equipment is no longer needed, the Recipient will request disposition instructions from the federal agency.
6. Right to Transfer Title - HUD may reserve the right to transfer title to the federal government or a third party named by the NYS CDBG program when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:
 - a. The property shall be identified in the grant or otherwise made known to the Recipient in writing.
 - b. The NYS CDBG program shall issue disposition instruction within 120 calendar days after the end of the federal support of the project for which it was acquired. If the NYS CDBG program fails to issue disposition instructions within the 120 calendar-day period, the Recipient shall follow Item D above, Disposition.
 - c. When title to equipment is transferred, the Recipient shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

D. Supplies

Supplies are all tangible personal property other than equipment.

1. Title - Title to supplies acquired under a grant will vest, upon acquisition, in the Recipient.

2. Disposition - If there is a residential inventory of unused supplies exceeding \$5,000 in total aggregate fair market upon termination or completion of the award, and if the supplies are not needed for any other federally-sponsored programs or projects, the Recipient shall compensate the NYS CDBG program for its share.

E. Change of Use of Real Property

The regulations governing the change of use of real property apply to real property within the Recipient's control (including activities undertaken by subrecipients) which was acquired or improved in whole or in part using NYS CDBG funds in excess of the threshold for small purchase procurement. These standards shall apply from the date NYS CDBG funds are first spent for the property until five years after closeout of the Recipient's grant.

1. A Recipient may not change the use or planned use of any such property (including beneficiaries of such use) from that for which the acquisition or improvement was made, unless the Recipient provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:
 - a. The new use of the property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or
 - b. The requirements in paragraph 2 below are met.
2. If the Recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use that does not qualify under paragraph 1(a) above, it may retain or dispose of the property for the changed use if the Recipient's NYS CDBG project is reimbursed or the NYS CDBG program is reimbursed, at the discretion of the state. The reimbursement shall be in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-NYS CDBG funds for acquisition of, and improvements to, the property, except that if the change in use occurs after grant closeout but within five years of such closeout, the Recipient shall make the reimbursement to the NYS CDBG program account.
3. Following the reimbursement of the NYS CDBG program in accordance with paragraph 2 above, the property no longer will be subject to any NYS CDBG requirements.

VII. 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;
- 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. Program Benefits (Section 3 of The Housing and Urban Development Act of 1968, as amended, 24CFR Part 135)

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 who 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.

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 www.nysdhcr.gov/Forms/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.

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/eo4/pdf/EE04Form.pdf>). 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 should 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;
- 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;

- 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 Section 3 and MBE/WBE forms are available on HCR's website at <http://www.nysdhcr.gov/Forms/FairHousing/>. 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?

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;
- 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.

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 of the community are aware of fair housing requirements, especially realtors, landlords, financial institutions, and minority households;
- Develop a fair housing assistance program to make housing opportunities known to minorities, to monitor compliance, and to refer discrimination complaints to the proper authorities;
- Conduct a meeting with financial institutions that serve the community to discuss the importance of providing financial assistance for housing in all geographic areas and to all residents in the community;
- Survey special housing needs of minorities and women to determine possible effects of discrimination;
- Use the "Equal Housing Opportunity" slogan and logo on Recipient letterhead; and
- Display Fair Housing Posters and distribute a Fair Housing Handout and Complaint Pamphlet to explain fair housing rights, practices and statutory requirements.

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. 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, 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 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, 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 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 federally conducted 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 www.lep.gov/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 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.

VIII. EXHIBITS

Labor Standards

- 5-1 Preconstruction Conference Checklist
- 5-2 Federal Labor and Civil Rights Requirements
- 5-3 Volunteer Certification Form
- 5-4 Contractor's Receipt of Required Program Materials

Project Sign

- 5-5 Sample Project Sign Specifications

Displacement, Relocation and Acquisition

- 5-6 Request for Acquisition Exemption
- 5-7 Acquisition Checklist

Lead –Based Paint

- 5-8 Lead Based Paint Summary Notices
- 5-9 Dual Threshold Approach for Calculating Level of Rehabilitation Assistance
- 5-10 Implementing the Lead Based Paint Rule
- 5-11 Lead Based Paint References and Resources

Other Resources

- 5-12 Links to Applicable Federal and State Regulations
- 5-13 Sample Notice Under the Americans With Disabilities Act
- 5-14 Sample Grievance Procedure Under the Americans with Disabilities Act
- 5-15 Links to Outside Agency Forms
- 5-16 Conflict of Interest Disclosure *NEW!*
- 5-17 Conflict of Interest Waiver Request Checklist *NEW!*

EXHIBIT 5-1

PRECONSTRUCTION CONFERENCE CHECKLIST

PRE-CONFERENCE PLANNING

- ___ 1. Identify and notify conference participants of the time and place of the preconstruction conference
- ___ 2. Prepare the materials that will be needed for the conference
- ___ 3. Organize the materials into individual packets for each conference participant

PRECONSTRUCTION MODEL AGENDA

- ___ 1. Identify the official representatives of participating organizations and how they can be contacted for official roster
- ___ 2. Identify the responsibilities of the architect or engineer if applicable
- ___ 3. Identify the responsibilities of the Recipient (local government)
- ___ 4. Identify the responsibilities of the contractor
- ___ 5. General discussion of contract terms
- ___ 6. Schedule for construction completion
- ___ 7. Subcontractors
- ___ 8. Project inspection (responsibilities of Recipient (local government), and architect or engineer)
- ___ 9. Compliance with federal labor standards
 - ___ Contractor's Guide to Davis-Bacon Requirements and Certified Payroll Forms
 - ___ Davis-Bacon Act
 - ___ Contract Work Hours and Safety Standards Act
 - ___ Copeland "Anti-Kickback" Act
- ___ 10. Compliance with civil rights regulations
 - ___ Executive Order 11246 as amended by Executive Order 11375
 - ___ Minority and Women-Owned Business Enterprises: Executive Order 12432
 - ___ Section 3 of the Housing and Urban Development Act of 1968

- 11. Notices that are required to be posted
 - Department of Labor’s Notice to Employees Working on Federal or Federally Financed Construction Projects
 - Appropriate wage determination
 - New York State Department of Commerce’s Equal Employment Opportunity poster
 - Department of Labor’s Job Safety and Health Protection poster

- 12. Forms the contractor must submit
 - Certified Payroll Forms (WH-347) or equivalent
 - Statement of Compliance with Labor Standards and Prevailing Wage Requirements (WH-348)
 - Names of all persons authorized to sign payrolls
 - Names of all subcontractors
 - Contract Reporting Form (Form 10-5)
 - Semi-Annual Labor Standards Enforcement Report (Form 5-1)

- 13. Forms to be signed at preconstruction meeting
 - Contractor’s Receipt of Required Program Materials

- 14. Materials to be provided to designated Labor Standards Compliance Office

EXHIBIT 5-2

FEDERAL LABOR AND CIVIL RIGHTS REQUIREMENTS

The Recipient should include the following information concerning federal labor standards and civil rights compliance during preconstruction conferences for construction projects involving NYS CDBG funds.

A. WAGE DETERMINATION AND EMPLOYEE CLASSIFICATION

Davis-Bacon Act is applicable to all construction contracts awarded by Recipients in excess of \$2,000. The rehabilitation of seven or fewer residential units under one contract is exempt from this requirement.

1. Laborers, mechanics, apprentices, and trainees must receive no less than the prevailing wages, plus fringe benefits paid for similar work in the locality.
 - a. Workers are covered by the Davis-Bacon Act while working at the site, transporting materials to and from the site and manufacturing or furnishing articles, supplies, or equipment on-site.
 - b. Apprentices or trainees may be paid less than journeyman wages if they are enrolled in an apprenticeship or training program approved by the U.S. Department of Labor (or State Apprentice Council recognized by the Department of Labor's Employment and Training Administration).
2. If the contractor needs laborers or mechanics whose classifications do not appear on the wage determination, Recipient's designated Labor Standards Officer must make a request for an appropriate classification to the U.S. Department of Labor.
3. Employees or supervisors working at other than their assigned classifications for 20 percent or more of their time must be paid and shown on the payrolls for each classification or, paid for all hours at the higher wage scale.
4. If the wage determination lists fringe benefits, the contractor must either provide them or pay the hourly equivalent in cash, in addition to the predetermined basic wage.
5. Claims and disputes including resolutions must be reported immediately to your OCR Community/Economic Developer and to the U.S. Department of Housing and Urban Development (HUD), Labor Relations Office. HUD may be called upon by the State to investigate and settle claims and disputes, or may enter of their own volition if the need arises.
6. Laborers and mechanics must be paid no less than once per week.

B. WORK HOURS, OVERTIME, AND SAFETY STANDARDS

Contract Work Hours and Safety Standards Act, as amended, is applicable to all contracts awarded by local Recipients in excess of \$2,000 for construction projects employing mechanics or laborers.

1. Forty hours is the standard work week.
2. One and one-half times the basic hourly rate of pay, exclusive of fringe benefit payments, must be paid for all hours over forty in a work week.
3. No worker shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health and safety.

C. DEDUCTIONS

Copeland “Anti-Kickback” Act is applicable to any federally assisted contract subject to Davis-Bacon standards.

1. Full wages earned must be paid.
2. Permissible deductions include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, or accident insurance, vacation or holiday pay, and defraying costs of apprenticeship or similar programs.

D. CONTRACTOR REPORTING REQUIREMENTS

In conjunction with the previously described labor and civil rights requirements the contractor is required to periodically submit several forms to the Recipient’s designated Labor Standards Officer. The prime contractor is fully responsible for providing all reports required from subcontractors.

1. Each contractor (prime and sub) must submit (through the prime contractor) Certified Payroll Forms (WH-347) for each week of work from the time the project begins through completion. If the contractor prefers to use a form other than WH-347, it must contain identical information. Weekly payrolls should be numbered sequentially, and be submitted to the Recipient no later than seven days following the end of the pay period.

Contractors are urged to use the U.S. Department of Labor (DOL), Payroll Form WH-347. Contractors may also use and furnish computerized weekly payrolls in lieu of the standard Payroll Form WH-347, if the basic information contained on the WH-347 is provided and the contractor includes signed certification for each payroll by using the “Statement of Compliance” Form WH-348. The text of the “weekly statement with respect to the payment of wages,” which is required by regulations of the U.S. Secretary of Labor, appears on the reverse side of this form.

Weekly Payroll Report Forms, WH-347 and WH-348 not only contain samples of these forms but examples and instructions for the contractor to follow for completing and filing

them on the project. For example, the Recipient should be aware that weekly payroll reports are also required from subcontractors identified as “working owners.” A “sole-proprietor” who performs work on the project, must still submit weekly payrolls showing himself or herself as “owner,” the work classification and the daily and total hours worked.

The payroll forms may be ordered from the Superintendent of Documents, Government Printing Office, Washington, D.C. 80402 or may be obtained from <http://www.dol.gov/whd/forms/wh347.pdf>. Contractors may also make copies of these forms and use them if they wish.

2. A completed Statement of Compliance with Labor Standards and Prevailing Wage Requirements must be submitted with each Certified Payroll Form. Certified payrolls must be submitted for each week that work is done on the project. Final payrolls shall be identified accordingly. If no work is performed on the project during a given period, on the next performance payroll, state: “No work performed from pay period ending (date) through (date).” The Statement of Compliance appears on the back of form WH-347 or as form WH-348 if WH-347 is not used.
3. For compliance with the New York State Labor Law, all contractors and sub-contractors will submit to the Recipient within 30 days after issuance of its first payroll, and every thirty days thereafter, a transcript of the original payroll record.
4. The first week after work on the project begins the Recipient’s designated Labor Standards Officer should be supplied with the names of anyone (other than owner or officer) who is authorized to sign payrolls for each contractor (prime and sub).
5. The prime contractor should supply the Recipient’s designated Labor Standards Officer with the names of all subcontractors working on the project prior to the preconstruction conference. Each subcontractor may then be informed of the conference. The names of any new subcontractors must be supplied immediately after they begin work on the project.
6. In accordance with E.O. 11246 each contractor (prime and sub) engaged in work totaling \$10,000 or more is required to submit a Minority Contract Reporting Form, as well as any documentation regarding affirmative action efforts to the local Recipient (Exhibit 5-I-8 is a sample Contract Reporting Form).
7. Working Subcontractors – Contractual relationships between contractors and alleged subcontractors (who perform mechanic’s work), which are formed for the purpose of evading the application of prevailing wage requirements, are expressly prohibited and may provide a basis for debarment. Where there is any doubt as to the bona-fide nature of a self-employed subcontractor who has no other employees, the following must be checked:

- a. Does the subcontractor have a registered trade name and is there a telephone listing under that name?
- b. Does the subcontractor have a license?
- c. Does the subcontractor have liability insurance or a subcontractor's bond?
- d. Does the subcontractor have a Federal Tax Identification Number?

Any of these criteria in conjunction with a signed contract containing HUD Federal Labor Standards Provisions from each such subcontractor should be sufficient to establish that he or she is a bona-fide subcontractor. Such a subcontractor will submit payrolls indicating only that he/she is the owner, the hours worked and the classification. The phrase "self-employed owner" shall be written under the name, address, and Social Security Number. Non-bona fide, self-employed subcontractors must be carried as employees on the payroll of the contractor who engaged him/her, and must be paid the prevailing wage rate for the classification of work performed.

Semi-annual reporting is also required for labor standard enforcement. The Recipient is required to report on the form provided in Exhibit 5-4 information regarding any/all contracts subject to Davis-Bacon, any/all reports of labor issues including; the filing of any complaints with the HUD Labor Relations Office, or the Department of Labor by employer and project name. Wage restitution and/or liquidated damaged data must be collected be reported on this form.

E. JOB SITE NOTICES

The prime contractor is required to post the following notices in a manner that is conspicuous to all workers engaged in the construction project:

1. Notice to Employees Working on Federal or Federally Financed Construction Projects (WH 1321);

Direct links to the English and Spanish versions of this new poster are:

(WH-1321) Davis-Bacon Poster (English):

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

(WH-1321) Davis- Bacon Poster (En Español):

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

2. Wage determination or a statement of all wage rates and supplements as specified in the contract. The statement of wage rates must be labeled "Prevailing Rate of Wages";
3. Equal Employment Opportunity poster;
4. Job Safety and Health Protection poster.

F. MONITORING AND SANCTIONS

The Recipient's designated Labor Standards Officer is responsible for monitoring the construction project to assure compliance with all relevant labor and civil rights requirements.

1. On-site inspections must be conducted by the Recipient's Labor Standards Officer to ensure that required notices are posted.
2. Weekly payroll reports of the prime contractor and all subcontractors must be examined by the Recipient's Labor Standards Officer to ensure compliance with labor standards.
3. At least once per month the Recipient's Labor Standards Officer must conduct interviews with construction employees of the prime contractor and subcontractors. The interviews should be scheduled early into the first month of construction to assure initial compliance with labor standards, and on shorter projects, conducted midway towards completion. A representative of each classification of mechanic and laborer, and at least 10 percent of the work force should be interviewed.
4. Violations of the Davis-Bacon and related acts may result in restitution of wages to employees, suspension of the project payment, contract termination, and/or suspension or debarment of the contractor or subcontractor.
5. Violation of the Contract Work Hours and Safety Standards Act makes contractors liable for unpaid wages and for liquidated damages to the federal government in the sum of \$10.00 per worker per day for each violation. Intentional violations are a federal misdemeanor, punishable for each and every offense by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or both.
6. Violations of the Copeland Act could be the basis for contract termination and could result in criminal prosecution by the federal government.

G. CONTRACTOR AFFIRMATIVE ACTION

Executive Order 11246, as amended by Executive Order 11375, requires nondiscrimination in employment under federally assisted contracts and requires affirmative action to ensure equality of opportunity in all aspects of employment.

The prime contractor and all subcontractors must ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, or national origin.

Disadvantaged Business Enterprises: Executive Order 12432 establishes the development of Disadvantaged Business Enterprises (DBEs) as a national priority.

1. The Recipient should supply a list of area DBE's that the prime contractor can use for contacting such businesses.

2. In cases where subcontracts are still available, the prime contractor must make and document a good faith effort to contact qualified DBE's.

Section 3 of the Housing and Urban Development Act of 1968 provides that to the extent feasible, opportunities for training and employment must be given to lower-income residents of NYS CDBG assisted project areas, and that contracts for work in connection with such projects be awarded to business concerns which are located in, or are owned in substantial part, by "project area" residents.

The Recipient should inform the contractor of this requirement. The "project area" is defined as the county in which the project takes place.

HUD Administrative Requirements for Grants, 24 CFR part 85.36, establishes procurement standards to be followed in federal assistance programs.

Whenever possible, small, minority and women-owned businesses should be solicited as potential sources of supplies, construction and services.

EXHIBIT 5-3

VOLUNTEER CERTIFICATION FORM

**FOR VOLUNTEER CONSTRUCTION WORKERS ON
COMMUNITY DEVELOPMENT BLOCK GRANT PROJECTS**

I, _____, do hereby attest to and certify the following regarding the
(Print Name)

_____ located at _____, in
(Name of Project) *(Address)*

_____, _____:
(City) *(State)*

1. I am not now receiving nor will I receive wages to perform any type of construction work on the above named project.
2. I agree to report to the designated official the dates, number of hours, and the work I performed on the above named project.
3. I understand I am volunteering my services on this project and will not receive monetary or other remuneration for my services.

(Signature)

(Date)

EXHIBIT 5-4

CONTRACTOR'S RECEIPT OF REQUIRED PROGRAM MATERIALS

(Local Government) _____
(Project) _____

Preconstruction Meeting
(Date) _____

On (date) _____, we, the undersigned, attended the preconstruction meeting for the (local government's) _____ (project) _____. At the meeting, we acknowledge receiving the following information:

1. Federal Labor Standards
 - Wage Determination and Employee Classification
 - Work Hours, Overtime and Safety Standards
2. Contractor Reporting Requirements
 - Contractor's Guide to Davis-Bacon Requirements and Certified Payroll Reports
 - Certified Payroll Forms
 - Payroll Information
3. Compliance with Civil Rights Regulations
4. Job Site Notices
 - Notice to Employees
 - Equal Employment Opportunity
 - Job Safety and Health Protection
 - Current Davis-Bacon Wage Determination, Decision # _____
5. Other

Contractor

Date

EXHIBIT 5-5

PROJECT SIGN SPECIFICATIONS

The sign design layout must follow the specifications available on the HCR website, <http://www.nyshcr.org/Funding/SignSpec/>.

Please contact your OCR Community Developer for further guidance.

EXHIBIT 5-6

REQUEST FOR ACQUISITION EXEMPTION

TO: Housing Trust Fund Corporation
Office of Community Renewal
Hampton Plaza
38 – 40 State Street, 9th 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:	
<input type="checkbox"/> Concurrence	Signed: _____
<input type="checkbox"/> Nonconcurrence	Title: _____
	Date: _____

EXHIBIT 5-7

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	Determined	Initial	Written Order	Acquisition
Amount:	\$ _____	\$ _____	\$ _____	Price
Settlement Costs	_____	_____	_____	_____
* If Applicable				

EXHIBIT 5-8

LEAD BASED PAINT SUMMARY NOTICES

Summary Notice of Lead-Based Paint Inspection

Address/location of property or structure(s) this summary notice applies to _____

Lead-based paint inspection description: _____

Date(s) of inspection: _____

Summary of inspection results (check all that apply)

- (a) ____ No lead-based paint was found.
- (b) ____ Lead-based paint was found.
- (c) ____ A brief summary of the findings of the inspection is provided below (required if lead-based paint found).

Summary of where lead-based paint was found. List at least the housing unit numbers and common areas (for multi-family housing), and building components (including type of room or space, and the material underneath the paint):

Contact person for more information about the inspection:

Printed name: _____
Organization: _____
Street and city: _____
State: ____ ZIP: _____
Phone number: (____) _____

Person who prepared this summary notice:

Printed name: _____
Signature: _____
Date: _____
Organization: _____
Street and city: _____
State: ____ ZIP: _____
Phone number: (____) _____

Summary Notice of Lead-Based Paint Risk Assessment

Address/location of property or structure(s) this summary notice applies to _____

Lead-based paint assessment description: _____

Date(s) of risk assessment: _____

Summary of risk assessment results (check all that apply)

- (a) ___ No lead-based paint hazards were found.
- (b) ___ Lead-based paint hazards were found.
- (c) ___ A brief summary of the findings of the risk assessment is provided below (required if any lead-based paint hazards were found).

Summary of types and locations of lead-based paint hazards. List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of lead-based paint hazards found:

Contact person for more information about the risk assessment:

Printed name: _____
Organization: _____
Street and city: _____
State: ___ ZIP: _____
Phone number: (____) _____

Person who prepared this summary notice:

Printed name: _____
Signature: _____
Date: _____
Organization: _____
Street and city: _____
State: ___ ZIP: _____
Phone number: (____) _____

Summary Notice of Completion of Lead-Based Paint Hazard Reduction Activity

Address/location of property or structure(s) this summary notice applies to _____

Summary of the hazard reduction activity: _____

Start and completion date(s): _____

Activity locations and types. List at least the housing unit numbers and common areas (for multi-family housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of hazard reduction activities performed at the locations listed _____

Date(s) of clearance testing and/or soil analyses: _____

Locations of building components with lead-based paint remaining in the rooms, spaces or areas where activities were conducted _____

Summary of results of clearance testing and soil analyses

- (a) ___ No clearance testing was performed.
- (b) ___ Clearance testing showed clearance was achieved.
- (c) ___ Clearance testing showed clearance was not achieved.

Contact person for more information about the hazard reduction:

Printed name: _____
 Organization: _____
 Street and city: _____
 State: ___ ZIP: _____
 Phone number: (____) _____

Person who prepared this summary notice:

Printed name: _____
 Signature: _____
 Date: _____
 Organization: _____
 Street and city: _____
 State: ___ ZIP: _____
 Phone number: (____) _____

EXHIBIT 5-9

CALCULATING THE LEVEL OF FEDERAL REHABILITATION ASSISTANCE

Step 1. Determine the average Federal housing assistance per assisted unit. (For multi-family units, divide total by the number of assisted units.)

Step 2. Determine the rehabilitation hard costs for the unit. Exclude soft costs and costs that are solely attributable to the lead hazard control work.

Step 3. Use the lesser amount to determine the level of rehabilitation assistance for purposes of determining the lead hazard evaluation, work and clearance required.

See the Grant Administration Manual, Section V.F. for further explanation of these steps.

	Project	Average Per Assisted Unit
Step 1. Federal Housing Assistance		
CDBG Funds		
HOME Funds		
Other HUD Funds (list:		
Other Federal Housing Assistance (list:		
Average Federal Housing Assistance (per assisted unit)		
Step 2. Hard Cost of Rehabilitation		
Total estimated Rehabilitation Hard Costs		
Exclude: Costs of LBP hazard control work (list items)		
Average Hard Cost of Rehabilitation (per assisted unit)		
Step 3. Federal Rehabilitation Assistance (per assisted unit)		
Select the <u>lesser of Steps 1 & 2 calculations</u> (per assisted unit) and check applicable category below		
If less than or equal to \$5,000 per unit: <ul style="list-style-type: none"> ▪ Test surfaces to be disturbed or presume LBP with OCR concurrence ▪ Follow Safe Work Practices on disturbed surfaces ▪ Clean & clear immediate work site with lab-tested dust wipes 		<input type="checkbox"/>
If above \$5,000 but less than \$25,000 per assisted unit: <ul style="list-style-type: none"> ▪ Conduct risk assessment of unit ▪ Follow 35.1340 interim controls for all hazards ▪ Clean & clear entire unit 		<input type="checkbox"/>
If more than \$25,000 per assisted unit: <ul style="list-style-type: none"> ▪ Conduct risk assessment of assisted unit & common areas ▪ Abate interior hazards (interim controls permitted for exterior) ▪ Clean & clear entire unit 		<input type="checkbox"/>

EXHIBIT 5-10
IMPLEMENTING THE LEAD BASED PAINT RULE

- 1) Are the property (ies) exempt from the regulation?
 - a) Construction completed after 1/1/78?
 - b) 0 BR unit(s)?
 - c) Elderly/disabled only?
 - d) Certified LBP Free or Abated?
 - e) Unoccupied pending demo?
 - f) Non-residential?
 - g) Rehab not disturbing paint?
 - h) Emergency action?

- 2) What kind of project is being assisted with CDBG?
 - a) Rehabilitation (Subpart J)
 - b) Homebuyer Assistance (Subpart K)
 - c) Other Acquisition Assistance (Subpart K)

- 3) What evaluation method is required?
 - a) Activity type
 - i) Rehabilitation less than \$5,000 Federal-Testing disturbed surfaces
 - ii) Rehab over \$5,000- Risk Assessment
 - iii) Homebuyer/Acquisition Assistance - Visual Assessment
 - b) Who will provide evaluation (and is training/certification needed)?
 - c) What is the estimated cost per unit?

- 4) What disclosure will be required and who is responsible?
 - a) Pamphlet
 - b) Tenant/Buyer notice of know LBP and hazards
 - c) Evaluation results (risk assessments & testing)
 - d) Hazard control results (if clearance)

- 5) If rehab, who will do the scope of work
 - a) Rehab scope
 - b) Hazard control scope
 - c) Integration of scopes (if applicable)
 - d) Is there an estimated range of cost for anticipated hazard control activities?

- 6) Who will do the hazard control work?
 - a) Work level
 - i) Paint stabilization
 - ii) Interim controls
 - iii) Abatement
 - b) Is there an adequate supply of workers/contractors qualified?
 - c) How will qualifications be determined?
 - d) What additional training is needed?

- 7) How will the hazard control work be monitored?
 - a) Type of monitoring of work practices and interim controls
 - b) Training required

- 8) Who will be responsible for clearance of hazard control work?
 - a) Contract assessors/inspectors
 - b) Staff assessors/inspectors/sampling technicians
 - c) Estimated cost of clearance per unit

- 9) What records will be maintained?
 - a) Evaluation method/results
 - b) Scope of work and contract
 - c) Hazard control work monitoring records
 - d) Clearance)

- 10) Will ongoing monitoring be required (and who will do it)?
 - a) If rental acquisition assistance, annual visual assessment
 - b) If rental rehab, annual visual assessment recommended

EXHIBIT 5-11

LEAD BASED PAINT REFERENCES AND RESOURCES

The following website links will provide additional information regarding the lead based paint regulations.

HUD, http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes

Center for Healthy Housing, <http://www.nchh.org/>

EPA, <http://www2.epa.gov/lead>

Community Connections, <https://www.onecpd.info>

State Department of Health, <http://www.health.ny.gov/>

EXHIBIT 5-12

LINKS TO APPLICABLE STATE AND FEDERAL REGULATIONS

Labor Standards:

Federal Labor Standards Provisions (HUD 4010 Form):

<http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf>

New York State Labor Standards:

<http://www.labor.ny.gov/workerprotection/publicwork/PWGeneralProvisions.shtm>

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

http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_relations/olrform

Conflict of Interest:

Conflict of Interest Regulations (24CFR570.611)

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

Displacement, Relocation and Acquisition:

Uniform Relocation Act (40CFR Part 24):

<http://www.gpo.gov/fdsys/pkg/CFR-2010-title24-vol3/pdf/CFR-2010-title24-vol3-sec570-611.pdf>

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

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation/policyandguidance/handbook1378

Lead Based Paint:

Lead Based Paint Disclosure Rule:

http://www.hud.gov/offices/lead/library/enforcement/24CFR35_SubpartA.pdf

Lead Safe Housing Rule:

<http://www.hud.gov/offices/lead/library/enforcement/LSHRFinal21June04.pdf>

Renovation Repair and Painting Rule:

<http://www.epa.gov/fedrgstr/EPA-TOX/2008/April/Day-22/t8141.htm>

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:

<http://www.hud.gov/offices/fheo/section3/Sect3-Regulations.pdf>

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
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FH_Laws/109

Minority and Women’s Business Enterprises Requirements 24 CFR 85.36
http://portal.hud.gov/hudportal/HUD?src=/program_offices/cpo/grantees/cfr8536

Executive Order 11246
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FH_Laws/EXO11246

Fair Housing Requirements:

Fair Housing Act
<http://www.justice.gov/crt/housing/title8.php>

Accessibility and Section 504 Requirements:

Section 504 of the Rehabilitation Act of 1979
<http://www.gpo.gov/fdsys/pkg/CFR-2000-title24-vol1/content-detail.html>

Title II of the American’s with Disabilities Act of 1990
http://www.ada.gov/regs2010/titleII_2010/titleII_2010_fr.pdf

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

Executive Order 11063
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FH_Laws/EXO11063

Limited English Proficiency Requirements

Executive Order 13166
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FH_Laws/EXO13166

EXHIBIT 5-13

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 5-14

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 5-15

LINKS TO OUTSIDE AGENCY FORMS

Labor Standards

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

<http://www.hud.gov/offices/adm/hudclips/forms/hud4.cfm>

Record of Employee Interview (HUD 11):

<http://www.hud.gov/offices/adm/hudclips/forms/hud1.cfm>

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

<http://www.mdt.mt.gov/publications/docs/forms/contracting/wh347instr.pdf>

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:

<http://63.234.227.130/Publications/osha3165.pdf>

Displacement, Relocation and Acquisition

“When a Public Agency Acquires Your Property” brochure:

<http://www.hud.gov/offices/cpd/library/relocation/publications/1041.pdf>

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:

http://www.hud.gov/utilities/intercept.cfm?/offices/lead/library/enforcement/selr_eng.pdf

Sample Lead Based Paint Disclosure Form for Rental of Housing:

http://www.hud.gov/utilities/intercept.cfm?/offices/lead/library/enforcement/lesr_eng.pdf

Civil Rights

Section 3

Section3 Brochure:

<http://www.hud.gov/utilities/intercept.cfm?/offices/ftheo/section3/Sect3-brochure.pdf>

Fair Housing

Fair Housing Brochure:

<http://www.hud.gov/offices/adm/hudclips/forms/files/928-1.pdf>

Fair Housing Planning Guide
<http://www.hud.gov/offices/fheo/images/fhpg.pdf>

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
<http://www.lep.gov/selfassesstool.htm>

EXHIBIT 5-16

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 making a determination 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 5-17

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.
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.
4. A completed Conflict of Interest Disclosure, Exhibit 5-16