IHCDA Strategic Investment Process Award Implementation Manual
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INTRODUCTION

This manual is a reference guide for projects receiving funding from federal programs administered by the Indiana Housing and Community Development Authority (IHCDA) through the Strategic Investment Process (SIP), including HOME, CDBG, and CDBG-D. It is designed to answer questions regarding procedures, rules, and regulations that govern these federal programs. This manual should be a useful resource for sponsors, developers, recipients, and management agents. It provides guidance with respect to IHCDA's administration of compliance under 24 CFR Part 92 (HOME) and 24 CFR Part 570 (CDBG), as well as other applicable federal regulations.

Please note, however, that this manual is to be used only as a supplement to compliance with all applicable regulations. This manual should not be considered a complete guide to the HOME or Community Development Block Grant (CDBG) programs. The responsibility for compliance with federal program regulations lies with the recipient. See disclaimer below.

SCOPE OF THIS MANUAL

This manual discusses the upfront compliance requirements necessary to get an awarded project through the closeout process. This manual does not discuss the SIP application process. This manual only briefly discusses the ongoing compliance requirements for rental projects. Readers looking for information on rental housing compliance should refer to IHCDA's manual entitled *HOME, CDBG, and CDBG-D Ongoing Rental Compliance Manual*.

DISCLAIMER

The publication of this manual is for convenience only. Your use or reliance upon any of the provisions or forms contained herein does not, expressly or impliedly, directly or indirectly, suggest, represent, or warrant that your development will be in compliance with the requirements of 24 CFR Part 92 or 24 CFR Part 570. The Indiana Housing and Community Development Authority and contributing authors hereby disclaim any and all responsibility of liability, which may be asserted or claimed arising from reliance upon the procedures and information or utilization of the forms in this manual.

Because of the complexity of federal and state regulations and the necessity to consider their applicability to specific circumstances, recipients are strongly encouraged to seek competent, professional legal and accounting advice regarding compliance issues**. IHCDA's obligation to monitor for compliance with the requirements of these federal regulations does not make IHCDA or its subcontractors liable for a recipient's noncompliance.**

Chapter 1 – Policy Requirements

A. What is the Strategic Investment Process?

IHCDA's commitment to investing in community solutions meant its method of distributing a variety of resources had to fundamentally change from the traditional method of applications that were linked to a particular funding source. The move to funding solutions places the focus on the strategic fit of a proposed activity, the strength of the sponsor and development team, and the financial feasibility and readiness of the development.

As a result, IHCDA has created a single allocation and investment process that bundles a variety of federal resources including HOME, CDBG, and CDBG-D. This new investment process (referred to as SIP) enable the project development team to work more closely with IHCDA staff to identify issues and obstacles that may occur and to provide feedback and support in resolving issues to ensure project success.

B. Strategic Investment Priorities

IHCDA creates housing opportunity, generates and preserves assets, and revitalizes neighborhoods by investing technical resources into the development of its partners across Indiana.

Within this framework, IHCDA seeks partnerships that offer innovative solutions to community challenges. As evidenced from socio-demographic data, survey results, and formal and informal discussions with stakeholders, IHCDA has identified the following strategic priorities for its investment decisions:

1. Comprehensive Community Development

Every community strives to be a place where people choose to live, work, and play. Comprehensive development means that a community's potential lies in the identification and creation of a shared vision, planned by local leadership, and carried out by an array of partners. When successful, it yields results beyond what can be achieved by individual organizations or disparate programs because of the unique synergy they generate. A thriving community is a community with job opportunities, strong schools, safe neighborhoods, a full range of housing choices, and a vibrant culture. Comprehensive development marshals resources and deploys coordinated strategies in a concentrated area to create opportunities for others in the community to take prudent risks and reap the rewards. The demolition of blighted structures, the rehabilitation of long-vacant housing and the creation of new community amenities and retail opportunities serve as a tipping point for future development through market forces.

Threshold Items

- New Construction developments must be completed to at least meet the minimum standard set by the National Association of Home Builders (http://www.nahbgreen.org/Certification/default.aspx)
- Units/Homes to be assisted for rehabilitation are required to have an energy audit completed prior to incurring any hard costs and also at the completion of the project.
- All beneficiaries are required to receive appropriate information and training on energy savings. The required booklet entitled "Energy Savers Booklet" can be found as Exhibit D to this chapter.

2. Aging in Place

Aging in place refers to making our living environment safe and adaptable so that everyone can remain independent and continue to thrive in their homes and community even as circumstances change. While the primary target populations for aging in place strategies are seniors and persons with disabilities, everyone benefits from buildings and communities that are accessible, visitable, and livable.

Threshold Items

- New Construction developments must be completed to at least meet the minimum standard set by the National Association of Home Builders (http://www.nahbgreen.org/Certification/default.aspx)
- All units/homes to be assisted under this priority will be required to conduct an assessment on each beneficiary/household to determine need for accessibility improvements and/or supportive services. Construction or rehabilitation must meet a need that, if not present, would leave the beneficiary/household with insufficient means for day to day living.
- All services (current or subsequent) must be in place via a letter of cooperation, memorandum, or executed agreement.
- Units/Homes to be assisted for rehabilitation are required to have an energy audit completed prior to incurring any hard costs and also at the completion of the project.
- For homeownership projects, one hundred percent (100%) of the units must be targeted and developed for beneficiaries that are either disabled and/or at least fifty-five (55) years of age.
- For rental projects, one hundred percent (100%) of the units must be targeted and developed for beneficiaries that are at least sixty-two (62) years of age OR eighty percent (80%) of the units must be targeted and developed for beneficiaries that are at least fifty-five (55) years of age or older.
- All beneficiaries are required to receive appropriate information and training on energy savings. The required booklet can be found on the Strategic Investment page on IHCDA's website. Energy Savers Booklet

3. Ending Homelessness

Merely *managing* homelessness is in no one's best interest. IHCDA and its partners are focused on systematically preventing and ending homelessness for those most vulnerable in our communities. By identifying an individual's or family's barriers to self-sufficiency and targeting the most appropriate housing solution, we can help to minimize the number of people that enter the homelessness delivery system and the duration of time they spend in it. For the chronically homeless--those who cycle through health care institutions and correctional facilities seeking services and shelter-- linking services with housing provides them stability and reduces the burden on other community systems. At the end of the day, our collective goal is to ensure that everyone has a place to call home.

Regarding beneficiaries, disabled is defined as any person who has a physical or mental impairment that substantially limits one (1) or more major life activities; has a record of such impairment; or is regarded as having such an impairment. The definition of a person with disabilities does not exclude persons who have the disease acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome (HIV). However, for the purpose of qualifying for low income housing, the definition does not include a person whose disability is based solely on any drug or alcohol dependence.

Threshold Items

- All Permanent Supportive Housing projects must have successfully been accepted into and completed the process of the Indiana Permanent Supportive Housing Institute (IPSHI).

4. High Performance Building

How we create community solutions is equally as important to what solutions are desired. High performance building integrates with and optimizes the surrounding environment through architectural and site design, construction techniques and materials, as well as resource use and recovery. Done right, high performance building maximizes quality and durability by minimizing environmental impacts and operating costs.

Threshold Items

- New Construction developments must be completed to at least meet the minimum standard set by the National Association of Home Builders (http://www.nahbgreen.org/Certification/default.aspx)
- Units/Homes to be assisted for rehabilitation are required to have an energy audit completed prior to incurring any hard costs and also at the completion of the project.
- All beneficiaries are required to receive appropriate information and training on energy savings. The required booklet can be found on the Strategic Investment page on IHCDA's website. Energy Savers Booklet
- All proposals under this priority are encouraged to design their developments to also meet one (1) or more of the other IHCDA priorities. Proposals that are presented ONLY under this priority will be required to provide significant leveraging as part of the development.
- Proposals presented ONLY under this priority that assist homeowners will be required to develop and administer a revolving loan program to create program income for use on future, eligible activities.

5. Emergency Home Repair

Addressing health & safety issues is very important in the development of any type of housing rehabilitation program. Situations arise where detriments to a home currently or will eventually create a threat to the residents' health and/or safety that could result in a variety of problems with personal health or day to day living. Improvements such as this not only remove the threat but provide the resident with a safe, decent, housing solution that reduces the risk of further occurrences and also provides them with a viable housing option while maintaining their residence that will contribute to the stabilization of the existing neighborhood.

Threshold Items

- Intended to address health and safety issues ONLY
- Health & Safety issue must be documented by an entity authorized to make such determinations
- Beneficiaries must be income certified with complete scope of work done on home
- Clearly established programs guidelines are required
- $10,000 subsidy limit per home, $100,000 maximum award amount.

C. HOME Matching Funds

The HOME Program requires a twenty-five percent (25%) match. As such, applicants must demonstrate eligible matching funds equal to twenty-five percent (25%) of the total amount of HOME funds drawn minus administration and/or CHDO operating costs.

The types of match for HOME projects/programs that may be accepted are as follows:

- Cash contributions permanently dedicated to the HOME program from non-federal funds and not donated by the applicant or the designated property owner;
- Program income from a federal grant earned after the end of the award period if no federal requirements govern its disposition (i.e., program income generated from the Rental Rehab Program);
- Grant equivalent of the present discounted value of the yield foregone in a below-interest rate loan;
- The present discounted, cash value, based on customary and reasonable means for establishing value, of State or local taxes, fees, or other charges that are normally and customarily imposed or charged;
- The appraised value of donated land or buildings, except those already owned by the applicant or a principal in the development, less any debt that remains as a lien against the property. Property may also be eligible as a partial donation if it is offered to the applicant at below market value and if the offeror submits a written declaration that the difference between market value and the sale price is intended as a contribution to affordable housing;
- The cost, not paid with federal resources, of on-site or off-site infrastructure improvements that are directly required for the HOME-assisted development. The infrastructure must have been completed no earlier than 12 months before HOME funds are committed to the project;
- Donated site-preparation or construction materials not acquired with federal funds, or the reasonable rental value of the donated use of site preparation or construction equipment;
- Volunteer skilled or unskilled labor and donated professional services. Unskilled labor is currently calculated at the rate of $10 per hour;
- The direct cost of supportive services provided to families residing in HOME-assisted units during the affordability period. The supportive services must be necessary to facilitate independent living or be required as part of a self-sufficiency program;
- Contributions to non-HOME-assisted but HOME-eligible developments, if certain federal requirements are met (income eligibility of occupants, property standards, rent limits, project occupancy requirements, affordability period, and tenant protections); and
- Neighborhood Assistance Program (NAP) credits and Build Indiana Funds.

<u>Ineligible forms of match:</u>

- Contributions made with or derived from federal resources or funds (including CDBG funds and Rural Development grants or loans) regardless of when the funds were received or expended;
- The interest rate subsidy attributable to the federal tax exemption on financing (such as bonds issued by the state) or the value attributable to federal tax credits (such as the Low Income Housing Tax Credit Program);
- Owner equity or investment in a project (except for sweat equity);
- Cash or other forms of contributions from applicants for or recipients of HOME assistance or contracts, or investors who own, are working on, or are proposing to apply for assistance for a HOME-assisted project (except for sweat equity or professional services donated by contractors who do not own any HOME projects);
- Funds used to pay for administrative, environmental review, or CHDO operating costs; and
- Contributions counted as match toward any other federally-funded program.

D. CDBG and CDBG-D Leveraging Funds

The leverage requirement for the CDBG program is ten percent (10%) of the total amount of CDBG funds drawn minus administration costs.

There is no leverage requirement for the CDBG-D program. However, any eligible leverage committed to your project can be banked for future use.

The types of leverage for CDBG and CDBG-D projects/programs that may be accepted are as follows:

- Cash contributions including those from beneficiaries of CDBG assistance;
- Cash or other forms of contributions from recipients of CDBG contracts;
- CDBG Program Income;
- Grant equivalent of the present discounted cash value of the yield foregone in a below-market interest rate loan;
- The non-federal cost of infrastructure improvements directly required for CDBG-assisted projects.
- AHP funds from the Federal Home Loan Bank;
- The appraised value of donated land (less any debt that remains as a lien against the property).
- Forbearance of state and/or local taxes, charges, or fees;
- The value of waived fees or charges associated with the transfer or development of real estate;
- Donated or voluntary labor (unskilled labor is currently valued at the rate of $10/hour) or professional services (the value of skilled labor or professional services is valued at the contributors customary rate);
- Donated construction materials, not acquired with federal funds. Such contributions must be valued at published standardized costs and documentation of the value must be maintained;
- Governmental grants, from HUD or USDA Rural Development, under certain circumstances; and
- Neighborhood Assistance Program (NAP) Credits and Build Indiana Funds.

Ineligible Forms of Leverage:

- Contributions made from certain federal/state resources including CDBG and HOME funds, and Emergency Shelter Grants; and
- Overhead costs such as office space or utilities and costs that cannot be directly attributed to the grant.

E. Banked Match/Leverage

If the applicant is proposing to utilize banked match/leverage for this activity:

- And it is the applicant's own banked match, the match liability on the previous award for which the match was generated must already be met and documented with IHCDA for the match to be eligible as of the application due date. Only HOME, CDBG, and CDBG-D--eligible match generated on IHCDA awards made in 1999 or later are eligible to be banked.
- Or, if it is another recipient's match, the applicant must provide an executed agreement with the application verifying that the recipient is willing to donate the match.
  - Only banked match from awards made in 1999 or later that have fully met their match liability is eligible to donate to another applicant. The award must be closed before the agreement to donate match is executed.
- Match cannot be sold or purchased and is provided purely at the discretion of the recipient that generated it.
  - Banked leverage generated on a CDBG or CDBG-D award can be used on a future CDBG or CDBG-D award.
  - Banked leverage generated on a CDBG or CDBG-D award cannot be used as match on a future HOME award.

- Banked match generated on a HOME award may be used as leverage on a future CDBG or CDBG-D award.

F. CDBG and CDBG-D Program Income

CDBG regulation, 24 CFR 570.489, defines program income as the gross income received by a state, unit of local government, or a subrecipient that was generated from the use of CDBG funds. Program income includes, but is not limited to the following:

- Proceeds from the sale of CDBG or CDBG-D assisted housing;
- Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG or CDBG-D funds;
- Proceeds from the disposition of equipment purchased with CDBG or CDBG-D funds;
- Gross income from the use or rental of real or personal property acquired by the unit of general local government or a subrecipient of a unit of a local unit of government with CDBG or CDBG-D funds, less the costs incidental to the generation of income;
- Gross income from the use or rental of real property owned by the unit of general local government or a subrecipient of a unit of general local government, that was constructed or improved with CDBG or CDBG-D funds, less the costs incidental to the generation of income;
- Payments of principal and interest on loans made using CDBG or CDBG-D funds;
- Proceeds from the sale of loans made with CDBG or CDBG-D funds;
- Proceeds from the sale of obligations secured by loans made with CDBG or CDBG-D funds;
- Interest earned on funds held in a revolving fund account; and
- Interest earned on program income pending disposition of the income.

If Program Income is generated by an activity that was only partially assisted with CDBG or CDBG-D, the income shall be prorated to reflect the percentage of CDBG or CDBG-D funds used.

The following outlines the three methods in which CDBG or CDBG-D program income should be treated.

1. Program income that is generated when an entity has another open CDBG or CDBG-D award - the program income should be spent on the current award prior to drawing down additional funds from IHCDA. Additionally, the maximum amount of CDBG or CDBG-D program income that may be expended on program delivery, administration, and environmental review is limited to twenty percent (20%) of the total receipt.

2. If an entity does not have an open award - program income amounting to less than $25,000 received during the local unit of government's fiscal year may be kept by the local unit of government and is not subject to the program income requirements.

3. If an entity does not have an open award - program income amounting too greater than or equal to $25,000 received during the local unit of government's fiscal year may not be kept by the local unit of government and must be returned to IHCDA. However, under certain circumstances, IHCDA may permit the LUG to establish a revolving loan fund for additional CDBG or CDBG-D-eligible activities. For further information on this issue, please contact your IHCDA Real Estate Production Analyst.

G. HOME Program Income

HOME Program Income is gross income received by the participating jurisdiction (IHCDA), state recipient (local unit of government) or an IHCDA HOME subrecipient directly generated from the use of HOME funds or matching contributions.

Program Income does not include funds recaptured from a homebuyer who does not meet his affordability period or who is foreclosed upon. These funds are recaptured funds and must be returned to IHCDA.

Income generated by CHDOs, not-for-profits, or for-profits acting as owners, sponsors or developers of HOME units are not considered program income.

When housing that generates program income is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds used. Program income includes, but is not limited to, the following:

- Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds or match contributions;
- Gross income from the use of rental of real property, owned by the participating jurisdiction, State recipient, or a subrecipient, that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less costs incidental to generation of the income;
- Payments of principal and interest on loans made using HOME funds or matching contributions;
- Proceeds from the sale of loans made with HOME funds or matching contributions;
- Proceeds from the sale of obligations secured by loans made with HOME funds or matching contributions;
- Interest earned on program income pending its disposition; and
- Any other interest or return on the investment permitted under § 92.205(b) of the HOME funds or matching contribution.

The following outlines the four methods in which HOME program income should be treated.

1. *Treatment by Local Unit of Government*

Local units of government that receive HOME repayments during the affordability period must return the funds to the IHCDA. However, if you have an open HOME award with the IHCDA, you must use these funds prior to drawing additional funds from the IHCDA. The funds must only be utilized on the following line items: new construction, rehabilitation, program delivery and demolition.

2. *Treatment by Not for Profit or For Profit Not Acting as an Owner, Sponsor or Developer (e.g. owner occupied)*

Not-for-profit entities or for-profit entities that receive HOME repayments during the affordability period must return the funds to the IHCDA. However, if you have an open award with IHCDA, you must use these funds prior to drawing down additional funds from IHCDA. The funds must only be utilized on the following line items: new construction, rehabilitation, program delivery and demolition.

3. *Treatment by Not for Profit or For Profit Acting as an Owner Sponsor or Developer*

Not for profit entities or for profit entities receiving payment back from homebuyers or rental tenants during the affordability period may keep these funds and the funds must be utilized for housing activities that benefit low-income families as provided in the IHCDA HOME Investment Partnerships Program Application.

4. *Treatment by a CHDO*

CHDOs receiving payment back during the affordability period may retain these funds. The funds must be utilized for housing activities that benefit low-income families as provided in 24 CFR 92.300(a)(2).

However, if at any time during the affordability period, the CHDO becomes decertified or no longer has a mission of providing affordable housing then all CHDO proceeds must immediately be remitted to IHCDA. Please contact your Compliance Monitor for further assistance in this area.

H. CDBG Public Hearings

All recipients of CDBG funds are required to conduct at least two public hearings, one (1) at the time of funding and one (1) at program completion, for the purpose of obtaining citizens' input and responding to proposals and questions about the project. A legal notice must be published to announce the meeting with minutes from the hearing retained for review at monitoring. It is acceptable to conduct the hearing during any regularly held public meeting, such as a town council meeting, provided all other requirements are met. Additional instructions that include boilerplate newspaper publication language can be found in Exhibit C.

I. Types of Rental Housing Projects

Permanent Rental Housing

The purpose of this activity is to provide funding for affordable long-term housing that will be rented to income-eligible tenants. Eligible activities include acquisition, rehabilitation, or new construction.

Permanent rental housing units may not be used for temporary or emergency housing at any time. All individuals or families moving into a permanent supportive housing unit must be income certified and must enter into a lease agreement.

Eligible permanent rental housing includes assisted living facilities that meet IHCDA's definition. IHCDA defines an assisted living facility as a living arrangement in which services are available to residents (e.g. meals, laundry, medication reminders, etc.) but the residents still live independently. Residents of such facilities pay a regular monthly rent and pay additional fees for the services that they desire. The fees for any services that are mandatory (i.e. services that are a condition of occupancy) must be included in the gross rent calculation.

Permanent Supportive Housing

The purpose of this activity is to provide funding for affordable long-term housing and supportive services for persons that would otherwise be at risk of being homeless. Eligible activities include acquisition, rehabilitation, or new construction.

Permanent supportive housing units may not be used for temporary or emergency housing at any time. All individuals or families moving into a permanent supportive housing unit must be income certified and must enter into a lease agreement.

Transitional Housing

The purpose of this activity is to provide funding for affordable short-term housing for homeless individuals or families, including victims of domestic violence. Eligible activities include acquisition, rehabilitation, or new construction.

The HOME program defines transitional housing as housing that is designed to provide housing and appropriate supportive services to persons, including but not limited to, deinstitutionalized individuals with disabilities, homeless individuals with disabilities, and homeless families with children. The intent of transitional housing is to facilitate the movement of individuals and families to independent living (e.g. permanent rental housing) within 24, or a longer period as determined necessary.

Transitional housing units may not be used for temporary or emergency housing at any time. All individuals or families moving into a permanent supportive housing unit must be income certified and must enter into a lease agreement.

Emergency shelters and migrant farm worker housing
CDBG funds can be used to fund emergency shelters (including youth shelters) and seasonal migrant farm worker housing. These types of projects provide temporary housing and as such do not require income verification or lease agreements. Instead, all individuals entering a shelter or farm worker housing must sign a program agreement. For more information on program agreements, see part J.4 below.

J. Rental Project Requirements

The following is a brief summary of major compliance requirements for rental projects funded through the Strategic Investment Process. For additional information on rental compliance and reporting requirements, please refer to the rental compliance manuals available online at http://www.in.gov/ihcda/2519.htm. For additional questions on ongoing compliance, please contact an IHCDA Compliance Auditor.

1. Rent and income restrictions

All assisted rental units must be rent and income restricted at the appropriate set-asides (30%, 40%, 50%, 60%, or 80% of AMI) as defined in the project's Application and recorded Declaration/Lien. Rent and income limits are released annually by HUD and published on IHCDA's website for convenience.

2. Utility Allowances

When utilities are paid directly by the tenant (as opposed to being paid by the owner/recipient), a utility allowance must be used to determine maximum allowable rent. The sum of tenant-paid rent + utility allowance + tenant-based rental assistance cannot exceed the published rent limit for the unit. Utility allowances must be updated annually and rents adjusted accordingly. Additional information on approved utility allowance sources and updating utility allowances can be found in the rental compliance manual online.

3. Lease Language

Leases are required for awards assisting Permanent Supportive Housing, Permanent Rental Housing, and Transitional Housing projects. **Leases, at a minimum, must include** the following:

- The legal name of all parties to the agreement and all other occupants;
- A description of the unit to be rented; must include unit/bedroom size, set aside percentage, and unit address;
- The date the lease becomes effective;
- The end date of the lease (must be for at least one (1) year unless there is a mutual agreement between tenant and owner for a shorter period);
- The rental amount;
- Language or Lease Addendum acknowledging receipt of the Fair Housing and Lead-Based Paint Brochures;
- A description of utilities that the tenant pays and those that the owner pays. The utility allowance requirements and monthly allowance being provided;
- The use of the premises;
- The rights and obligations of the parties, including the obligation of the tenant to certify annually (or more frequently as required) to income as defined herein;

- Language which addresses income decreases, income increases, utility allowance increases/decreases, basic rent changes (in Rural Development or 236 Developments), household composition changes, or any other change and its impact on the tenant's rent;
- Renewal process;
- Language addressing the right of the development and/or other funding providers to enter the assisted-unit for physical inspections;
- Termination process (must give at least thirty (30) days notice);
- Signature of tenant (s) age eighteen (18) and older or emancipated;
- Signature of recipient/property manager; and
- Date of execution.

The lease **may not contain** any of the following language:

- Agreement to be sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
- Treatment of property. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
- Excusing owner from responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
- Waiver of notice. Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
- Waiver of legal proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury;
- Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
- Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

4. Program Agreements

Emergency shelters are considered public facilities under CDBG regulations; therefore, no rent is intended to be charged. In lieu of a lease, recipients are required to implement a program agreement. Program agreements also apply to seasonal migrant farm worker housing projects. This agreement is to provide residents with program guidelines and must include, at a minimum, the following:

- Effective date;
- Signature of both resident and staff member;
- Summary of supportive services available;
- Program guidelines / resident rules such as curfews, laundry, and recreation rules;
- Program expectations for resident;
- Maximum length of stay; and
- List of items regarded as contraband.

5. Tenant Selection Criteria

There are no federal or IHCDA regulations regarding criminal or credit background checks, landlord references, or a minimum income necessary for occupancy. Implementation of these criteria is entirely up to owner/management discretion, so long as the screening criteria are applied equally to all applicants.

There are also no federal or IHCDA regulations governing minimum or maximum household size for a particular unit. However, owners must comply with all applicable local laws, regulations, and/or financing requirements (e.g. if Rural Development, use RD regulations). IHCDA advises all owners or agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements should be incorporated into the development's management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, tenant/landlord laws, and municipal code that may establish a maximum or minimum number of persons per unit.

Additionally, there are no current regulations governing citizenship requirements for HOME, CDBG, and/or Development Fund assisted-units. Since the Fair Housing Act does not prohibit discrimination based solely on citizenship status, recipients may ask applicants to provide documentation of citizenship or immigration status as part of the screening process. If the recipient chooses to implement such a policy, the screening criteria must be established in writing and applied in a uniform, nondiscriminatory fashion. Recipients should be aware that other housing programs (such as HUD programs) may have stricter citizenship requirements that must be followed if the project has additional funding sources.

Because many of these tenant selection criteria are left up to the discretion of the recipient, it is important for each development to have an established Tenant Selection Criteria Policy in writing. This document should be made available to all applicants and tenants.

At a minimum, a good Tenant Selection Criteria Policy should include the following:

- Occupancy standards in effect (how many tenants can live in a unit based on size of the unit);
- Program eligibility factors, including income limits;
- Any minimum income requirements imposed by management;
- Any citizenship requirements imposed by management;
- Specifics on the information that is analyzed when performing credit checks, criminal background checks, and previous landlord references. The plan should clearly spell out what findings constitute a rejection of application (e.g. do certain criminal charges or a certain credit score automatically disqualify the household?);
- Explanation of the application and waiting list process, including the process through which a tenant can appeal a rejection decision;
- Explanation of the transfer policies in effect;
- Breakdown of any special preferences set aside at the project (e.g. units reserved for special needs populations or an elderly restriction on the project); and
- List of any other relevant items used in considering the household's eligibility for occupancy

When creating a development's Tenant Selection Criteria Policy, the recipient must be careful to follow all applicable eligibility regulations, Fair Housing regulations, and local occupancy standards. See Chapter 5 for more information on Fair Housing regulations.

With the exception of accessible units (see Part 5 below), all units should be leased on a first-come first-served basis with tenants selected in date order from the waiting list.

6. Marketing Accessible Units

At initial lease-up, accessible units should be marketed to persons with disabilities requiring an accessible unit. For ongoing leasing, the following order should be followed for marketing the accessible units:

1. First offer accessible units to existing occupants that require accessibility features but are currently occupying a unit that does not offer such features.
2. Next offer accessible units to qualified applicants on the waiting list that require accessibility features.
3. Market the unit to attract new disabled applicants.
4. Finally, offer the unit to a non-disabled person on the waiting list. If this is done, the tenant should understand that he or she may later be asked to transfer to another comparable but non-accessible unit if the accessible unit is needed by a disabled person. While the tenant may have to transfer if there is a vacant unit, he or she would not be evicted or otherwise terminated to make room for a disabled household. This agreement should be incorporated into the lease.

Chapter 2 – Lead Based Paint Requirements

A. Background

Lead is highly toxic and affects virtually every system of the body. At high exposure levels, lead poisoning can cause coma, convulsions, and death. While adults can also suffer from excessive lead exposures, the groups most at risk are fetuses, infants, and children under the age of six (6). At low levels lead's neurotoxic effects have the greatest impact on children's developing brains and nervous systems, causing reductions in IQ and attention span, reading and learning disabilities, hyperactivity, and behavioral problems (Davis, 1993). These effects have been identified in many carefully controlled research studies (National Academy of Sciences, 1993). However, the vast majority of childhood lead-poisoning cases go undiagnosed and untreated, since most poisoned children have no obvious symptoms.

HUD estimates that three-quarters of pre-1980 housing units contain some lead-based paint. The likelihood, extent, and concentration of lead-based paint all increase with the age of the building. Fully ninety percent (90%) of privately owned units built before 1940, eighty percent (80%) of units built between 1940 and 1959, and sixty-two percent (62%) of units built between 1960 and 1979 contain some lead-based paint (HUD, 1990b). Because the greatest risk is in dwellings built before 1950, older housing generally commands a higher priority for lead hazard controls.

The belief that in order to be poisoned children *must* eat lead-based paint chips is unfounded. The most common cause of poisoning is the ingestion—through hand-to-mouth transmission—of lead-contaminated surface dust (Clark, 1991; Bellinger, 1991; Roberts, 1991; Chisolm, 1985; Farfel, 1990; Farfel, 1994). Lead-contaminated dust may be so fine that it cannot be seen by the naked eye. In addition, lead-contaminated dust is difficult to clean up. Leaded dust is generated as lead-based paint deteriorates over time, is damaged by moisture, abraded on friction and impact surfaces, or disturbed in the course of renovation, repair, or abatement projects. Lead can also be tracked into homes from exterior dust and soil.

Children can also be exposed to lead in bare soil. The high levels of lead in soil typically come from deteriorating exterior lead-based paint around the foundation of a house (TerHarr, 1974; Linton, 1980). The fallout of lead emissions from the combustion of leaded automobile gasoline, lead-based paint, and industrial sources also contributes to lead levels in soil (ATSDR, 1988). In some areas high leaded soil levels result from factory and smelter emissions or deteriorating lead-based paint on steel structures, such as bridges. Bare soil that is contaminated with lead poses a hazard to children who play in it. Lead in soil may also be tracked into a home, increasing interior leaded dust levels.

B. General Education Requirements

IHCDA requires all grantees to participate in educating the public on the hazards of lead poisoning. The following material must be posted or distributed to the parties indicated regardless of project activity:

1. *For Contractors and Subcontractors:* "Lead Paint Safety: A Field Guide for Painting" - This brochure must be distributed to every contractor and sub-contractor participating in a HOME or CDBG assisted housing rehabilitation program. Documentation of the distribution of this brochure to the contractors and sub-contractors must be maintained in the project file. The recipient must create a receipt form for the contractor to sign to document receipt of the brochure. This brochure can be ordered from the National Lead Information Center at (800) 424-5323.
2. *For Homeowners and Renters:*
   a. "Protect Your Family from Lead in Your Home" - <u>This EPA brochure must be distributed to every family participating in any housing activity.</u> Documentation of the distribution of this brochure to

beneficiaries must be maintained in each project file. Additionally, for rental housing projects, all tenants during the affordability period must receive this brochure at move-in and sign a receipt form to be maintained in their file.

b. "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools" - Renovators must distribute to each family the EPA/HUD pamphlet. Documentation of the distribution of this brochure to beneficiaries must be maintained in each project file.

3. *For Organizations:* "Runs Better Unleaded" - This poster must be displayed at the offices of the local unit of government, sub-recipient, award administrator, and any administrative organization involved in a federally assisted project. IHCDA encourages local officials to post these posters at any public facility located in the jurisdiction.

C. Lead Hazard Testing and Clearance Process (See also Chapter 12, Funds Management, Lead Form for Set-up and Clearance)

1. Determine if the property is exempt from testing. Properties that might be exempt from testing include:
   a. Residential structures built after January 1, 1978;
   b. Rehabilitation that does not disturb paint;
   c. Areas where state and local governments banned lead-based paint prior to January 1, 1978;
   d. Properties found not to have lead-based paint during earlier testing that meets the requirements of prior evaluations;
   e. Properties where all lead-based paint has been identified and removed using approved methods;
   f. Unoccupied units that will be demolished;
   g. Property not suitable for human residential habitation;
   h. Zero-room dwelling units where child occupancy is unlikely; or
   i. Elderly and disabled housing (as defined by 24 CFR Part 35.110 and Part 35.115): This refers to housing designated exclusively for persons with disabilities or housing reserved for households composed of one (1) or more persons sixty-two (62) years of age or older, or other age if recognized as elderly by a specific Federal housing assistance program. It does not refer to single-family homes owned or occupied by elderly persons or persons with disabilities. Additionally, this exemption does not apply if a child less than the age of six (6) resides or is expected to reside in the dwelling unit.

2. The "Approach to Lead Hazard Evaluation and Reduction" varies depending on level of assistance to the unit, so calculate the level of assistance using the "Lead Form for Set-up and Clearance" in Chapter 12, Funds Management.
   a. The following costs are not counted when calculating the level of assistance for a project:
      1) "Soft" Costs such as Administrative Costs, Program Delivery, Environmental Review, and Relocation Costs.
      2) Acquisition Costs
      3) Lead Hazard Evaluation and Reduction Costs associated with site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributed to lead-based paint reduction.
   b. In multi-family projects that include both federally-assisted and non-assisted units, use the following formula:

Rehabilitation hard costs for all assisted dwelling units (not including common or exterior areas)	+	Rehabilitation hard costs for common areas and exterior surfaces
Number of federally-assisted units in the project		Total number of units in the project

3. Identify the "Approach to Lead Hazard Evaluation and Reduction" using the tables below.

	< $5,000 assistance to unit	**$5,000 - $25,000 assistance to unit**	**> $25,000 assistance to unit**
Approach to Lead Hazard Evaluation and Reduction	Do no harm	Identify and control lead hazards	Identify and abate lead hazards
Notification	Yes	Yes	Yes
Lead Hazard Evaluation	• Paint testing of surfaces to be disturbed by rehabilitation	• Paint testing of surfaces to be disturbed by rehabilitation • Risk assessment	• Paint testing of surfaces to be disturbed by rehabilitation • Risk assessment
Lead Hazard Reduction & Clearance	• Repair surfaces disturbed during rehabilitation • Safe work practices • Clearance of work site	• Interim controls • Safe work practices • Clearance of unit	• Abatement • Safe work practices • Clearance of unit
Ongoing Maintenance	For rental properties	For rental properties	For rental properties
EIBLL	No	No	No
Options	• Presume lead-based paint • Use safe work practices on all surfaces	• Presume lead-based paint • Use standard treatments	• Presume lead-based paint • Abate all applicable surfaces

4. Conduct the Lead Hazard Evaluation
5. Notify the occupant of the Lead Hazard Evaluation.
6. Complete Lead Hazard Reduction activities as directed according to the level of assistance and the results of the Lead Hazard Evaluation.
7. Conduct the Lead Hazard Reduction and Clearance Test.
8. Provide the occupant with the Notification of Hazard Reduction and Clearance.
9. Complete and submit the "Lead Form for Set-up and Clearance" (see Chapter 12, Funds Management, Exhibit J)

D. Evaluation Process

1. **Visual Assessments** must be conducted by persons that have completed HUD's online visual assessment training located at: **www.hud.gov:80/lea/training/visualassessment/h00100.htm**.

2. **Paint testing** must be conducted by a licensed lead-based paint inspector or risk assessor.

3. **Risk assessments** must be conducted by a licensed risk assessor.

4. All paint testing samples and risk assessment samples must be analyzed by an approved laboratory.

E. Notice of Evaluation

1. The administering agency must notify occupants about the results of the lead hazard evaluation within fifteen (15) days after the results have been determined. The notification must provide the following information:
   a. The presence and location of lead-based paint or the presumption of lead based paint.
   b. A description of how occupants can get additional information including the full report of the testing methods and results.
   c. An explanation of the decision to forego evaluation and presume that lead-based paint and/or hazards exist. You must notify occupants of the reasons for making this presumption.
2. The notice of evaluation may be provided to the occupant as follows:
   a. In single-family buildings, recipients can provide this information to the homeowner directly.
   b. In multi-family buildings, recipients can either distribute this information to each household or post it in a central location where all residents can access it.
3. The results and methods of all evaluations must be summarized in a report that is made available to residents if requested. Program staff can prepare the report; however, in some cases the paint inspector or risk assessor may be the most qualified person to write the report.
4. Occupants must receive the results of the hazard reduction and clearance tests within fifteen (15) days of completion.

F. Lead Hazard Reduction

1. Renovations in target (pre-1978) housing and child-occupied facilities must be conducted by certified renovation firms, using renovators with accredited training, and following the safe work practice requirements.

2. Safe Work Practices

   a. At least one (1) certified renovator must be at the job or available when work is being done. The certified renovator may be a certified LBP Abatement Supervisor who has completed the four (4) hour RRP refresher course.

b. Safe work practices must be used for all work on all lead-based paint surfaces. Safe work practices are required on deteriorated interior surfaces (i) larger than two (2) square feet, (ii) over ten percent (10%) of any building component (e.g., window or door trim) and (iii) on deteriorated exterior surfaces larger than twenty (20) square feet.

3. Lead Hazard Reduction Measures

a. **Paint Stabilization**: Includes repairing disturbed paint and applying a new coat of paint. Paint stabilization must be done by a certified abatement worker or by a contractor who is supervised by a certified abatement supervisor.

b. **Interim Controls and Standard Treatments:** Includes addressing friction and impact surfaces, creating smooth and cleanable surfaces, encapsulation, removing or covering lead-based paint components, and paint stabilization. Interim controls and standard treatments must be completed by a certified abatement worker, by a contractor who is supervised by a certified abatement supervisor or by workers trained in a HUD approved lead based paint worker course.

c. **Abatement**: Abatement involves permanently removing lead-based paint hazards, often through paint and component removal, and enclosure. Abatement work must be done by a licensed abatement supervisor along with certified abatement workers.

4. Pre-Construction Conference

For activities where a licensed Lead-Based Paint Abatement Supervisor is utilized, a pre-construction conference for all contractors and workers that will be involved in disturbing lead-based paint is required. The supervisor will be required to explain safe work practices and review the work specification for each particular job site. The supervisor must explain the entire process to contractors, including possible increase in job cost, use of HEPA vacuums, clearance test, relocation, retainage, and maintaining a licensed Lead Project Supervisor onsite during all site preparation, abatement activity, and site cleanup. Award recipients are required to keep documentation of minutes and attendees of the pre-construction conference. IHCDA staff will document this requirement at monitoring.

G. Relocation

Occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe, and similarly accessible dwelling unit that does not have lead-based paint hazards, except if:

1. Treatment will not disturb lead-based paint hazards or soil-lead hazards;

2. Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned afterward, and entry free of dust-lead hazards, soil-lead hazards, and debris is provided;

3. Treatment of the interior will be completed within one (1) period of eight (8) daytime hours, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards (e.g. exposed live electrical wiring, release of toxic fumes, or site-disposal of hazardous waste); or

4. Treatment of the interior will be completed within five (5) calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, treatment does not create other safety, health, or environmental hazards and, at the end of work on each day, the worksite and the

area within at least ten (10) feet (3 meters) of the containment area is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas, and bathroom and kitchen facilities.

If it is determined those occupants must be relocated from the lead premises then the occupants must remain away from the unit until the unit passes clearance.

H. Lead Hazard Clearance Tests

1. Clearance Tests must be conducted by a licensed lead-based paint inspector, risk assessor or clearance technician.
2. The clearance examiner must be independent from the individual or entity that conducted the paint stabilization or other lead hazard reduction, unless they are employees of the administering agency. Note: If agency employees are used, the same individual who conducted paint stabilization is not permitted to conduct clearance.
3. The purpose of clearance is to make sure that the unit is safe for occupants to return. Occupants are not permitted in the work area until it has passed clearance. Clearance must be performed at least one (1) hour after work has been completed. During clearance, a licensed professional will take dust samples and have them tested for lead. Clearance tests are not required when work areas is smaller that a total of two (2) square feet per room, ten percent (10 %) of the total surface area of interior components, such as window sills, or smaller than twenty (20) square feet on the exterior (DeMinimus).
4. **Before Clearance.** Prior to the clearance inspection, the contractor and program staff should ensure that the worksite is ready for inspection.
   a. Be sure that all required work has been completed.
   b. Be sure that all the lead hazard reduction measures have been completed.
   c. Remove debris, paint chips, and dust from all surfaces, especially horizontal surfaces.
   d. Remove debris and chips from the ground surrounding the building.
   e. No less than one(1) hour after work has been completed; perform a final check of all surfaces for dust and chips. Check where dust tends to settle such as window troughs and sills, the tops of doorframes, and baseboards.
5. **Clearance Tasks.** During clearance, the licensed professional will complete the following tasks.
   a. Conduct a visual assessment of the unit and worksite to identify dust, debris, and deteriorated paint.
   b. Take dust samples from floors, interior windowsills, and window troughs.
   c. If work was done to the exterior, visually assess the soil near the worksite.
   d. Submit the samples to an NLLAP-recognized laboratory for analysis.
   e. Write a report presenting the results of the clearance examination.

	Floors ($\mu g/ft^2$)	Interior Window Sills ($\mu g,ft^2$)	Window Troughs ($\mu g/ft^2$)
Lead in Dust (as measured by a dust wipe sample)	40	250	400

6. **Final Payment to Contractor.** A minimum of ten percent (10%) of the total contract must be held from the contractor until you receive a clearance report detailing that the levels of lead are within the acceptable range.

I. Notification of Lead Hazard Reduction and Clearance

1. The administering agency must provide occupants with the "Notification of Lead Hazard Reduction and Clearance" within fifteen (15) days of completion.
2. The notice should include:
   a. A summary of the hazard reduction activities and clearance results;
   b. A contact name, address, and telephone number for further information; and
   c. The locations of remaining lead-based paint surfaces and lead hazards.

J. On-Going Lead Based Paint Requirements

1. Owners must inform current and new occupants of the lead hazard reduction methods that took place and where lead-based paint exists in their units. The brochure entitled "Protect Your Family from Lead in Your Home" must be provided to all new occupants upon move-in (see Part B.1 of this Chapter).
2. Owners should request, in writing, that the occupants of rental units monitor lead-based paint surfaces and inform the owner of potential hazards.
3. Regular maintenance and evaluation of the lead hazard reduction work must be performed. The owner is responsible for:
   a. A visual inspection of lead-based paint at unit turnover or at least annually;
   b. Repair of all unstable paint;
   c. Repair of encapsulated or enclosed areas that are damaged; and
   d. Owners must continue to comply with the notification requirements when additional lead hazard evaluation and hazard reduction activities are performed.

Chapter 3 – Accessibility Requirements

This chapter outlines Section 504 of the Rehabilitation Act. Recipients cannot discriminate against an otherwise qualified individual with disabilities, solely by reason of his or her disability, with regards to participation in any program or activity receiving CDBG or HOME funds. This chapter defines the recipient's responsibilities in terms of physical and program accessibility of its CDBG or HOME program. For more information on Fair Housing and nondiscrimination see Chapter 5.

Recipients must include the accessibility logo on all client related brochures, applications and correspondence. An electronic copy of the logo is available at http://www.in.gov/ihcda/3099.htm or by contacting your IHCDA Real Estate Production Analyst or Compliance Auditor.

Per Section 504 of the Rehabilitation Act of 1973:

"No ***otherwise*** qualified individual with disabilities, shall, **solely** by reason of his or her disability, be excluded from the participation in, or denied the benefits, or be subjected to discrimination under any program or activity receiving Federal financial assistance from HUD."

A. Accessibility Requirements

New Construction

5 or more units	15 or more units
Required minimum of five percent (5%) of the units or at least one (1) unit accessible for mobility impairments; Minimum of two percent (2%) or at least one (1) unit accessible for hearing or vision impairments	***Required*** minimum of five percent (5%) of the units or at least one (1) unit accessible for mobility impairments; Minimum of two percent (2%) or at least one (1) unit accessible for hearing or vision impairments

Substantial Rehabilitation

5 or more units	15 or more units
Recommended minimum of five percent (5%) of the units or at least one (1) unit accessible for mobility impairments; recommended minimum of two percent (2%) or at least one (1) unit accessible for hearing or vision impairments	***Required*** minimum of five percent (5%) of the units or at least one (1) unit accessible for mobility impairments; Minimum of two percent (2%) or at least one (1) unit accessible for hearing or vision impairments

Rehabilitation

5 or more units	15 or more units
Recommended minimum of five percent (5%) of the units or at least one (1) unit accessible for mobility impairments; recommended minimum of two percent (2%) or at least one (1) unit accessible for hearing or vision impairments	***Recommended*** minimum of five percent (5%) of the units or at least one (1) unit accessible for mobility impairments; recommended minimum of two percent (2%) or at least one (1) unit accessible for hearing or vision impairments

B. Physical Accessibility

All new construction housing projects with five (5) or more units or projects involving substantial rehabilitation must be designed and constructed to be readily accessible to and usable by individuals with disabilities.

A minimum of five percent (5%) or at least one (1) of the units (whichever is greater) must be accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the Uniform Federal Accessibility Standards (UFAS) is accessible for purposes of this section. An additional two percent (2%) of the units (but not less than one (1) unit) in such a project must be accessible for persons with hearing or vision impairments.

Substantial Rehabilitation is defined as having fifteen (15) or more units (in a project) and the cost of the rehabilitation is greater than seventy-five percent (75%) of the replacement cost of the completed facility.

C. Distribution of accessible dwelling units

Accessible dwelling units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with a disability has a choice of living arrangements that is, as a whole, comparable to that of other persons eligible for housing assistance under the same program. This provision shall not be construed to require provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

D. Occupancy of accessible dwelling units

Recipients with accessible units shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with disabilities, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the owner or manager before offering such units to a non-disabled applicant shall offer such unit:

(1) First, to a current occupant of another unit of the same project, or comparable projects under common control, having disabilities requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then
(2) Second, to an eligible qualified applicant on the waiting list having a disability requiring the accessibility features of the vacant unit.

When offering an accessible unit to an applicant not having disabilities requiring the accessibility features of the unit, the owner or manager may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

E. Homeownership programs

Recipients are required to ensure that any newly constructed or rehabilitated housing units for purchase i.e. single family (including semi-attached and attached) units receiving Federal financial assistance shall be made accessible upon request of the prospective buyer if the nature of the disability of an expected occupant so requires.

In such cases, the buyer shall consult with the seller or builder/sponsor regarding the specific design features to be provided. If accessibility features selected at the option of the homebuyer are ones covered by the standards prescribed by the Uniform Federal Accessibility Standards, those features shall comply with the standards prescribed in the UFAS. The buyer shall be permitted to depart from particular specifications of these standards in order to accommodate his or her specific disability.

The cost of making a facility accessible under this paragraph may be included in the mortgage amount within the allowable mortgage limits, where applicable. To the extent such costs exceed allowable mortgage limits, they may be passed on to the prospective homebuyer, subject to maximum sales price limitations (see 24 CFR 235.320).

F. 24 CFR Part 8/Accessibility Standards for Design, Construction, and Alteration

This regulation deals with the Uniform Federal Accessibility Standards (UFAS) for construction. The UFAS outlines specific requirements in terms of creating units accessible for people with disabilities. The UFAS contains specs and guidance on access ramps, doorway widths, handles on doors, cabinets, sink heights, etc.

These standards are used in new construction and substantial rehabilitation as defined under the physical accessibility section above.

Copies of UFAS are available through HUD's Publications Office. (800) 767-7468. HUD's TDD (hearing or speech impaired) number is 202-708-0113. IHCDA also has limited copies available for use. Please contact your IHCDA Real Estate Production Analyst.

Recipients also need to ensure that the space where clients apply for housing is accessible. IHCDA staff will review the physical offices of the recipient, sub recipient, and/or award administrator in order to determine the accessibility of the offices.

G. Program Accessibility

In addition to physical accessibility, recipients are also required to have accessible programs. Recipients must ensure that people have access to apply for that program.

For example, if an applicant required an application in Braille or in a language other than English, the recipient is required to make that accommodation.

Additionally, recipients must have a communication system in place for the hearing and speech impaired. Relay Indiana is a free service that relays calls between a person using a text telephone (TTY/TTD) and users of the general telephone network in Indiana. If the need to use this service arises, recipients should call Relay Indiana at 800-743-3333.

For more information on reasonable accommodations and modifications as required under Fair Housing, see Chapter 5.

Chapter 4 – Uniform Relocation Act & Section 104(d) Requirements

This chapter provides guidance on how to handle permanent and temporary displacement of residents as a result of the IHCDA assisted development. URA and Section 104(d) can be extremely costly to an award recipient if not done correctly. The information in this chapter is presented based on the type of activity you are undertaking.

According to Title I of the Housing and Community Development Act of 1974, as amended, and Title II of the National Affordable Housing Act of 1990, as amended, "Each award recipient shall provide for reasonable benefits to any person involuntarily and permanently displaced as a result of the use of assistance received under this title..." as required under the **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, as amended, and Federal implementing regulations at 49 CFR Part 24 and the requirements of **Section 104(d) of Title I of the Housing and Community Development Act of 1974**, as amended.

A. Temporary Relocation for Homeowner Repair and Improvement

Participation in the homeowner repair and improvement program is voluntary, so participants are ***not*** eligible for permanent relocation assistance. Award recipients are required to provide *temporary* relocation assistance in the event that a unit becomes temporarily unlivable during rehabilitation.

During the initial eligibility review for the homeowner repair and improvement program, award recipients should inform participants that relocation might occur. Award recipients can provide relocation in the form of paying for hotels, housing participants in another unit, paying for meals, etc. Homeowner repair and improvement participants are not required to receive relocation advisory notices.

B. Property Acquisition – Willing Buyer/Seller Transaction

This situation arises when the property owner is interested in selling the property. In this case, you would use Form I – Voluntary Acquisition Disclosure to Seller to notify the property owner of the following:

a. of the property's estimated fair market value;
b. the purchase price of the property ; and
c. that the purchaser does not have the power of eminent domain.

This notice must be sent certified mail or hand delivered with signed receipt.

Willing buyer/seller transactions are *ineligible* for relocation assistance. However, any *tenants* residing in the building are entitled to relocation. Please refer to Chapter 5 Section D: Property Acquisition with Tenants for further guidance.

C. Property Acquisition

If award funds are used to acquire a property for the purpose of becoming HOME or CDBG housing, the award recipient is responsible for ensuring compliance with all of the relocation statutes.

Step 1 – Property Owner Notification (Form A)

Send a notice to the seller; this packet of information should include a cover letter explaining the IHCDA recipient's interest in the property and the informational URA brochure entitled "When a Public Agency Acquires Your Property." Notices should be issued **as soon as feasible** after a specific property has been identified for CDBG or

HOME assistance. This packet of information should be sent certified mail; however, if certified mail is not used, a signed statement from the homeowner must be obtained to document their receipt of this information.

Step 2 – Determine Value of Property

You must determine the value of the property.

a. If the value of the property is below $10,000, a licensed real estate appraiser may determine value. The estimate must be in writing.
b. For property valued above $10,000, a fee appraisal documenting value must be obtained. The appraisal must be conducted by a licensed real estate appraiser.
c. For properties that have been damaged and are located within the 100-year floodplain, a fee and review appraisal must also be completed. The review appraisal must be conducted by a licensed real estate appraiser. In the event the two appraisals do not match, the review appraisal value must be utilized.

You must notify the property owner by certified mail of the time and date of the appraisal. The homeowner can attend the appraisal if they choose.

Step 3 – Notify Property Owner of Offer

After the completion of the market valuation or appraisals, the recipient notifies the property owner of the offer to purchase. This should be sent either certified mail or hand delivery with a signed receipt.

Step 4 – Sign the Purchase Offer

Once the property owner accepts the offer, you may execute the purchase offer. If this is done prior to release of funds and Section 106 Historic Clearance, you should enter into a purchase option that documents the Section 106 Clearance and Release of Funds process must be successfully completed as a condition of sale.

Step 5 – Recipient Questionnaire

The recipient should complete the questionnaire, which provides additional information regarding the property.

D. Property Acquisition with Tenants

Step 1 – General Information Notice (Forms – two of them)

a. Residential Tenant That Will Not be Displaced (Exhibit B)
b. Residential Tenant to be Displaced (Exhibit C)

The notice must be provided as soon as feasible after the submission of an application to IHCDA, or as soon as a specific property has been identified for CDBG or HOME assistance.

The notice must explain that the CDBG or HOME assisted development has been proposed and caution the resident not to move prematurely.

The notice must inform the resident of the terms for continued occupancy if the resident will not be displaced or of the assistance available if the person will be displaced.

If displacement is possible, the notice should enclose additional information about available relocation assistance (e.g., HUD Booklet 1042-CPD, *Relocation Assistance to Tenants Displaced From Their Homes.*)

Step 2 - Notice to Tenants Moving In After Application (Exhibit R)

This notice must be issued to each prospective tenant BEFORE the tenant agrees to move into the development.

The notice must explain that the development has been proposed and inform residents that they may be displaced or sustain a rent increase as a result and that they will NOT be entitled to relocation assistance in either event.

Failure to issue this notice can be very costly. The award recipient may incur unnecessary relocation liability for each resident who moves in after the application for CDBG or HOME assistance and is not given this notice.

Step 3 - Notice of Nondisplacement (Exhibit D)

For acquisition and/or residential rehabilitation projects, this notice is issued to residents who will remain in the project after its completion.

The notice is issued at the time of the execution of the agreement for acquisition and/or rehabilitation and contains a specific offer of a suitable, affordable unit in the project.

Step 4 - Temporary Relocation Notice

Residents who are not required to move permanently may be required to move temporarily, if all conditions of the move are "reasonable".

Residents that are to be temporarily relocated must receive "reasonable" advance written notice of the location, terms and conditions of the temporary move and of their right to reimbursement of all reasonable out-of-pocket expenses.

Step 5 - Notice of Eligibility for Relocation Assistance (Exhibits E, F, G & H)

For acquisition and/or residential rehabilitation projects, this notice is issued to residents who will be displaced.

The notice is issued at the time of the execution of the agreement for acquisition and/or rehabilitation and contains a commitment for relocation assistance including:

a. Address of at least one (1) comparable replacement unit and other appropriate (but not necessarily comparable) referral housing units.
b. A specified amount for a replacement housing payment and moving expenses.

Because the comparable rents set an upper limit for assistance, failure to provide information about available, comparable units may result in a requirement to pay excessive relocation costs.

For a family who can be offered a decent, safe, and sanitary unit in the project but not an affordable one, the notice may offer the family the opportunity to waive relocation assistance and remain in the development.

The notice should include the information contained in HUD Booklet 1042-CPD *Relocation Assistance to Tenants Displaced From Their Homes* or Booklet 1044-CPD *Relocation Assistance to Displaced Homeowners*.

There are different types of replacement housing depending on whether the resident is a homeowner or rental tenant as well as how long they have lived in the property. Please refer to the following information in making your determination of benefits:

a. Replacement Housing Payment Calculation for URA (180-Day Homeowner)
b. Replacement Housing Payment Calculation for URA (90-179-Day Homeowner)
c. Replacement Housing Payment Calculation for URA (Rental Tenants)
d. Replacement Housing Payment Calculation for Section for 104(d)

For the specific requirements and calculation methods for the above, please refer to the Relocation Definitions Section.

Step 6 - 90 Day (and 30 Day) Notices

Each lawful occupant to be displaced must receive at least ninety (90) days written advance notice before being required to move.

The notice cannot be given before the person is issued a Notice of Eligibility for Relocation Assistance **or** before being notified of the availability of a comparable replacement dwelling.

The notice must specify the date by which the property must be vacated, or if the date is unknown, it must indicate the earliest date that the occupant may be required to move.

If no date is specified in the 90-Day Notice the occupants must be informed that they will receive at least thirty (30) days advance written notice of the specific date of the move.

E. Information and Counseling

1. All residents must be kept informed of development activities and scheduling.

2. Information and counseling should also include:

   ◊ Referrals to other available assistance and human services (e.g., health services, public assistance, child care)

   ◊ Information about Federal, State, and local housing programs and how to apply for them.

   ◊ Information about the household's rights under the Fair Housing Act.

   ◊ For those who are displaced: information, to the extent possible, about replacement housing opportunities that may promote fair housing and moves to neighborhoods outside areas of racial concentration.

F. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) applies to:

◊ Displacement that results from acquisition, demolition, or rehabilitation for HUD-assisted developments carried out by public agencies, nonprofit organizations, private developers, or others.

◊ Real Property Acquisition for HUD-assisted developments (whether publicly or privately undertaken).

◊ URA requirements apply to all CDBG or HOME assisted projects regardless of whether federal, local, or private funds are paying for the specific development activity that is causing displacement to occur.

G. URA Assistance to Displaced Households

Assistance must be provided to displaced persons who **leave** the development. Displaced households must receive:

- ◊ Appropriate notices and other advisory services to assure they are fully informed of their rights, make informed decisions, and receive referrals to appropriate services that may be needed.

- ◊ Replacement housing including the offer of a comparable replacement dwelling and, if necessary, financial assistance to make the unit affordable. (Financial assistance may be in the form of a Replacement Housing Payment or tenant-based rental assistance, such as Section 8 Certificates and Vouchers). There is no income cut-off for eligibility for relocation assistance. Anyone who is displaced may be entitled to URA assistance.

- ◊ Moving and related expenses to help cover costs of the move. The displaced person has the option of choosing:

  -- a payment for actual, out-of-pocket, reasonable moving and related expenses; or
  -- a fixed moving expense allowance based on the U.S. Department of Transportation (DOT) residential moving cost schedule. The current allowance can be found online at http://www.fhwa.dot.gov/realestate/ua/index.htm. It is called the "Residential Moving Cost Schedule".

H. URA Assistance to Remaining Households

Assistance must also be provided to those persons who are expected to **remain** in the development. Remaining households must receive:

- ◊ Appropriate notices and other advisory services - To assure that they are fully informed of their rights, make informed decisions, and receive referrals to appropriate related services that may be needed.

- ◊ Suitable housing - The family must be offered a unit within the development that is decent, safe, and sanitary and appropriate for the household's size.

- ◊ Affordable housing - If a household's rent increases as a direct result of a federally assisted activity to an amount that is more than the household can afford, the household is considered "economically displaced." The award recipient must treat this household like any other displaced household by issuing a "Notice of Eligibility" and providing relocation assistance.

- ◊ Temporary relocation assistance - Including moving and related expenses to cover the cost of any temporary move (e.g., while the unit is being rehabilitated).

- ◊ Moving and related expenses - To help cover the cost of any permanent move to another unit in the development.

I. Donations

Owners may offer to donate properties, and these transactions would be considered voluntary. But the owners must be informed of their rights under URA, AND they must waive these rights in a written consent document. However, any tenant residing in an owner-donated property would be eligible for relocation.

J. Key Definitions for Section 104(d)

◊ *Conversion -*

-- Changing the use of the unit (e.g., from permanent rental housing to a hotel or to a non-residential use), and/or
-- Rehabilitating a low/mod unit with CDBG or HOME assistance causing the post rehab rent to be above the Section 8 Fair Market Rent (FMR). If rent increases, but does not exceed the FMR, then the household may be eligible for URA, but not Section 104(d).
-- Conversion does not occur if the sole development activity is acquisition. However, if CDBG or HOME funds are used for any development activity (i.e. acquisition but not the subsequently planned rehabilitation), the entire development is considered to be funded with CDBG or HOME funds.

◊ *Demolition -*

-- Any unit occupied by a low or moderate income resident that is demolished with CDBG or HOME funds triggers the requirement to provide relocation assistance to the occupant at Section 104(d) levels.
-- Whether or not a demolished unit must be replaced depends upon its condition and how long it has been vacant prior to demolition. (More details are provided in Section L: One-For-One Replacement).

◊ *Low/Mod Unit -*

-- A low/mod unit is a housing unit that has a market rent (including estimated tenant-paid utilities) that is equal to or below the Section 8 Fair Market Rent.
-- The determination of a low/mod unit is **not based upon the income of the occupant**. For example, a unit that rents above the FMR that is occupied by a low or moderate-income tenant is NOT a low/mod unit. But a unit that rents below the FMR that is occupied by a high-income person IS a low/mod unit.
-- To determine whether an owner-occupied unit is a low/mod unit, consider the "market rent" for the unit based upon the rents for comparable units that are being rented.

◊ *Market Rent –*

-- Rent (including estimated tenant-paid utilities) charged for an unsubsidized comparable unit. Generally, this is what a tenant pays. A reduced rent charged to a relative or onsite manager is not market rent. For owner-occupied units, the market rent is the rent the unit could command if it were rented.

◊ *Section 8 Fair Market Rents (FMRs) -*

-- FMRs are determined by HUD and are published annually in the Federal Register. They are published by bedroom size for individual market areas.
-- FMRs are intended to represent a figure at or below which modest, decent, safe, and sanitary housing (including the cost of utilities) can be rented on the private market (approximately the 45th percentile of standard housing occupied by people who have moved within the last two years).

◊ *Vacant Occupiable Dwelling Unit -*

-- A dwelling unit in standard condition (regardless of how long it has been vacant); OR
-- A vacant unit in substandard condition that is suitable for rehabilitation (regardless of how long it has been vacant); OR
-- A dilapidated unit, not suitable for rehabilitation which has been occupied (except by squatters) within one (1) year from the before the date of agreement.

K. Section 104(d) Tenant Assistance and Relocation Requirements

◊ Whenever:

-- Any unit, at any rent level that is occupied by a low or moderate-income person is **demolished** with CDBG or HOME funds; the displaced person is eligible for relocation assistance at the Section 104(d) levels.
-- A CDBG or HOME funded **conversion** displaces a low or moderate-income person; the displaced person is eligible for relocation assistance at Section 104(d) levels.
-- A low or moderate-income person remains in a development **converted** with CDBG or HOME funds, Section 104(d) economic displacement rules apply.

◊ Any displaced person who qualifies for Section 104(d) assistance is also covered by URA.

◊ High-income residents of a CDBG or HOME funded development who are displaced (physically or economically) are not eligible for Section 104(d) assistance but are eligible for URA assistance.

SECTION 104(d) REPLACEMENT HOUSING PAYMENT

◊ The Section 104(d) Replacement Housing Payment is available only to low and moderate-income households; however, high income displaced tenants are eligible to receive assistance under the URA.

◊ The Section 104(d) Replacement Housing Payment is intended to provide affordable housing for a 60-month (5 year) period. There is no cap on the Section 104(d) Replacement Housing Payment.

◊ For homeowners who are displaced and who qualify for Section 104(d), use the market rent of the comparable and replacement units in this calculation.

◊ **Be sure to compare the Section 104(d) calculation to the amount that they would receive under the URA formula. If the amount calculated under the URA formula exceeds the amount under the Section 104(d) formula, then the displaced household is entitled to the URA amount.**

◊ Provide homeowners with a copy of HUD booklet 1365-CPD *Relocation Assistance Under Section 104(d) to Persons Displaced From Their Homes*.

L. Section 104(d) One--For-One Replacement Requirements

◊ Award recipients may not use CDBG or HOME dollars to reduce the supply of "low/moderate dwelling units."

◊ Section 104(d) requires that each applicable low/mod unit that is "lost" through conversion or demolition in conjunction with a CDBG or HOME assisted development be replaced by another affordable unit.

◊ This is a bricks and mortar requirement. It is not related to the circumstances of the household who lives in the unit, nor whether the unit is currently owned or rented.

◊ Award recipients MUST replace a unit if:
- -- It meets the definition of a low/mod dwelling unit; **AND**
- -- It is occupied or is a vacant occupiable dwelling unit; **AND**
- -- It is to be demolished or converted to a unit with market rents above the FMR or to a use that is no longer for permanent housing.

◊ A unit DOES NOT need to be replaced if:
- -- It does not meet **all** of the triggering criteria.
- -- It is a substandard unit not suitable for rehabilitation (as defined by local minimum housing standards or the State Consolidated Plan) that has been vacant for over a year.

◊ Income of the current resident is not relevant when evaluating triggers for replacement.

1. DISCLOSURE AND REPORTING REQUIREMENTS

◊ Before an award recipient executes a contract for any activity that would create the need for one-for-one replacement, the award recipient must:

-- Make the plan public, by publication in a newspaper of general circulation; and
-- Submit to IHCDA the following information:
- -- Description of the proposed activity;
- -- Location and number of units to be removed;
- -- Schedule for the beginning and completion of the demolition or conversion;
- -- Location and number of replacement units;
- -- Source of funding and timing for providing the replacement units;
- -- The award recipient's basis for determining that the replacement units will remain affordable for at least ten (10) years from the initial date of occupancy; and
- -- The award recipient's justification (if applicable) for replacing larger units with smaller units.

◊ There will be no formal IHCDA approval of the submission. IHCDA will forward the information to HUD and both agencies will use it during their monitoring activities.

2. REPLACEMENT UNITS

◊ Replacement units must be:

- -- Within the award recipient's jurisdiction and, if possible, consistent with other statutory priorities, in the same neighborhood;
- -- In standard condition; and
- -- Designed to remain affordable to low-income families for ten (10) years.

◊ The total number of bedrooms replaced must equal the total number of bedrooms removed (but not necessarily in the same unit configurations).

◊ Larger units may not be replaced with smaller units unless the award recipient can demonstrate that the replacement is consistent with the housing need of low or moderate-income households in the jurisdiction. Example: A jurisdiction might show that the need for one-bedroom units as shown in the local comprehensive plan or housing plan greatly exceeds the need for two-bedroom units.

◊ Replacement units must be provided within a **four (4) year time frame.**

-- Units made available up to one (1) year before the submission of the award recipient's plan for a one-for-one replacement may be counted as replacement units.
-- Units made available within three (3) years after the beginning of the demolition or rehabilitation can be counted as replacement units.

◊ Substandard units that are rehabilitated can count toward the replacement unit if:

-- No person was displaced by the assisted activity; and
-- The unit was vacant for at least three (3) months before the agreement authorizing the rehabilitation; and
-- The unit is in standard condition following rehabilitation.

M. URA and Section 104(d): Similarities

Both URA and Section 104(d) provide assistance for persons who have been displaced as a direct result of CDBG or HOME assisted developments. Specific similarities between the two sets of regulations include:

◊ ***Minimizing displacement*** - Both regulations stress that displacement should be minimized when possible.

◊ ***Notices*** - Both require that a General Information Notice, and a Notice of Non-Displacement or a Notice of Eligibility for Relocation Benefits be provided.

◊ ***Economic displacement*** - Both regulations consider people who cannot afford to remain in the property after completion to be economically displaced.

◊ ***Relocation assistance and procedures***
-- Moving expenses are the same under the two sets of regulations.
-- Both require payments of rental assistance, although the amounts and available types vary across the two regulations.
-- Both permit offering Section 8 to eligible families who will remain in the development to avoid economic displacement. And, as with URA, "gap" payments may be required in some cases.
-- Both require that displaced tenants be offered comparable dwelling units that are decent, safe, and sanitary.
-- Advisory services are required under both Section 104(d) and URA.
-- Appeals are provided for under both sets of requirements.

◊ ***Award recipient responsibility and records*** - Award recipients are responsible for ensuring subrecipient compliance with both Section 104(d) and URA and keeping adequate records.

N. Relocation Definitions

Advisory Services - Includes timely notices, information booklets, explanation of assistance, referrals to comparable housing, referrals to social services, counseling, and advice on rights under the Fair Housing Act.

Affordable Rent (CDBG/HOME) - is rent plus utilities that does not exceed thirty percent (30%) of a household's gross monthly income.

Comparable - Tenants who are displaced must be referred to at least one (1) comparable replacement unit.

◊ Comparables are used to:
- -- Assure that displaced persons actually have a place to go, and
- -- Set a limit on the maximum liability for the agency for replacement housing payments because the replacement housing payment is based upon the lesser of the cost of the household's replacement unit or the cost of the comparable unit.

◊ Generally, "comparable" units must be:
- -- Similar in size
  Generally, comparable units will have the same amount of space as the original unit.
  Sites should be typical in size for residential development with normal site improvements.
  NOTE: If the original unit was dilapidated, a smaller, decent, safe, and sanitary unit adequate in size to accommodate the household may be considered comparable. If a household is found in an overcrowded unit, however, the comparable must alleviate the overcrowding.
- -- Similar in function
  The unit performs the same function, service, or purpose as the displacement unit and contains the same principle features.
- -- Reasonably accessible to the person's employment
- -- Located in equal to or better area than the displacement unit vis-a-vis public utilities and commercial and public facilities. The location should be no less desirable than the displacement location and provide access to work, services, and facilities. Comparable units may not be in areas subject to unreasonable, adverse environmental conditions.
- -- Currently available to the displaced person. Units are "available" if:
  The person has been informed of the location; has sufficient time to negotiate an agreement to lease or purchase; and receives relocation payments (as necessary) in sufficient time to complete the move or purchase.
- -- Decent, safe, and sanitary (See definition below)
- -- Within the financial means of the displaced person.
  Note: Because URA requires that financial assistance be provided to assist the household to afford the replacement unit, the unit selected, as the comparable is not required to be affordable by the family without assistance.

◊ The type of rental property affects whether it is considered comparable.
- -- Public housing is a suitable comparable unit for displaced public housing tenants, but not for other tenants.
- -- Project based subsidized housing (e.g., Section 8 or Section 236 developments) is an acceptable comparable for displaced public housing tenants as well as those who lived in such projects before being displaced.
- -- A privately owned unit made affordable by a tenant-based subsidy (e.g., Section 8 Rental Certificates) is an acceptable comparable for displaced person who previously lived in a unit with a project-based subsidy.
- -- Affordable privately owned housing is an acceptable comparable for any tenant.

Conversion -

◊ Changing the use of the unit (e.g., from permanent rental housing to a hotel or to a non-residential use).

◊ Rehabilitating a low/mod unit with CDBG or HOME assistance causing the post rehab rent to be above the FMR (If rent increases, but does not exceed the FMR, then the household may be eligible for URA, but not Section 104(d)).

- ◊ Conversion does not occur if the sole development activity is acquisition. However, if CDBG or HOME funds are used for any development activity (i.e., acquisition but not the subsequently planned rehabilitation), the entire development is considered to be funded with CDBG or HOME funds.

Decent, Safe, and Sanitary Units must:

- ◊ Be structurally sound, weather-tight, and in good repair;
- ◊ Include wiring that is safe and adequate for lighting and other devices;
- ◊ Contain a heating system capable of sustaining a healthful temperature;
- ◊ Be adequate in size for the household including:
  - -- Separate, well-ventilated bath with sink, bathtub or shower, and toilet in good working order and properly connected;
  - -- A kitchen area with sink, potable water, sewage drainage, and space and connections for stove and refrigerator; and
  - -- Unobstructed access to safe, open space at ground level.
- ◊ For a person with mobility impairments, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling; and
- ◊ Comply with the lead-based paint requirements of 24 CFR Part 35 (i.e., no cracking, peeling, chipping, scaling paint, and provide lead-based paint notice if children under seven (7) years of age will occupy the unit).
- ◊ For programs covered by the Section 8 Housing Quality Standards (HQS), units that meet HQS are considered "decent, safe, and sanitary" replacement units.
- ◊ Qualified persons who are knowledgeable of the local housing code must inspect units.

Demolition -

- ◊ Any unit occupied by a lower income resident that is demolished with CDBG or HOME funds triggers the requirement to provide relocation assistance to the occupant at Section 104(d) levels.
- ◊ Whether or not a demolished unit must be replaced depends upon its condition and how long it has been vacant prior to demolition (see One for One Replacement section).

Displacement - occurs when a person (or their property) permanently moves as a direct result of a federally assisted acquisition, demolition, or rehabilitation activity. A direct result includes the following:

- ◊ The person is required to move from the property (e.g., because the family size cannot be accommodated after rehabilitation, the unit is demolished or its use is changed, or the family's lease is not renewed).
- ◊ The person leaves the property because a decent, safe, and sanitary and affordable unit in the property was not offered.
- ◊ The person leaves the property because of unreasonable temporary relocation requirements or unreasonable terms for permanent moves within the property.
- ◊ The person leaves for whatever reasons, AND the necessary notices to assure that the person was fully informed about relocation rights and assistance were not given or were not given in a timely fashion.
- ◊ The person leaves the property because the landlord did not renew their lease in order to avoid displacement.
- ◊ The landlord forces tenants to move in order to provide a "vacant" property for assistance.

Displacement does not include persons who:

- ◊ Were evicted for cause, BUT not if the eviction is taken to evade paying relocation assistance.

- ◊ Have no legal right to occupy the property (e.g. persons that meet the definition of squatters under local law).
- ◊ Before leasing and occupying the property, but after application for development funding, receive written notice of the possibility that displacement or an increase in rent may occur and that relocation assistance will not be provided.
- ◊ Retain the right of use and occupancy of the property following acquisition (life estates).
- ◊ After being fully informed of their rights, waive them.
- ◊ The award recipient decides (and HUD agrees in writing) were not displaced as a direct result of the development (professional relocatees).
- ◊ Were required to move out for a short period to facilitate emergency repairs, as long as certain conditions are met (see Temporary Relocation).

Economic Displacement - Applies to tenants who will to remain in the development after rehabilitation. If a tenant's rent increases as a result of the development and the increased rent and utilities is greater than the household's affordable rent level, then the household must be considered "economically displaced". The award recipient must treat this household like any other displaced household, by issuing a "Notice of Eligibility" and providing relocation assistance.

General Information Notice (GIN) - Informs all occupants of a possible development and of their rights under the URA. Stresses that the household should not move at this time.

HUD-assisted - Any development that involves Community Development Block Award (CDBG) or HOME Investment Partnership Program (HOME) funds awarded through the Indiana Housing and Community Development Authority (IHCDA).

Involuntary Acquisition - The use of eminent domain to acquire a property.

Low and Moderate Income - Households that have a gross annual income below eighty percent (80%) of the area median income. HUD annually publishes a table of low and moderate incomes by area and household size.

Low/Mod Unit -

- ◊ A low/mod unit is a housing unit that has a market rent (including estimated tenant-paid utilities) that is equal to or below the Section 8 Fair Market Rent.
- ◊ The determination of a low/mod unit is **not based upon the income of the occupant**. For example, a unit that rents above the FMR that is occupied by a low or moderate-income tenant is NOT a low/mod unit. But a unit that rents below the FMR that is occupied by a high-income person IS a low/mod unit.
- ◊ To determine whether an owner-occupied unit is a low/mod unit, consider the "market rent" for the unit based upon the rents for comparable units that are being rented.

Market Rent - Rent charged for an unsubsidized comparable unit. Generally, this is what a tenant pays. A reduced rent charged to a relative or on-site manager is **not** market rent. For owner-occupied units, the market rent is the rent the unit could command if it were rented.

Move-in Notice - Informs households moving into potential projects after the application that they may be displaced and that they will not be entitled to assistance.

Moving and Related Expenses - In addition to the Replacement Housing Payment, the displaced person has the option of:

- ◊ A payment for actual, out-of pocket, reasonable moving and related expenses; or
- ◊ A fixed moving expense allowance based on a Department of Transportation (DOT) schedule that is published periodically (available from IHCDA).

90-Day Notice - Informs displaced households of the day by which they must vacate the property. Displaced households may not normally be given less than ninety (90) days to vacate their residence.

Notice of Eligibility - Informs households to be displaced of their rights and levels of assistance under the URA. Information on comparable units must be included with this notice.

Notice of Non-Displacement - Informs households who will remain in the project after completion of the assisted activity of their rights and of the terms and conditions of their remaining at the property.

Development- An activity or series of activities that are integrally related, each essential to the other, whether or not all components receive federal financial assistance. If federal funds are used in **any** activity, the entire development is considered a federally assisted development.

Referral Unit - Other appropriate (but not necessarily comparable) housing which is suggested to the household as part of advisory services.

Replacement Housing Payment (RHP) - Replacement housing assistance is available to both renters and homeowners.

- ◊ Assistance is provided in the form of either rental assistance or purchase assistance.
- ◊ Rental Assistance may be in the form of a Replacement Housing Payment or, for eligible households, Section 8 tenant-based rental assistance if it is available. The household (not the award recipient) has the right to choose whether rental assistance is provided through a Replacement Housing Payment or through tenant-based rental assistance for URA relocation. Under Section 104(d) requirements, the award recipient (not the tenant) decides whether tenant-based rental assistance or a replacement housing payment will be made. However, if the household wants a cash payment and therefore rejects an offer of tenant-based rental assistance under Section 104(d), the household retains its right to a cash payment (forty-two (42) months) under URA.

- ◊ Replacement Housing Payments must be made in installments unless the tenant wishes to purchase a home. If the tenant wishes to purchase, the full amount of the payment must be paid in lump sum and attributed to the purchase cost of the home. Under Section 104(d), cash purchase assistance can only be used to buy a co-operative unit or for mutual housing. If the displaced tenant wishes to purchase other than a co-operative unit or mutual housing unit, replacement housing benefits may be calculated using the URA formula and paid in one (1) lump sum. The household may then use the URA assistance to buy any type of unit.

Replacement Housing Payment Calculation for URA (180-Day Homeowner)

- ◊ A displaced homeowner who has owned and occupied the property for at least one hundred and eighty (180) days immediately before the initiation of negotiations is eligible for a replacement housing payment.
- ◊ The payment includes the difference between:
  - -- the cost of a replacement dwelling (lesser of the comparable and actual), and
  - -- the acquisition price of the displacement unit.
- ◊ The payment also includes:
  - -- any additional mortgage financing costs, and
  - -- reasonable expenses incidental to the purchase.

EXAMPLE: URA Replacement Housing Payment - 180 - Day Homeowner

Price of actual replacement dwelling	=$60,000	
Price of comparable replacement dwelling	=$55,000	
Choose the lesser: $55,000		
Acquisition price of displacement dwelling	=$25,000	
Difference: $55,000 - $25,000	*=$30,000*	
Increased financing costs	*=$ 1,000*	
Incidental costs	*=$ 1,000*	
Replacement Housing Payment	***$32,000***	***[To be provided in a lump sum to be applied to purchase price.]***

Replacement Housing Payment Calculation for URA (90-179-Day Homeowner) **-** Receive the same assistance as a displaced rental tenant, except this owner can never receive more than a 180-Day homeowner would receive.

Replacement Housing Payment Calculation for URA (Rental Tenants) -

Assistance for Tenants in Occupancy
More than 90 Days

Replacement Housing Payment makes up (for a 42 month period) the **difference between:**

The **lesser** of rent and estimated utility costs for

the replacement dwelling or comparable unit; and

The **lesser** of:
(a) 30% of the tenant's average monthly gross income; or
(b) the monthly rent and estimated average utility costs of the displacement dwelling; or
(c) the welfare rent (in as-paid welfare states only)

Assistance for Tenants in Occupancy
Less than 90 Days

Replacement Housing Payment makes up (for a 42 month period) the **difference between:**

The **lesser** of rent and estimated utility costs for the
replacement dwelling or comparable unit and;

30% of the tenant's average monthly gross income

EXAMPLE: URA Replacement Housing Payment - Rental Tenant

$600 Rent and utilities at actual replacement dwelling
$500 Rent and utilities at comparable replacement dwelling
Choose the lesser: $500

$400 Rent and utilities at the displacement dwelling
$300 30% of gross monthly income
Choose the lesser: $300

Replacement Housing Payment is ***$500 - $300 = $200 x 42 months = $8,400***
[To be paid in installments, or in a lump sum if used for a downpayment.]

Replacement Housing Payment Calculation for Section 104(d) -

- ◊ As with URA, the payment is calculated using the lower of the cost of the tenant's replacement dwelling (including utilities) or a comparable replacement dwelling.
- ◊ The Replacement Housing Payment makes up (for a 60 month period) the difference between:
  - -- The **lesser** of the rent and utility costs for the replacement dwelling or comparable unit, and
  - -- The tenant's Total Tenant Payment (TTP), calculated as the **greater** of:
    - 30% of adjusted income; or
    - 10% of gross income; or
    - Welfare Rent (in as-paid states only)

  Be sure to compare the Section 104(d) calculation to the amount that they would receive under the URA formula. If the amount calculated under the URA formula exceeds the amount under the Section 104(d) formula, then the displaced household is entitled to the URA amount.

EXAMPLE: Section 104(d) Replacement Housing Payment

$500	Replacement Unit Rent	$20,000	Annual Income
$ 50	Estimated Average Utilities	$ 1,440	Adjustment (480 x 3)
$550	Replacement Unit Gross Rent	$18,560	Adjusted Income

$490	Comparable Unit Rent	$20,000 / 12 months x .10 = $167
$ 50	Estimated Average Utilities	$18,560 / 12 months x .30 = **$**464
$540	Comparable Unit Gross Rent	Welfare Rent N/A
		TTP = $464

Replacement Housing Payment:

	$ 540	Comparable Unit Gross Rent
minus	$ 464	Total Tenant Payment (TTP)
	$ 76	Monthly Difference
	x 60	Months
	$4,560	***Replacement Housing Payment [To be paid in installments, or in lump sum if used for a downpayment (some restriction apply, see definition of replacement housing payment).]***

Replacement Unit - The unit to which the household actually moves.

Section 8 Fair Market Rents (FMRs) -

- ◊ FMRs are determined by HUD and are published annually in the Federal Register. They are published by bedroom size for individual market areas.
- ◊ They are intended to represent a figure at or below which modest, decent, safe, and sanitary housing (including the cost of utilities) can be rented on the private market (approximately the 45th percentile of standard housing occupied by people who have moved within the last two (2) years).

Temporary Relocation -

- ◊ Residents who will remain in the development after rehabilitation may be required to move temporarily during rehabilitation.

- ◊ The temporary dwelling must be suitable and decent, safe, and sanitary - but not necessarily comparable. All other conditions of the move must be "reasonable".
- ◊ In addition to the Notice of Nondisplacement discussed earlier, the resident must, at a minimum, receive:
  - -- Reasonable advance written notice of the date and approximate duration of the planned temporary move.
  - -- Information about the terms and conditions under which the tenant will be returning to the unit when the development is completed.
  - -- Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary move including any increase in monthly rent/utility cost. (No claim form has been developed by HUD, but adequate documentation for reimbursements should be retained in award recipient files.)

Temporary Relocation Notice **-** Informs households who will be temporarily relocated of their rights and of the conditions of their temporary move.

Total Tenant Payment (TTP) - is the greater of:

- ◊ 30% of adjusted income;
- ◊ 10% of gross monthly income; or
- ◊ Welfare Rent (in as-paid states only)

Vacant Occupiable Dwelling Unit -

- ◊ A dwelling unit in standard condition (regardless of how long it has been vacant); or
- ◊ A vacant unit in substandard condition that is suitable for rehabilitation (regardless, how long it has been vacant); or
- ◊ A dilapidated unit, not suitable for rehabilitation which has been occupied (except by squatters) within one (1) year from before the date of agreement.

Voluntary Acquisition -

- ◊ In general, URA recognizes these potential types of voluntary transactions:
  - -- Purchases where the award recipient can exercise the power of eminent domain but agrees in writing not to do so.
  - -- Purchases where the award recipient does not have the power of eminent domain.
  - -- Purchases of property from government agencies (Federal, State, or local) if the purchasing award recipient does not have the power of condemnation.
  - -- Donations where the owner is informed of their rights under URA and waives these rights in a written consent document.

O. Record Keeping System

Good record keeping is essential. Sample forms are provided to assist in record keeping and managing the development workload. All records must be retained at least three years after all displaced persons and all property owners have received the final payment to which they are entitled, or the date the development is completed, whichever is latest.

Relocation - The following record keeping system must be established and maintained for each displaced person (household or business).

- ◊ Establish a separate file for each tenant displaced.
- ◊ Completed copy of Acquisition / Relocation Summary Form for each property (Exhibit A).
- ◊ Copies of all notices and evidence of tenant receipt, including date of their receipt.
- ◊ Demographic information (e.g., name, address, sex, race, income, disability status, female-headed household, etc.).
- ◊ Description of relocation needs and preferences.
- ◊ Description of comparable replacement dwellings, including monthly housing cost, number of rooms, census tract location, etc.
- ◊ List of all referrals made, including date, address, and price. If refused, indicate reason for refusal.
- ◊ Comparable replacement dwelling on-site description, including:
  - -- date of relocation
  - -- address and census tract of dwelling
  - -- monthly housing cost
  - -- socioeconomic neighborhood information
- ◊ Inspection reports of comparable replacement dwellings.
- ◊ Payment type(s) and amount(s) and evidence, including date(s) of payment(s).
- ◊ Copies of any appeals and records of the outcomes.
- ◊ All relevant correspondence.

P. Involuntary Acquisition

The following record keeping system is required for the involuntary acquisition of real property.

- ◊ A separate case file established for each property when an owner is initially contacted.
- ◊ Completed copy of Acquisition / Relocation Summary Form for each property (Exhibit A).
- ◊ A list identifying all parcels to be acquired for the development.
- ◊ For each parcel acquired, the files should include:
  - -- Identification of property and property owner(s);
  - -- Evidence that the owner was informed on a timely basis about the acquisition and his/her rights;
  - -- Copy of appraisal reports, and evidence the owner was invited to accompany each appraiser on the inspection of the property;
  - -- Copy of the written purchase offer and date of delivery to the owner;
  - -- Copy of the purchase contract and documents conveying the property;
  - -- Copy of closing statement identifying any incidental expenses;
  - -- Evidence the owner received payment and appropriate documentation if payment differed from offer of just compensation; and
  - -- Copy of any appeal or complaint filed with the award recipient and the award recipient's response.

Q. Voluntary Acquisition

The following record keeping system is required for the voluntary acquisition of real property.

- ◊ A separate case file established for each property when an owner is initially contacted.
- ◊ Completed copy of Acquisition / Relocation Summary Form for each property (Exhibit A).
- ◊ A list identifying all parcels to be acquired for the development.
- ◊ For each parcel acquired, the files should include:
  - -- Identification of property and property owner(s); and
  - -- Evidence that the owner was informed on a timely basis: of his/her rights; that the acquisition would not involve the use of eminent domain; and of the fair market value of the property in question.

Chapter 5 – Fair Housing and Civil Rights

Fair Housing and Civil Rights activities are required of all IHCDA award recipients. All required actions are defined and discussed in the following pages of this section.

A. Fair Housing

The Fair Housing Act states that it is illegal to discriminate against any person because of race, color, religion, sex, disability, familial status, or national origin (the seven protected classes) in:

- the sale or rental of housing or residential lots;
- the advertising of the sale or rental of housing;
- the financing of housing;
- the provision of real estate brokerage services; and
- the appraisal of housing.

The Fair Housing Amendments Act of 1988 Final Committee Report to the House of Representatives (100-711) dated June 17, 1988 provides the background information to the Fair Housing Law and Committee intentions when submitted to Congress. The Fair Housing Amendments became Public Law 100-430 on September 13, 1988 to amend Title VIII, commonly called The Civil Rights Act of 1968. This legislation revised certain procedures and implemented new protections and enforcement. On Monday, January 23, 1989, the Federal Register contained the Final Rule for implementation of the Fair Housing Amendments Act of 1988. The effective date of this legislation was March 12, 1989 with the specific provisions for new construction effective March 13, 1991.

Fair Housing legislation is clear in regard to discriminatory practices and penalties. Prohibited activities include but are not limited to:

- refusal to rent or sell housing based on a protected class;
- providing different selection criteria to different applicants;
- failure to allow reasonable accommodations or modifications;
- eviction based on a protected class;
- steering or segregation at a property;
- false denial of availability; and
- discriminatory advertising.

IHCDA has established procedures for processing Fair Housing complaints. The procedures are as follows: 1) IHCDA will forward all Fair Housing complaints to the Fair Housing and Equal Opportunity Office at HUD and to the Indiana Civil Rights Commission; 2) IHCDA will notify the recipient of such complaint; and 3) if it is determined that there is a violation of the Fair Housing Act, IHCDA will consider the project to be out of compliance.

B. Allowable and Disallowable Inquiries under Fair Housing

The law does not intend to prohibit property owners, managers, and administrators from valid inquiries into an applicant's ability to meet lease requirements and/or program eligibility requirements as set forth in Federal or State programs or in a Tenant Selection Criteria. However, there are certain areas that owners, managers, and administrators must clearly understand in regard to legitimate questions and disallowed inquires. These areas are:

1. Independent Living - An owner, manager, or administrator should not attempt to assess whether an applicant is capable of independent living but only whether the applicant meets essential eligibility requirements. If an applicant requires supportive services but does not ask that they be provided, the need for supportive services should not be considered a factor in determining eligibility. If the

provision of supportive services is part of the housing program, then these services should be provided in a non-discriminatory manner. However, no provider is required to take any action which would fundamentally alter the nature of the program in order to accommodate the disability of an applicant or tenant.

2. Restriction of Children/Disabled in Housing: Evacuation Safely - There can be no restriction as to where persons may reside in housing with the exception of Federal or management priorities for certain adapted or accessible units. Accepting or rejecting applicants on the basis of the ability to evacuate safely is not allowed.

3. Legal and Illegal Questions - The Fair Housing Law clearly defines legal and illegal questions for all applicants of all housing in the United States. It is unlawful to make an inquiry as to the nature or severity of a disability of an applicant for a dwelling, a person intending to reside in that dwelling after it is sold, rented or made available, or any person associated with that person.

   However, the following inquiries can be made, **provided these inquiries are made to all applicants, whether or not they have disabilities, and are clearly defined in a written Tenant Selection Criteria policy (for more information on Tenant Selection Criteria and waiting lists see Chapter 1, Part I-3 and I-4):**

   - Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;
   - Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability or for a priority available only to persons with disabilities or to persons with a particular type of disability;
   - Inquiry to determine whether an applicant for a dwelling is a current abuser or addict of an illegal controlled substance;
   - Inquiry to determine whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.
   - Credit and criminal background check.

A manager or owner is never required to make available a dwelling to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals, or whose tenancy would result in substantial physical damage to the property of others.

C. Reasonable Accommodations and Modifications under Fair Housing

A reasonable accommodation is a change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, a recipient must allow a reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the provider's operations. For more information on reasonable accommodation, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Accommodations Under the Fair Housing Act" released May 17, 2004 (available as Exhibit D to this chapter).

A reasonable modification is a change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, an owner must allow a reasonable modification at the expense of the

tenant. However, if the changes needed by the tenant are ones that should have already been included in order to comply with design and construction accessibility standards, then the owner will be responsible for paying for the modifications. For more information on reasonable modification, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Modifications Under the Fair Housing Act" released March 5, 2008 (available as Exhibit E to this chapter).

D. Award Recipient Required Fair Housing Actions

When an award recipient is awarded a CDBG or HOME award through IHCDA, certain actions must be taken by the award recipient to comply with Fair Housing regulation and IHCDA policy.

1. All CDBG award recipients are required to take an action to affirmatively further fair housing. **The action(s) must reach the general community at-large and not be limited to low-moderate income residents only.** IHCDA strongly encourages each CDBG recipient to execute a Fair Housing Ordinance during the life of the award as an action to affirmatively further fair housing (a sample Fair Housing Ordinance is located as Exhibit A of this chapter). However, if a Fair Housing Ordinance has already been executed prior to the execution date of the CDBG award, the CDBG award recipient in receipt of the IHCDA award must take a different action to affirmatively further fair housing.

   Suggested actions are as follows:

   - Undertake fair housing enforcement (i.e. complaint processing);
   - Work actively with existing entities (public or private non-profit) whose goal is to further fair housing;
   - Display fair housing exhibits at local public exhibitions (County Fairs, Festivals, etc.);
   - Review local zoning laws and procedures to determine whether the laws contribute to, or detract from, fair housing;
   - Use local resources to assess existing public opinion about the status of fair housing organizations, public and private community centers, civil rights groups, and organizations that represent minorities, women, families, senior citizens, and persons with disabilities.
   - Develop public information and educational programs promoting fair housing and provide fair housing information to the following types of groups:
     - citizen groups concerned with housing issues (fair housing groups, tenant associations, builders, real estate agents/brokers);
     - organizations representing specific population groups (minorities, women, senior citizens, persons with disabilities); and
     - other local organizations (advocacy groups, unions, voters' leagues).

   Documentation of the Fair Housing action taken by the CDBG award recipient must be maintained in the award recipient's award file. Therefore, it is the responsibility of the award recipient to provide the proper documentation for the award files which will be monitored by IHCDA.

2. All HOME award recipients with rental or homebuyer projects containing five or more HOME-assisted units must certify compliance with the IHCDA Affirmative Marketing Procedures (see Exhibit B of this chapter). HOME award recipients with rental and homebuyer projects must provide IHCDA with a signed copy of the IHCDA Affirmative Marketing Certifications and Procedures before IHCDA will provide the award recipient with a Notice of Release of Funds. A sample Affirmative Marketing Plan form (form # HUD-935.2A) is available as Exhibit C to this chapter.

3. All CDBG and HOME award recipients are required to post the Fair Housing Opportunity poster at public buildings as evidence of the award recipient's fair housing policy. Also, if a subrecipient is associated with an IHCDA award, the subrecipient must also post the poster in its offices. Finally, if the project involves a public facility or a building with a common area, such as a leasing office, the fair housing poster must be hung conspicuously at those locations as well. Copies of this poster may be obtained from your IHCDA Real Estate Production Analyst or Compliance Auditor. Award recipients must also include the Fair Housing logo on all client correspondence (confirmation letters, brochures, leases, etc.) This logo is available at the following HUD website: http://www.hud.gov/library/bookshelf11/hudgraphics/fheologo.cfm.

4. Award recipients must provide all beneficiaries the HUD brochure entitled "You May Be A Victim Of..." Documentation of the client's receipt of the brochure must be maintained in the client's file. Therefore, the award recipient is responsible for creating a receipt form for the beneficiary to sign as receipt of the Fair Housing brochure. The brochure is available as Exhibit F to this chapter.

*For additional information on Fair Housing under the HOME program, see the HUD Guide entitled "Fair Housing for HOME Participants" available as Exhibit G to this chapter.

E. Civil Rights

Introduction

The civil rights laws, regulations, and executive orders are designed to protect individuals from discrimination on the basis of race, national origin, religion, color, sex, age and disabled status. These laws, regulations, and executive orders, as they apply to the CDBG or HOME program, protect individuals from discrimination in housing, the use of public facilities and services, benefits created by CDBG or HOME projects, and employment and business opportunities.

The following is a summary of the regulations.

Title VI - Civil Rights Act of 1964

Title VI provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. It directs each federal department or agency that extends financial assistance to any program or activity through awards, loans, or contracts, except contracts of insurance or guaranty, to issue rules or regulations to be approved by the President to carry out the purposes of the Title. Title VI authorizes the termination or the refusal to grant or continue federal assistance under any program or activity involving a recipient receiving an express finding of a failure to comply, but only after due notice, an opportunity for a hearing, and a determination that compliance cannot be secured by voluntary means.

Title VII – Civil Rights Act of 1964 (as amended)

This provision prohibits discrimination in employment on the basis of sex.

Title VIII – Civil Rights Act of 1968

Title VIII prohibits blockbusting, or discrimination in the sale or rental of dwellings, the financing of housing, or advertising, Title VIII makes it unlawful to deny any person access to, membership, or participation in any multiple listing service or real estate brokers' organization for discriminatory reasons. The law is applicable in stages and ultimately applies to all dwellings except those which are specifically exempt. Title VIII generally does not apply to the sale or rental of a single family house by a private individual owner who does not own more than three (3) such single-family houses at any one (1) time. After December 31, 1969, the sale or rental of any such single-family home is exempted from the application of Title VIII only if it is sold or rented without the use of a broker and without discriminatory advertising. The act does not apply to rooms or units in dwellings containing living quarters occupied by not more than four families living independently of each other of the owner occupies one of such quarters as his or her residence.

Also exempted is the sale or rental of dwellings owned or operated by religious organizations, for other than a commercial purpose, to persons of the same religion unless membership in such religion is restricted on account of race, color or national origin. Neither does Title VIII prohibit a private club, not open to the public and providing lodging which it owns or operates for other than commercial purposes, from limiting rental or occupancy to its members.

Section 3: Housing and Urban Development Act of 1968

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

Section 109: Housing and Urban Development Act of 1974

Section 109 provides that no person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part under this title.

Section 504: Rehabilitation Act of 1974

Section 504 provides that no otherwise qualified disabled individual in the United States, as defined in Section 7(6), shall, solely be reason of this disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Age Discrimination Act of 1975

The Act provides that no person in the United States on the basis of age shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Executive Order 11063

Executive Order 11063 provides that no person on the basis of race, color, religion, sex or national origin, shall be discriminated against in:

- Housing (and related facilities) provided with federal assistance.
- Lending practices, with respect to residential property, when such practices are connected with loans insured or guaranteed by the federal government.

Executive Order 11246, as amended by Executive Order 11375

Executive Order 11246, as amended by Executive Order 11375, provides that no person shall be discriminated against on the basis or race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally assisted construction contracts in excess of $25,000.

Executive Order 12138: Women Business Enterprise Policy

For purposes of this Order, affirmative action may include, but is not limited to, creating or supporting new programs responsive to the special needs of women business enterprises, establishing incentives to promote business or business-related opportunities for women business enterprises, collecting and disseminating information in the support of women business enterprises and ensuring to women business enterprises knowledge of any ready access to business-related services and resources. In implementing this Order an agency undertakes to use or to require compliance with numerical set-asides or similar measures. It shall state the purpose of such measure and the measure shall be designed on the basis of pertinent factual findings of discrimination against women's business enterprise and the need for such measure.

F. Civil Rights Applicability

Civil rights laws, regulation, and executive orders are applicable to all award recipients regardless of the percentage of CDBG or HOME funded participation. Requirements included here are in addition to the community's existing civil rights requirements.

To assure compliance with these requirements, both the award recipient and its contractors must document all policies, procedures and actions taken with respect to these requirements. In addition, the award recipient must fully document the characteristics of the population of the project area to determine the specific actions necessary to ensure civil rights compliance.

The following section outlines specific required and suggested civil rights policies and procedures.

G. Civil Rights Policies and Procedures

The award recipient must document compliance with civil rights policies and procedures in four general areas:

1. Employment
2. Housing
3. Benefits of Project
4. Contracts

1. Employment

The award recipient must keep records concerning any persons it hires, indicating that the hires were on an equal opportunity basis. To document equal employment opportunity efforts, all advertisements for employment must state that the award recipient is an equal opportunity employer. The award recipient must retain copies of the advertisements in its files. IHCDA also encourages the award recipient to prepare and implement an affirmative action hiring plan. Finally, records of the number of persons employed must be kept by race, sex, and income. If any CDBG or HOME funds go into any administrative arm or department of the award recipient, all departments of the award recipient become subject to the civil rights requirements under the CDBG or HOME program.

Other suggested procedures for the award recipient to follow in demonstrating equal employment opportunity in its hiring, firing and promotion practices are:

a. Document job descriptions and qualifications required of applicants and reasons for rejection or acceptance of each applicant.

b. Provide the Indiana Employment and Training Services with job descriptions for all open positions and request the referral of minority and female applicants. Copies of all such correspondence should be kept in the award recipient files.

c. Post the equal employment opportunity (EEO) posters prescribed by HUD and U.S. Department of Labor (DOL) at the city hall or other public buildings notifying the community that the award recipient is an equal opportunity employer. These posters are routinely sent out along with a federal wage decision, or can be obtained on request from the IHCDA Real Estate Production Analyst or Compliance Auditor. The award recipient must enter its name and address in the top box on the EEO poster. In the next two boxes the award recipient must enter the name and address of IHCDA and the HUD Area Office:

Indiana Housing and Community Development Authority
30 South Meridian Street, Suite 1000
Indianapolis, IN 46204

U.S. Department of Housing and Urban Development
Fair Housing and Equal Opportunity Division
151 North Delaware Street
Indianapolis, IN 46204

2. Housing

If the award recipient has a CDBG or HOME funded housing project, it must affirmatively promote fair housing. Regardless of the CDBG or HOME project undertaken by the community, the community is required to not discriminate in any area related to housing.

An award recipient with a housing assistance project is required to post the fair housing opportunity poster at all work sites and at the city hall or other public buildings. For award recipients with no housing provision projects (e.g., housing planning only), this poster should still be posted in public buildings as evidence of the award recipient's fair housing policy. Copies of this poster may be obtained from the IHCDA Real Estate Production Analyst.

3. Benefits of Project

The award recipient must keep records on the number of minority, female, and low-to-moderate income persons or families applying for and benefiting from the project. Records should include the make-up of the households being assisted, either individually or by target area.

A direct benefit activity is an activity which requires the beneficiary to submit an application or complete a personal record as an integral part of participating in the program. Individual household information will be available for direct benefit activities. For example, in a housing rehabilitation program, an application would be an integral part of providing loans or awards to households. For such individual assistance, the award recipient should require each applicant to provide a signed declaration of the race, sex, and income status of his or her household. The award recipient must also require the applicant to provide written verification of the income status of the household.

Beneficiary information must be obtained and documented in a form that can be readily summarized for inclusion in the Close-out Documentation submitted to IHCDA at the end of the award.

4. Contracts

a. All applicable civil rights language must be included in award bid documents and contracts with contractors or professional service firms. The procurement chapter (Chapter 10) lists the required provisions that must be included in the contracts and bid documents. The contract and bid documents should also contain the requirements for a Section 3 plan and, when applicable, an affirmative action hiring plan.

   The award recipient must make sure that all of the above items are completed prior to the actual award of the contract, or within fifteen (15) days of the award and before the notice to proceed is sent to the contractor. This includes, as applicable, the completion of the affirmative action hiring plan, the Section 3 plan, the signing of the above and the non-segregated facilities form. This would also be done by all contractors and subcontractors.

b. The award recipient's contractors and subcontractors may be subject to the affirmative action requirements. All contractors and subcontractors holding any federal or federally-assisted construction contract in excess of $10,000 are subject to the provisions of 41 CFR Part 60-4, Construction Contractors - Affirmative Action Requirements, which specifies language to be included in all applicable bid documents and contracts and the requirements of contractors subject to those regulation.

c. Contracts subject to 41 CFR Part 60-4 include appropriate minority and women workforce participation goals. Indiana has adopted a state goal of ten percent (10%) participation for minority and/or women-owned business enterprises (MBE/WBE) on all contract requirements. Please refer to Section E, for further discussion of MBE/WBE participation.

d. Non-construction contractors and construction contractors with fifty (50) or more non-construction employees and one (1) or more contracts totaling $50,000 in a twelve (12) month period and which meet the other conditions of 41 CFR 60-2 are subject to the affirmative action requirements of 41 CFR Part 60-2, Affirmative Action Programs.

e. 41 CFR 60-1.21 requires each award recipient to include in the invitation for bids for each formally advertised non-construction contract, or state at the outset of negotiations for each negotiated non-construction contract, that if the award should exceed $1 million, the prospective contractor (and certain subcontracts) will be subject to a compliance review before the award of the contract.

f. Contractors and subcontracts must post the appropriate equal opportunity and fair housing posters at all work places, regardless of the type of project. The EEO poster should be completed by placing the contractor's name and address in the top box. In the next two boxes the contractor should enter the names and addresses of IHCDA and the HUD Field Office as listed on page 5. The fair housing opportunity poster should be posted at all work places when a housing assistance project is involved.

g. The award recipient must also inform its contractors and subcontractors of their requirement to file DOL form CC-257, "Monthly Employment Utilization Report". For all contracts and subcontracts less than $100,000, this report must be filed with the award recipient each month by each contractor and subcontractor. For contracts equal to or greater than $100,000, this form must be filed each month with both the award recipient and the DOL area office. This form provides the award recipient with equal employment monitoring information and must be kept in the award recipient's files as evidence of this monitoring. A copy of this form may be obtained from the appropriate IHCDA Compliance Auditor.

h. All contractors under the program who: (1) are not exempt under 41 CFR 50-1.5; (2) have fifty (50) or more employees; and (a) are prime contractors or first-tier subcontractors having a contract or contracts totaling $50,000 or more in any twelve (12) month period or (b) serve as depositories of government funds in any amount, or (c) are financial institutions which are issuing and paying agents for U.S Savings Bonds and Notes, are required by 41 CFR 60-1.7 to annually file on or before March 31 the Employer Information Report EEO-1 (Standard Form 100) with the DOL area office. Each contractor required to submit such report shall file it within thirty (30) days after it is awarded a contract unless the contractor has submitted such a report within twelve (12) months preceding the date of the award. To obtain a copy of this form with instructions, contact the appropriate IHCDA Compliance Auditor.

H. Pre-Construction Conference (Davis Bacon projects only)

The award recipient must hold a pre-construction conference with the prime contractors and available subcontractors, apprising them of their responsibilities and obligation included in the contract documents. Items discussed and attendance at this conference must be documented in the form of minutes, a copy of which must be retained for each pre-construction conference held for each construction project. For further discussion of the pre-construction conference please refer to Labor Standards and Procurement sections, respectively. The following Civil Rights items (discussed previously in this chapter) should be explained and discussed at the pre-construction conference.

1. Title VI - Civil Rights Act of 1964
2. Section 3 - Housing and Urban Development Act of 1968
3. Section 504 - Rehabilitation Act of 1974
4. Executive Order 11063
5. Executive Order 11246, as amended by E.O. 11375
6. 41 CFR Part 60-4 - Construction Contractors - Affirmative Action Requirements, as applicable
7. Female and Minority Participation Goals, as applicable
8. 41 CFR Part 60-2 - Affirmative Action Programs, as applicable
9 41 CFR Part 60-1.21, as applicable
10. Required Posters: Two (2) for equal employment opportunity and one (1) for fair housing opportunity
11. DOL Form CC-257 - Monthly Employment Utilization Report
12. Employer Information Report, EEO-1 (Standard Form 100)
13. Signatures required of contractors on contract and certifications.

I. Minority and Women Business Participation

Minority-owned and women-owned business enterprises (MBE/WBE's) shall have the maximum feasible opportunity to participate in the performance of contracts under federal award programs. Award recipients shall exercise their "best efforts" to ensure that MBE/WBE's are given the opportunity to participate in CDBG or HOME funded contracts, including contracts for services, supplies and construction activities. Indiana has adopted a goal of ten percent (10%) aggregate participation for minority- and/or women-owned business enterprises in CDBG or HOME funded projects.

A minority- or women-owned business enterprise is defined for this program as *a business which has been established for at least one (1) year and is fifty-one percent (51%) owned, operated and controlled by minorities or women.* Corporation or partnerships formed merely to qualify as an MBE or WBE for purposes of this program will not be considered minority or women-owned business enterprises.

Award recipients are required to maintain documentation supporting their "best efforts" to achieve the state goal of ten percent (10%) minority and/or women-owned business enterprise participation on each CDBG or HOME funded project. To document "best efforts: to attain the ten percent (10%) goal, the following steps should be taken to solicit bids from and encourage participation by minority- or women-owned business enterprises:

1. Where legal notice is required by law, include language notifying bidders of the ten percent (10%) MBE/WBE participation goal on the project.

2. Refer to the most current listing of MBE/WBE certified firms on the Indiana Department of Administration's Minority & Women's Business Enterprises website located at http://www.in.gov/idoa/2352.htm. Here you will be able to find a list of firms in the categories of work needed for the project, including professional services, supply, and construction services.

3. Contact at least two (2) MBE/WBE firms from the referral list, notifying them of the impending bidding opportunity and how to participate.

4. If award recipients anticipate the use of subcontractors or additional purchasing contracts for supplies, then the referral list of qualified minority- and women-owned businesses should be disbursed to all prime contractors at this conference. Award recipients should supply a copy of the plans and specifications as well as a list of the organizations that will have plans and specification on file.

5. Award recipients must maintain documentation supporting their "best efforts" for monitoring and auditing purposes. **Award recipients must document solicitation of MBE/WBE firms through Certified Mail receipts, Certificates of Mailing, receipts from hand-delivery of notices, or email. For email notification, recipients should use a 'delivery receipt' and/or 'read receipt' function on the email and maintain a copy of both the email and the verification that it was delivered and/or opened.**

Chapter 6 – Conflict of Interest Prohibition

Conflicts Prohibited

No persons who exercise or have exercised any functions or responsibilities with respect to HOME or CDBG activities or who are in a position to participate in a decisionmaking 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 thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter.

Procurement Conflicts

Procurement standards must require that no employee, officer, agent of the recipient or administering agency may participate in the selection or administration of a contract supported by HOME or CDBG if a conflict of interest real or apparent, would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for award:

- Employee, agency or officer of the recipient or administering agency;
- Any member of an employee's, agent's or officer's immediate family;
- An employee's, agent's of officer's partner; or
- An organization that employs or is about to employ any of the above.

Persons Covered

The conflict of interest provisions 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 HOME or CDBG funds.

Conflict Examples:

Organization	*Description*	*Conflict*
Local Unit of Government	The town council president's brother was to bid on the inspection services to be provided under a CDBG award.	The town council president would not be able to participate in the procurement of the contract in which his brother plans to bid. However, the selection of the inspection firm must be made in accordance with the local unit of government's procurement standards.
Not-for-profit – not acting as a owner, sponsor or developer	A board member of the organization intends to bid on work that the organization is undertaking using HOME funding.	The board member would need to follow the HOME procedure for conflict of interest

Procedures

The award recipient of HOME or CDBG funds will need to submit the conflict in writing to its IHCDA Real Estate Production Analyst. The letter should contain the following information:

1. A request for an exception to the conflict of interest prohibition;
2. A copy of the minutes from a public meeting denoting that the affected person has publicly disclosed the conflict of interest and has stated that he/she has withdrawn from functions or responsibilities with respect to the assisted activity in question; and
3. An opinion from the recipient's attorney that the interest for which an exception is sought would not violate state or local law.

IHCDA will forward the conflict of interest to the U.S. Department of Housing and Urban Development (HUD) to determine if an exception to the conflict is allowed. IHCDA will notify the award recipient in writing whether an exception has been allowed or denied by HUD.

If an exception is allowed, a completed Uniform Conflict of Interest Disclosure Statement must be sent to the following parties within fifteen (15) days:

1. Indiana Housing and Community Development Authority (IHCDA);
2. State Board of Accounts; and
3. Clerk of the Circuit Court of the county in which the contract was executed.

Factors to Consider When Granting an Exception

- Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program which would otherwise not be available;
- Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interest or benefits as are being made available or provided to the group or class;
- Whether the affected person has withdrawn from his or her function or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;
- Whether the interest or benefit was present before the affected person was in a position constituting the conflict of interest;
- Whether undue hardship will result either to the Participating Jurisdiction or the person affected when weighted against the public interest served by avoiding the prohibited conflict; and
- Any other relevant consideration.

Exclusions to Conflict of Interest

There are select situations where the process for notification of a conflict of interest with a project **is not** applicable:

- Any CHDO or not-for-profit organization acting as a owner, sponsor, or developer of a project.
- An employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

Chapter 7 –
Section 3: Economic Opportunities for Low and Very Low Income Persons

A. Why does HUD enforce Section 3?

Each year HUD invests billions of federal dollars into distressed communities for projects designed to build and rehabilitate housing, improve roads, develop community centers, and otherwise assist families achieve the American Dream. The Section 3 regulation recognizes that HUD funding typically results in projects/activities that generate new employment, training and contracting opportunities. These economic opportunities not only provide "bricks and mortar", but can also positively impact the lives of local residents who live in the neighborhoods being redeveloped.

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 135] is HUD's legislative directive for providing preference to low- and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects. As a condition of receiving HUD Community Planning and Development assistance, recipients certify that they will comply with the requirements of Section 3 annually pursuant to 24 CFR 570.607(b). Accordingly, the Department has the legal responsibility to monitor recipients for compliance and can impose penalties upon those that fail to meet these obligations.

B. Applicability of Section 3 to Community Planning & Development Assistance

1. Funding Threshold

HUD's guidance on Section 3 has been revised and updated effective June 9, 2009. Previously, the threshold for whether a recipient had to comply with Section 3 requirements was if an individual award was for $200,000 or greater. HUD's new interpretation is that the requirements **apply when the recipient has received $200,000 in construction funding from all HUD Community Planning & Development (CPD) programs during a program year**. This includes CDBG, HOME, HOPWA, ESG, NSP, and other programs.

2. Applicable CPD Programs

- Community Development Block Grants (CDBG)
- Home Investment Partnership (HOME) Assistance
- Housing Opportunities for Persons with Aids (HOPWA)
- Economic Development Initiative (EDI)
- Brownfield Economic Development Initiative (BEDI)
- Emergency Shelter Grants
- Homeless Assistance
- University Partnership Grants
- Neighborhood Stabilization Program (NSP)
- Certain Grants Awarded Under HUD Notices of Funding Availability (NOFAs)

(See also HUD website for guidance on Sec 3 applicability to ARRA.)

3. Applicability Limited to Construction Activities

The requirements of Section 3 only apply to the portion(s) of covered funding that were used for project/activities involving housing construction, rehabilitation, demolition, or other public construction.

4. Applicability to Contractors

Contractors or subcontractors that receive contracts in excess of **$100,000** for Section 3 covered projects/activities are required to comply with the Section 3 regulations in the same manner as direct recipients.

C. Section 3 Requirements

1. Section 3 Goals

If it is determined that a recipient or contractor meets the threshold requirements above, the recipient or contractor must attempt to reach the following goals found at 24 CFR Part 135.30:

1) Offering thirty percent (30%)of new employment opportunities to Section 3 residents.

2) Awarding ten percent (10%) of the total dollar amount of all covered construction contracts to Section 3 businesses.

See "Definitions & Certification" in this chapter.

2. Goals Limited to New Jobs and Contracts

Section 3 goals are required when the normal completion of construction and rehabilitation projects creates the need for **new** employment, contracting, or training opportunities. If the expenditure of covered funding does not result in new employment, contracting, or training opportunities , the Section 3 regulations should not be construed to mean that recipients are required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete covered projects/activities.

3. Mandatory Reporting Required

Whether or not an IHCDA award generated a need for new employment or contracts, the recipient must still submit Section 3 quarterly reports to IHCDA indicating this information. This is because IHCDA is obligated to report this data in the aggregate for all our recipients to HUD.

Recipients also are asked to submit their own annual report to HUD (form HUD-60002).

D. Implementing Section 3: Recipient Responsibilities

1. Implementing procedures to notify Section 3 residents and business concerns about employment and contracting opportunities generated by Section 3 covered assistance;

2. Notifying potential contractors working on Section 3 covered projects (contracts $100,000 or greater) of their responsibilities by incorporating the Section 3 Clause into all covered solicitations and contracts [see 24 CFR Part 135.38];

3. Assisting and actively cooperating with the Department in making contractors and subcontractors comply;

4. Documenting actions taken to comply with Section 3; and

5. Submitting Section 3 Annual Summary Reports (form HUD-60002) in accordance with 24 CFR Part 135.90.

E. Definitions and Certification

1. **Section 3 Residents** are one (1) of the following:
   1. Residents of Public and Indian Housing; or
   2. Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low- or very low-income households.

2. **Section 3 Business Concerns** are one (1) of the following:
   1. Businesses that are fifty-one percent (51 %) or more owned by Section 3 residents;
   2. Businesses whose permanent, full-time employees include persons, at least thirty percent (30%) of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or
   3. Businesses that provide evidence of a commitment to subcontract in excess of twenty-five percent (25%) of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

3. Self-Certification and/or Evidence Required

1. Residents and business concerns seeking Section 3 preference shall certify and/or submit evidence to the recipient/contractor verifying that they meet the definitions provided above.

2. Recipients can use their discretion for determining the type of evidence that is required by prospective Section 3 residents and business concerns. Some examples include: proof of residency in a public housing authority; proof of federal subsidies for housing, food stamps, or unemployment benefits; and payroll data or other relevant business information.

F. Annual Reporting to HUD (Form HUD-60002 - Section 3 Summary Reports)

1. Annually, each recipient of Community Planning and Development funding is required to submit form HUD-60002 (See Exhibit A of this chapter) to HUD's Economic Opportunity Division in Washington, DC. , preferably online from the following website: www.hud.gov/section3.

2. Section 3 Annual Summary Reports are intended to measure each recipient's efforts to comply with the statutory and regulatory requirements of Section 3 in its own operations **AND** those of its covered contractors, subcontractors, and sub-recipients. (i.e., it should include the results of any contractor with a contract of $100,000 or greater).

3. The Section 3 Summary Report should correspond to all covered projects and activities that were administered (not awarded) during the reporting period.

4. Section 3 reports must be submitted by all agencies that receive funding in excess of $200,000 whether new jobs/contracts were created or not.

5. The "reporting period" option in the online Section 3 Summary Reporting System (box #7) lists quarters but the Section 3 reporting is an annual requirement. Accordingly, recipients should select **Quarter 4** to document the total amount of covered activities/projects that were completed during the entire reporting period.

6. Note that recipients must submit a separate HUD-60002 for each type of covered funding (*e.g.,* separate reports must be submitted for CDBG and HOME funding). However, while each report lists only the projects covered by that funding source, the recipient is required to comply with section 3 based on the cumulative total of awards from all CPD funding sources.

Example 1: A regional non-profit is administering three HUD CPD awards this year:

- *It is still administering an NSP award that was granted in a previous year. Approximately $180,000 in construction contracts will be bid this year.*
- *It is administering two (2) CDBG grants for communities in their region for owner-occupied rehab programs, which total $150,000 in construction contracts.*
- *It has a HOME award for rehabilitation of a rental project, and approximately $175,000 in construction contracts will be awarded this year.*

The organization will need to file three (3) 60002s, one (1) for each program.

In addition, if under any of the three (3) programs at least $100,000 is bid to a single contractor, the organization also must report on the activity generated by the contractor including bids to sub-contractors.

Example 2: A small urban non-profit has a HOME grant from IHCDA of $90,000 to assist in rehabilitation of a small apartment building it owns. Under the previous Section 3 interpretation, IHCDA would not have required a report from this organization since the award was less than $200,000. However, the organization could have other HUD CPD awards from the city in which it is located, so under the new interpretation, IHCDA will require the non-profit to submit a 60002. However, the 60002 should only reflect the activity related to the organization's IHCDA award. Also, since the construction contract is for less than $100,000, the organization only needs to report on the contracts they awarded, not any awarded from the contractor to subcontractors.

G. Quarterly Reporting to IHCDA

IHCDA has four responsibilities with regard to Section 3:

1. Inform recipients about the requirements of Section 3;
2. Assist recipients and their contractors with achieving compliance;
3. Monitor recipients' performance with respect to meeting the requirements of Section 3; and
4. Report to HUD on the cumulative Section 3 activities taking place within its jurisdiction on an annual basis.

In order to comply with these responsibilities, IHCDA will require all recipients to submit a quarterly update of Form HUD-60002. Quarterly reports will be due February 1, May 1, July 1, and November 1. A copy of HUD-60002 is provided as Exhibit A to this chapter. Please submit all update reports to section3@ihcda.in.gov.

H. Contents of Form HUD-60002

Following is the information required by HUD on the Annual Summary Report (HUD-60002) and which will also need to be provided on the quarterly update reports to IHCDA.

1. The total dollar amount of HUD funding that was received by the recipient for covered projects/ activities during the specified reporting period.

2. The total number of new employees that were hired by the recipient and/or its covered contractors, subcontractors, and sub-recipients, as a result of performing or completing covered project/activities.

3. The number of new employees that were hired by the recipient (or its covered contractors, subcontractors, and sub-recipients), as a result of covered projects/activities, that met the definition of a Section 3 resident.

4. The total number of man hours worked on covered projects (optional).

5. The aggregate number of hours worked by Section 3 residents on covered projects (optional).

6. The total number of Section 3 residents that participated in training opportunities that were made available by the recipient agency, its contractors, sub-recipients, or other local community resource agencies.

7. The total dollar amount of construction and/or non-construction contracts (or sub-contracts) that were awarded with covered funding.

8. The dollar amount of the recipient's construction or non-construction contracts (or subcontracts) that were awarded to Section 3 business concerns.

9. Detailed narrative descriptions of the specific actions that were taken by the recipient (or its covered contractors, subcontractors, sub-recipients, or others) to comply with the requirements of Section 3 and/or meet the minimum numerical goals for employment and contracting opportunities.

I. HUD Compliance

Absent evidence to the contrary, HUD considers recipients of covered funding to be in compliance with Section 3 if they meet the minimum numerical goals set forth at 24 CFR Part 135.30, specifically:

1. Thirty percent (30%) of the aggregate number of new hires shall be Section 3 residents; and
2. Ten percent (10%) of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns.

Recipients that fail to meet the minimum numerical goals above bear the burden of demonstrating why it was not possible to do so. Such justifications should describe the efforts that were taken, barriers encountered, and other relevant information that will enable the Department to make a compliance determination.

Recipients that submit Section 3 reports containing **all zeros**, without a sufficient explanation to justify their submission, are in **noncompliance** with the requirements of Section 3.
Failure to comply with the requirements of Section 3 may result in sanctions, including: debarment, suspension, or limited denial of participation in HUD programs pursuant to 24 CFR Part 24.
Recipients that are subject to annual A-133 Audits may also receive an audit finding for failure to submit form HUD-60002 to HUD.

J. Source / Additional Information

For additional information, see "ANNUAL SECTION 3 SUMMARY REPORTING REQUIREMENTS FOR RECIPIENTS OF HUD COMMUNITY PLANNING & DEVELOPMENT FUNDING (TECHNICAL ASSISTANCE ON FORM HUD-60002)"
Found at http://www.hud.gov/offices/fheo/section3/section3.cfm, February 25, 2011.

Chapter 8 – Income Verification

All households receiving HOME or CDBG assistance must be income eligible. Therefore, the income verification process must be completed before the assistance begins. It is each recipient's responsibility recipient to become familiar with and comply with the income requirements.

IHCDA has chosen to utilize the Part 5 definition for determining annual income. The annual income definition is found at 24 CFR Part 5.609. This definition was previously referred to as the Section 8 definition. The Part 5 definition of annual income is the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period.

For additional information on determining income eligibility, refer to the following resources:

- HUD Handbook 4350.3 Chapter 5 (Included as Exhibit A of the Chapter)
  Section 1: Determining Annual Income
  Section 3: Verification
  Exhibit 5-1: Income Inclusions and Exclusions
  Exhibit 5-2 Assets
  Appendix 3: Acceptable Forms of Verification
- "Technical Guide for Determining Income and Allowances for the HOME Program" (Included as Exhibit B to this Chapter)

A. Initial Income Certifications

Households must qualify as low-income at the time of initial occupancy or at the time HOME/CDBG funds are invested, whichever is later, in accordance with the Part 5 method of verifying income.

Determining eligibility for Owner-Occupied Projects

- Households must be income eligible at the time the construction contract is executed.

  An income verification is good for six (6) months from the time of the verification. If more than six (6) months lapse, the household income must be re-verified.

Determining eligibility for Homebuyer Projects

- In the case of a contract to purchase existing housing, at the time of purchase;
- In the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the agreement is signed; or
- In the case of a contract to purchase housing to be constructed, at the time the contract is signed.

  An income verification is good for six (6) months from the time of the verification. If more than six (6) months lapse, the household income must be re-verified.

Determining eligibility for Rental Projects

- Households must be income eligible at the time of lease execution.

  An income verification is good for six (6) months from the time of the verification. If more than six (6) months lapse, the household income must be re-verified.

NOTE: For rental developments funded in conjunction with Low Income Housing Tax Credits, income verifications are good for one hundred and twenty (120) days from the date of verification. If more than one hundred and twenty (120) days have lapsed, the household income must be re-verified.

B. Record Keeping: Files and Forms

Beneficiaries are eligible for the program only if the proper documentation verifying the household's eligibility is placed in its file. IHCDA strongly recommends efficient record keeping for monitoring purposes. A summary sheet may be placed in the beneficiary files as a self-checklist for recipients. The following is a guideline for what information to include in the beneficiary file:

Files

At a minimum, the following items must be located in the file and must be organized in chronological order for easy review:

1. Beneficiary application for assistance;
2. Tenant Eligibility Questionnaire (Exhibit D)
    - Should be completed at the time the beneficiary submits an application for assistance
    - Rental projects – Should also be completed for every year the household resides at the property. A separate form must be completed by each adult household member;
3. Tenant Income Certification (Exhibit C)
    - Must be signed and dated by all adult members of the household
    - Should be completed at the time of the initial income verification and if the initial income verification has expired, at the time of re-verification
    - Parts VI and VII are <u>not</u> applicable to Homebuyer and Owner-Occupied Rehabilitation projects
    - Rental projects – Should also be completed for every year the household resides at the property. The TIC must have proper signature and effective dates clearly stated;
4. Verifications of <u>all</u> sources of earned and unearned income (e.g. employment wages, Social Security, pensions, child support, etc.) and <u>all</u> sources of assets (e.g. checking, savings, CDs, etc.) noted on the Tenant Eligibility Questionnaire and Tenant Income Certification
    - 3rd party verifications are the preferred method of income verification
    - When utilizing paystubs as support documentation for verifying and anticipating income from wages of a beneficiary/tenant whose job provides steady employment (e.g. forty (40) hours a week fifty-two (52) weeks a year), you must obtain the number of paystubs that cover three (3) consecutive months of payments. For beneficiaries/tenants with jobs providing employment that is less stable or does not conform to a twelve (12) month schedule (e.g. seasonal laborers and other sporadic work), income documentation should be obtained that covers the entire previous twelve (12) month period.
    - If utilizing tax returns as income verification, you must obtain a certified copy by completing IRS Form 4506 "Request for Copy of Tax Form."
    - Rental Projects – Verifications must be obtained and an income certification completed for every year the household resides at the property.
5. Any other documentation verifying the beneficiaries' eligibility (i.e. joint custody of a child documentation, all management clarification documents, etc.);

6. Initial and subsequent leases and all lease addenda executed by the tenant and recipient (Rental Only);
7. Documentation of the receipt of the applicable brochures (Fair Housing & Lead Based Paint); and
8. For tenants in rental projects receiving tenant-based Section 8 vouchers, a copy of the Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the Section 8 agency showing the amount of rental assistance. For tenants in project-based Section 8 units, a copy of the current HUD Form 50059 showing the amount of rental assistance.

All documents included in the beneficiary/tenant file must be fully completed, signed, and dated. IHCDA will not accept documents that are incomplete, that have been marked with correction fluids (i.e. whiteout), or where information has been obliterated with pen or marker.

Tenant Income Certification (TIC) Form

Every beneficiary file must contain a Tenant Income Certification (TIC) form, regardless of funding source, activity type, or whether or not that beneficiary also has an income certification from another program in the file (e.g. HUD Form 50058/50059 or similar RD certification forms). **Beginning January 1, 2012, IHCDA's sample TIC (Exhibit C) is a mandatory form that must be used in all files. IHCDA will no longer accept any other TIC document, unless the TIC is submitted to IHCDA and specifically approved.**

The TIC must list the IHCDA income set-aside (and rent set-aside for rental projects) for the household. Therefore, the set-aside should be listed as 30%, 40%, 50%, 60%, or 80%, not the actual AMI % of the household. For example, at time of move-in a household may actually have an income at 43% of area median income. This would be reported as qualifying at the 50%, 60%, or 80% AMI income set-aside depending on the set-asides allowed for the project.

Tenant Eligibility Questionnaire

A fully completed Application and Tenant Eligibility Questionnaire is critical to an accurate determination of beneficiary eligibility. The information furnished on the Application and Tenant Eligibility Questionnaire should be used as a tool to determine all sources of income, including total assets and income from assets. **Beginning January 1, 2012, IHCDA's Tenant Eligibility Questionnaire form (Exhibit D) is a mandatory form that must be used in all beneficiary files.**

C. Annual Household Income

Annual income is the amount of income that is used to determine a family's eligibility for assistance. Annual income is defined as follows:

1. All amounts, monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member; or
2. All amounts anticipated to be received from a source outside the family during the twelve (12) month period following admission or annual recertification effective date.

Annual income includes amount derived (during the twelve (12) month period) from assets to which any member of the family as access.

The recipient must obtain third party verification of income sources of all adult household members age eighteen (18) or older, as well as benefits paid on behalf of minors in the household.

Regular Cash Contribution and Gifts: All income received on a regular basis from persons not living in the units must be counted. These sources may include rent and utility payments paid on behalf of the family, and other cash on non-cash contributions provided on a regular basis. The only exceptions are child care expenses paid directly to the child care provider on behalf of the household or groceries given to the household (actual grocery items, not money for groceries).

Examples:

The father of a young single parent pays her monthly utility bills. On average he provides $100 each month. The $100 must be included in the family's annual income.

The daughter of an elderly tenant pays her mother's $175 share of rent each month. The $175 value must be included in the tenant's annual income.

Welfare Rent as Income: Welfare assistance is counted as income. Most Owner/agents will use the actual gross amount of welfare assistance the household received. In certain "as-paid" localities, however, a special calculation is required. In an as-paid jurisdiction, welfare assistance for housing costs is established separately from the rest of the welfare assistance and may be adjusted based on the actual cost of the family's housing.

For welfare recipients, Owner/Agents in as-paid jurisdictions must count as income the amount of general assistance the family received plus the maximum amount of housing assistance the family could receive (rather than the amount the household is actually receiving).

Self-Employed Persons*: Self-employment net income (after business expenses) from non-farm business, including proprietorship and partnership must be counted. Also, farm self-employment net income (after operating expenses) must be counted. Include amounts from land rented for shares.*

*Military Income: A*ll regular pay, special pay, and allowances of a member of the Armed Forces must be counted. The exception to this rule is special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

Whose Income Should Be Counted

Adults: Count the annual income (earned and unearned) of the head, spouse, co-head, and any other adult members of the family. In addition, persons under the age of eighteen (18) who have entered into a lease, under state law, are treated as adults and their annual income must also be counted. These persons will be the head, spouse, or co-head; they are sometimes referred to as emancipated minors.

Minor children: Benefits or other unearned income, including income from assets, of minors is counted. This includes child support, AFDC payments, Social Security, and other benefits paid on behalf of the minor.

Temporarily absent family members. The income of temporarily absent family member is counted in Part 5 definition of annual income – regardless of the amount the absent family member contributes to the household. For example, a construction worker employed at a temporary job on the other side of the state earns $600 per week. He keeps $200 per week for expenses and sends $400 per week to his family. The entire amount ($600 per week) is counted in the family's income.

Adult students living away from home. If an adult full-time student is counted as a member of the household in determining the household size (to compare against the HUD income limits), only the first $480 of the student's income must be counted in the family's income. However, if the student is the head, co-head or spouse you must count the full amount of income. (NOTE: Verification must be obtained from the school verifying the student is full time.)

Adult student living at home: Count only earned income up to a maximum of $480 per year for full-time students, age eighteen (18) or older, who is not the head of the family, co-head, or spouse. (NOTE: Verification must be obtained from the school verifying the student is full time.)

Permanently absent family members. If a family member is permanently absent from the household (e.g., a spouse who is in a nursing home), the head of household has the choice of either counting that person as a member of the household, and including income attributable to that person as household income, or specifying that the person is no longer a member of the household.

Determining Household Size

The following persons shall not be included when calculating the household size for purposes of determining income eligibility: foster children, foster adults, live-in aides (as defined in 24 CFR 5.403), unborn children, and children being pursued for legal custody or adoption who are not currently living with the household.

Whose Income Should Not Be Counted

Income of live-in aides. If a household included a paid live-in aide (whether paid by the family or social service program), the income of the live-in aide, regardless of the source, is not counted. Except under unusual circumstances, a spouse or minor child cannot be considered a live-in aide.

Earned income of minors. Earned income of minors (age seventeen (17) and under) is not counted. However, unearned and asset income of minors is included in total household income.

Income Inclusions

1. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, and bonuses, and other compensation for personal services.
2. Net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness cannot be used as deductions in determining the net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4. The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum

amount or prospective monthly amounts for the delayed start of a period payment (except as provided in number 14 of Income Exclusions).

5. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in number 3 of Income Exclusions).
6. Welfare Assistance. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
   - The amount of allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
   - The maximum amounts that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph is the amount resulting from one (1) application of the percentage.
7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. All regular pay, special day and allowances of a member of the Armed Forces (except as provided in number 7 of Income Exclusions).

<u>Income Exclusions</u>

1. Income from employment of children (including foster children) under the age of eighteen (18) years.
2. Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
3. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in number 5 of Income Inclusions).
4. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of live-in aide (as defined in 24 CFR 5.403).
6. Certain increases in income of a disabled member of qualified families residing in HOME-assisted housing or receiving HOME tenant-based rental assistance (24 CFR 5.67(a))
7. The full amount of student financial assistance paid directly to the student or to the educational institution.
8. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
9. a. Amounts received under training programs funded by HUD.
   b. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).
   c. Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and that are made solely to allow participation in a specific program.
   d. Amounts received under a resident service stipend (as defined in 24 CFR 5.609(c)(8)(iv).
   e. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only of the period during which the family member participates in the employment-training program.
10. Temporary, nonrecurring, or sporadic income (including gifts).
11. Reparation payments paid by foreign government pursuant to claims under the laws of the government by persons who were persecuted during the Nazi era.
12. Earnings in excess of $480 for each full-time student eighteen (18) years old or older (excluding the head of household or spouse).

13. Adoption assistance payments in excess of $480 per adopted child.
14. Deferred period amounts from SSI and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts.
15. Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
16. Amounts paid by a state agency to a family member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.
17. Amount specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions of 24 CFR 5.609(c) apply, including,
    - The value of the allotment made under the Food Stamp Act of 1977;
    - Payments received under the Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);
    - Payments received under the Alaskan Native Claims Settlement Act;
    - Payment from the disposal of funds of the Grand River Band of Ottawa Indians;
    - Payments from certain submarginal U.S. land held in trust for certain Indian tribes;
    - Payments, rebates or credits received under Federal Low-Income Home Energy Assistance Programs (includes any winter differentials given to the elderly);
    - Payments received under the Main Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 9z Stat.1785);
    - The first $2,000 of per capita shares received from judgments awarded by the Indian Claims Commission or the Court of Claims or from funds the Secretary of Interior holds in trust for an Indian tribe;
    - Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs, or veterans benefits;
    - Payments received under Title V of the Older Americans Act (Green Thumb, Senior Aides, Older American Community Service Employment Program);
    - Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y);
    - Earned income tax credit refund payments;
    - The value of any child care provided or reimbursed under the Child Care and Development Block Grant Act of 1990;
    - Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, State job training programs and career intern programs, AmeriCorps);
    - Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indiana Nation or the Apache Tribe of Mescalero Reservation;
    - Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990;
    - Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;
    - Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the study commission of a crime against the applicant under the Victims of Crime Act; and
    - Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998.

D. Treatment of Assets

There is no asset limitation in the HOME or CDBG Program.

Third-party verification of all household assets is required, even if the total amount is less than $5,000. This is different than the requirements for Section 42 Low-income Housing Tax Credit projects.

What to Include as an Asset

In general terms, an asset is a cash or non-cash item that can be converted to cash. It is the income earned on the asset that is included in annual income (e.g. count the interest earned on the savings account), not the value of the savings account itself.

The market value of an asset is simply its dollar value on the open market. For example, the market value of a share of stock is the price quoted on the stock exchange on a particular day. A property's market value is the amount it would sell for on the open market. This may be determined by comparing the property with similar, recently sold properties.

An asset's cash value is the market value less reasonable expenses required to convert the assets to cash including:

- Penalties or fees for converting financial holdings. Any penalties, fees or transaction charges levied when an asset is converted to cash are deducted from the market value to determine its cash value.
- Costs for selling real property. Settlement costs, real estate transaction fees, payment of mortgages/liens against the property and any legal fees associated with the sale of real property are deducted from the market value to determine equity in real estate.

For the purposes of calculating annual income, the cash value of an item is counted as the asset, not the market value.

Actual Income from Assets

In general, the income counted is the actual income generated by the asset. The income is counted, even if the household elects not to receive it. For example, though an applicant may elect to reinvest the interest or dividend from an asset, the interest or dividends is still counted as income.

To obtain the anticipated interest on a savings account, the current account balance can be multiplied by the current interest rate applicable to the account. Alternatively, if the value of the account is not anticipated to change in the near future and the interest rate has been stable, a copy of the IRS 1099 form showing past interest earned can be used.

Checking accounts are assets. You should use the average monthly balance over a six-month period as the cash value of the checking account.

Two Special Asset Rules

1. *Imputing Income from Assets*

   This rule assumes that a household with assets has increased payment ability, even if the assets do not currently produce income. Rather than dispose of the property (asset), the rule requires that an "imputed" income be calculated based on the Passbook Rate, which is currently two percent (2%).

This rule only applies if the total cash value of all assets is more than $5,000.

Example 1: The Cayhill family has $6,000 (average balance over six months) in a non interest-bearing checking account. The recipient would include in annual income an amount based on the current Passbook Rate, ($6,000 * 2%) = $120.

Example 2: The Shaw family has $3,000 (average balance over six months) in a non interest-bearing checking account and $5,500 in an interest-bearing savings account. The family reports, and the grantee verifies, $150 interest on the savings account. The recipient would count the greater of the actual income from the assets or the imputed income based on the Passbook Rate:

Imputed Rate ($8,500 * 2%) =	$170
Actual Income	$150
Included in Annual Income Calculation	$170

Example 3: The Smiths have $600 (average balance over six months) in a non interest-bearing checking account. No income would be counted because the total value of assets is less than $5,000, therefore, there is no imputed asset calculation; and the account is non-interest bearing, therefore, no income is being generated off of it.

2. *When Assets are Disposed of at Less than Fair Market Value*

Part 5 rule requires that any asset disposed of for less than the fair market value during the two years preceding the income determination be counted as if the household still owned the asset.

The amount to be included as an asset is the difference been the cash value of the asset and the amount that was actually received (if any) in the disposition of the asset.

Example 1: Mr. Jones cashed in stock to give to a granddaughter for funds for college in August 2010. The stock has a market value of $4,500 and a broker fee of $500 was charged for the transaction. The $4,000 ($4,500 - $500) would be counted for any income determination until August 2012. If Mr. Jones had no other assets, no income from assets would be included in annual income because the cash value of the asset is less than $5,000. If other assets brought total assets to more than $5,000, however, the imputed income calculation would need to be done.

Example 2: Mrs. Dutch "sold" a piece of property to a family member for $30,000 on July 1, 2010. The home was valued at $75,000 and had no loans against it.

Market Value	$75,000
Less settlement costs	$ 3,000
Less sales price	$30,000
Cash value to be considered	$42,000

The $42,000 would be counted as an asset for any income determination until July 1, 2012. You would calculate the imputed cash value using the Passbook Rate.

However, assets disposed of for less than fair market value as a result of foreclosure or bankruptcy are not included in this calculation. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be less than fair market value if the applicant receives (or received) important consideration not measurable in dollar terms.

Asset Inclusions

1. Cash held in savings accounts, checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average six (6) month balance.
2. Cash value of revocable trusts available to the applicant.
3. Equity in rental property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs (e.g., broker fees) that would be incurred in selling the asset. Under **HOME** and **CDBG**, equity in a family's primary residence is not considered in the calculation of assets for owner-occupied rehabilitation projects.
4. Cash value of stocks, bonds, Treasury bills, certificates of deposit and money market accounts.
5. Individual retirement accounts and Keogh accounts (even though withdrawal would result in a penalty).
6. Retirement and pension funds.
7. Cash value of life insurance policies available to the individual before death (e.g., surrender value of a whole life or universal life policy).
8. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
9. Lump sum or one (1) time receipts, such as inheritances, capital gains, lottery winnings, victim's restitution, insurance settlements and other amounts not intended as periodic payments.
10. Mortgages or deeds of trust held by an applicant.

Asset Exclusions

1. Necessary personal property, except as noted in number 8 of Inclusions, such as clothing, furniture, cars and vehicles specially equipped for persons with disabilities.
2. Interest in Indian trust lands.
3. Assets not effectively owned by the applicant. That is, when assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone else who is not a member of the household and that other person is responsible for income taxes incurred on income generated from the asset.
4. Equity in cooperatives in which the family lives.
5. Assets not accessible to and that provide no income for the applicant.
6. Term life insurance policies (i.e., where there is no cash value).
7. Assets that are part of an active business. "Business" does not include rental of properties that are held as an investment and not a main occupation.

E. Methods of Verification

1) Third Party Verification - Reasonable effort to obtain written third-party verification is required. IHCDA does not require the recipient/management agent to use particular forms for third-party verifications; however, recommended sample third-party verification forms are included in the Chapter 8 Exhibits. All requests for income verification must:

1. State the reason for the request;
2. Include a release statement signed and dated by the prospective beneficiary;
3. Provide a section for the employer or other third-party source to state the applicant's current anticipated gross annual income or rate of pay, number of hours worked, and frequency of pay. Over-time hours, bonuses, tips, and commissions must be included. Spaces should also be available for a signature, job title, phone number, and date (if forms are returned with any information incomplete, the recipient/management agent MUST complete a clarification form to document incomplete information); and
4. Probability and effective date of any increase during the next twelve (12) months.

5. Recipients must send verification forms directly to the third party, not through the applicant.

Additionally, if third party verification is impossible to get from the third party or is delayed, the recipient may use information obtained electronically from e-mail or the internet. For example, a recipient may receive the fair market value of a house from an internet site that provides that information from the comparable real estate in the area.

Verbal Verification **-** When written verification is not possible prior to move-in, direct contact with the source will be acceptable to IHCDA only as a last resort and should be followed by written verification. The conversation should be documented in the applicant's beneficiary file to include all information that would be contained in a written verification. The information must include the name, title, and phone number of the contact, the name of the recipient/management agent accepting the information, and the date the information was obtained.

In addition, if the recipient receives third party verifications that are not clear or are not complete, a documented verbal clarification may be accepted if it includes the name and title of the contact, the name and signature of the recipient/management agent accepting the information, and the date.

Furthermore, if after requesting third-party verification, the third party indicates that the information must be obtained from an automated telephone system, the recipient may document the information provided from the telephone system. The documentation must state the date the information is received, all of the information provided, and the name, signature, and title of the person receiving the information.

2) Second party verification & electronic verification **-** Recipients may use documents submitted by the applicant or beneficiary only if:

1. Information does not require third-party verification (such as birth certificates or adoption papers verifying household membership, divorce decrees, etc.); or
2. Third-party verification is impossible or delayed beyond two (2) weeks of the initial request. Recipients must show efforts (e.g. phone logs, fax receipts, certified mail receipts, etc.) to obtain the third party verifications before the use of second party verifications will be permitted.
3. There is a fee associated with receiving the third party verification. For example, if a bank will charge a fee for providing bank account information on a checking account, the recipient may verify the account by obtaining the most recent six (6) months of bank statements from the beneficiary.

The recipient must be able to reasonably project anticipated income for the next twelve (12) months from the second party verification. For example, **if third party verification of employment income is impossible and efforts to obtain the third party verification have been made and delayed two (2) weeks, the recipient may obtain three (3) consecutive months of paystubs from the beneficiary**. The recipient must place copies of the second party verifications and the efforts to obtain the third party verification in the beneficiary's file. **If utilizing tax returns as income verification, you must obtain a certified copy by completing IRS Form 4506 "Request for Copy of Tax Form."**

If second-party verification must be used, the owner is required to document the beneficiary file explaining the reason third-party verification could not be obtained and showing all efforts that were made to obtain third-party verification. Page 5-61 of the HUD Handbook 4350.3 states that the following documents should be placed in the beneficiary file:

a) A written note to the file explaining why third-party verification is not possible; and/or

b) A copy of the date-stamped original request that was sent to the third-party; and/or
c) Written notes or documentation indicating follow-up efforts to reach the third-party to obtain verification; and/or
d) A written note to the file indicating that the request has been outstanding without a response from the third-party.

3) Self-Certification - As a last resort, the owner may accept a beneficiary's signed affidavit if third-party and second-party verifications cannot be obtained. The recipient should try to refrain from using self-affidavits except where absolutely necessary. **NOTE: This form of verification can only be used for rental projects.**

If a self-affidavit must be used to verify income or asset sources, the recipient is required to document the beneficiary file by explaining the reason third-party or second-party verification could not be obtained and showing all efforts that were made to obtain verification. Per Chapter 5 of the HUD Handbook 4350.3, the following documents should be placed in the beneficiary file:

a) A written note to the file explaining why third-party verification is not possible; and/or
b) A copy of the date-stamped original request that was sent to the third-party; and/or
c) Written notes or documentation indicating follow-up efforts to reach the third-party to obtain verification; and/or
d) A written note to the file indicating that the request has been outstanding without a response from the third-party; and/or
e) A written note to the file explaining why second-party verification is not possible.

F. Rental Tenants

Household income must be certified at the time of occupancy and recertified on an annual basis in accordance with the Part 5 method of verifying income.

For information regarding on-going compliance, annual certification, etc. please refer to the rental housing compliance manuals available on IHCDA's website at http://www.in.gov/ihcda/2519.htm or contact your Compliance Auditor.

G. How to Calculate Area Median Income Percentages

To calculate the percentage of area median income, do the following:

- 50% Limit for Household Size * 2 = 100% Area Median Income Limits
- Actual Household Income / 100% Area Median Income Limit = % of Area Median Income

Example

A family of four (4) in Bartholomew County makes $17,800 per year. The fifty percent (50%) limit for a family of four (4) in Bartholomew County is $24,750. The percentage of area median income is calculated as follows:

Step 1: What is the total household income? $17,800

Step 2: What is fifty percent (50%) of the area median income for a family of four (4)? $24,750

Step 3: What is one hundred percent (100%) of the area median income for a family of four (4)? $49,500 [$24,750*2]

Step 4: What is the household's percentage of area median income? 36% [Step 1/Step 3]

H. Calculating Income & Assets: Examples

Example 1

Family Members	***Position in Family***	***Age***	***Income Sources***
Ricky Ricardo	Head	80	Receives gross Social Security in the amount of $625/month; receives a pension from the local musicians' union in the amount of $25 every quarter (3 months).
Lucy Ricardo	Spouse	79	Receives gross Social Security in the amount of $120/month; grossed $4,200 for giving voice lessons last year, but paid business expenses of $1,250 from this income for equipment and sound proofing.
Ricky Ricardo II	Child	45	Earns $330/week as an interpreter for a local non-profit organization.

If the Low Income Limit for a household of 3 is $30,000 and the Ricardo's have no other source of income, do they qualify for assistance?

ANTICIPATED ANNUAL INCOME

Family Member	*Wages/ Salaries*	*Benefits/ Pensions*	*Public Assistance*	*Other Income*	*Asset Income*
Ricky		**$ 7,600**			**Enter the Greater of lines 4 or 5 from above in e**
Lucy		**$ 1,440**		**$ 2,950**	
Ricky II	**$ 17,160**				
6. Totals	**a. $17,160**	**b. $9,040**	**c.**	**d. $2,950**	**e. N/A**
7. Enter total of items from 6a through 6e. This is Annual Income….. $29, 150					

The household is eligible for assistance.

Explanation

Ricky — Ricky's entire income is composed of pensions and benefits. It equals $625/month x 12 months/year + $25/quarter x 4 quarters/year = 7,600.

Lucy — Lucy's benefits income is $120/month x 12 months/year, or $1,440. Her net income from her business was $4,200-$1,250, or $2,950. (Her equipment and soundproofing expense is an allowable deduction because the business funds were reinvented in the business and did not represent expansion.)

Ricky II — Ricky II's income is wage income. The calculation is $330/week x 52 weeks/year = $17,160.

Example 2

Family Members	Position in Family	Age	Income Sources
George Jefferson	Head	53	Works full-time at $7.25/hour; also receives $400/month from the government as a result of a settlement in the Agent Orange product liability litigation.
Eloise Jefferson	Spouse	48	Works 18 hours/week at a bank at $7.50/hour; also receives $50/month from her mother to help with expenses.
Lionel Jefferson	Son	19	Full-time student at City College where he has a part-time, 15-hour/week job in the student bookstore at $6.00/hour for the 46 weeks when classes are in session.

Under the HOME Program, the Income Limit for a family of thee in the jurisdiction is $23,900. Are the Jefferson's eligible for HOME assistance? Assume the Jefferson's have no assets.

ANTICIPATED ANNUAL INCOME

Family Member	Wages/ Salaries	Benefits/ Pensions	Public Assistance	Other Income	Asset Income
George	**$ 15,080**				**Enter the Greater of lines 4 or 5 from above in e**
Eloise	**$ 7,020**			**$600**	
Lionel	**$ 480**				
6. Totals	**a. $22,580**	**b.**	**c.**	**d. $600**	**e. N/A**
7. Enter total of items from 6a through 6e. This is Annual Income….. $23,180					

This family is eligible for assistance.

Explanation

George	George's earnings from work count as income, but his income from the Agent Orange Settlement Funds does not.
Eloise	Eloise's income from wages of $7.50 @ 18 hours a week for $7,202 as well as her gift of $50 a month.
Lionel	Only the first $480 of his earnings count since Lionel is a full-time student.

Example 3

Family Members	Position in Family	Age	Income Sources
Blanche Deverou	Head	55	Works 6 hours/night, 4 nights/week at $5.00/hour as waitress; also earns as average of $55/night in tips.
Rose Nylen	Friend	58	Earns $6.50/hour as a full-time aide in a hospital; employer reports that her wages will increase to $6.75/hour; 7 weeks from the effective date of this calculation.
Dorothy Spornac	Friend	61	Earns $60/day as a substitute teacher, and works an average of 3 days/week for the 40 weeks school is in session (she made $7,200 last year); also received $40/month in Food Stamps.
Under the HOME Program, the Income Limit for a household of three is $38,500			

ANTICIPATED ANNUAL INCOME

Family Member	Wages/ Salaries	Benefits/ Pensions	Public Assistance	Other Income	Asset Income
Blanche	**$ 17,680**				**Enter the Greater of lines 4 or 5 from above in e**
Rose	**$ 13,980**				
Dorothy	**$ 7,200**				
6. Totals	**a. $38,860**	**b.**	**c.**	**d.**	**e. N/A**
7. Enter total of items from 6a through 6e. This is Annual Income….. $38,860					

This household is not eligible for assistance. Their income exceeds the limit for a household of three.

Explanation

Blanche	Blanche's income must include both the wages and tips.
Rose	(1) Calculate the wages for the first six weeks at $6.50 an hour ($1,560). (2) Calculate the wages for 46 weeks at $6.75 an hour ($12,420).
Dorothy	Dorothy made $7,200 last year, and there is no reason to expect that she will work more or less often in the coming year. Her income is, therefore, estimated at $7,200. Food Stamps are excluded from income.

Examples of Asset Calculations

Example 1

Family Members	Assets	Asset Value
John Herrera	Checking Account	$870 average 6-month balance with an interest rate of 2.7%
	Inheritance	Received an inheritance of $30,000 that he used to buy a new car for $12,000; pay off his $3,000 credit card bill; and open a mutual funds account to invest the remaining $15,000 at an annual interest rate of 5.3%.

Assets			
Family Member	**Asset Description**	**Current Cash Value of Assets**	**Actual Income from Assets**
Juan Herrera	Checking Account	$ 870	$ 23
Juan Herrera	Mutual Fund	$15,000	$795
Net Cash Value of Assets		$15,870	
Total Actual Income From Assets			$818
If Net Cash Value of Assets is greater than $5,000, multiply by 2% and enter results here, otherwise, leave blank			$317

The asset income to be used in the annual income calculation is $818.

Explanation

Checking account — The income from the checking account is calculated based on the 6-month balance and the interest rate ($870 *2.7%).

Inheritance — A car owned for personal use in not an asset. However, the mutual funds are an asset ($15,000 * 5.3%).

Example 2

Family Members	Position in Family	Age	Family Assets	Asset Value
Archie Bunker	Head	72	Checking account	$595 average 6-month balance in a non interest-bearing account.
Edith Bunker	Spouse	73	Savings account	$2,695 at 3.1%

Assets			
Family Member	**Asset Description**	**Current Cash Value of Assets**	**Actual Income from Assets**
Archie Bunker	Checking Account	$ 595	0
Edith Bunker	Savings Account	$2,695	$84
Net Cash Value of Assets		$3,290	
Total Actual Income From Assets			$84
If Net Cash Value of Assets is greater than $5,000, multiply by 2% and enter results here, otherwise, leave blank			

The asset income to be used in the annual income calculation is $84.

Explanation

Use the actual income in this case, because the cash value of the Bunker's total assets is less than $5,000. The imputed income is only calculated for assets when the total cash value of all assets exceeds $5,000.

Example 3

Family Members	Position in Family	Age	Family Assets	Asset Value
Fred Mertz	Head	85	Rental Property	Small rental property that grosses $6,500/year (expenses to keep up the property are $3,400/year). The property has a fair market value of $69,000, but they have a mortgage on the property in the amount of $35,000. The average closing cost in a real estate transaction is 8% in the area.
Ethel Mertz	Spouse	81	Savings account & Stock	Savings of $5,000 that earned $179 in interest during the past year. 100 shares of stock with a face value of $4.25 per share, that have not shown a dividend in years. The cost to sell the stock would be about $76.

Assets			
Family Member	**Asset Description**	**Current Cash Value of Assets**	**Actual Income from Assets**
Fred	Rental Property	$28,480	$3,100
Ethel	Savings Account	$ 5,000	$ 179
Ethel	Stock	$ 349	
Net Cash Value of Assets		$33,829	
Total Actual Income From Assets			$3,279
If Net Cash Value of Assets is greater than $5,000, multiply by 2% and enter results here, otherwise, leave blank			$ 676

The Mertz' income from assets is $3,279.

Explanation

Apartment Building	The cash value of the property is:	
	Market Value	$69,000
	Less Mortgage	35,000
	Less sales costs ($69,000*8%)	5,520
	Cash Value	$28,480
Stock	Fair Market Value	$425
	Cost to sell	76
	Cash Value	$349

Chapter 9 – Labor Standards (Davis-Bacon Requirements)

This chapter deals with the Davis-Bacon requirements for federal projects; however, you should refer back to the procurement chapter for the applicable procurement methods and requirements.

A. Labor Standards Acts

The regulations for labor standards requirements are found at 29 CFR Parts 1, 3, 5, 6, and 7.

The three basic statutes governing labor standards requirements are:

1. *Contract Work Hours and Safety Standards Act*

   The Contract Work Hours and Safety Standards Act requires that workers receive "overtime" compensation at a rate of one and a half (1 ½) times their regular hourly wage after they have worked forty (40) hours in one (1) week. It applies to all construction contracts issued under the HOME and CDBG programs.

2. *Copeland "Anti-Kickback" Act*

   The Copeland "Anti-Kickback" Act requires that workers be paid at least once a week, without any deductions or rebates except permissible deductions. Permissible deductions include taxes, deductions the worker authorizes in writing, and those required by court processes. The Act also requires contractors to maintain payroll records and submit weekly statements of compliance to the contracting agency. Payment to employees must be in cash or a negotiable instrument payable on demand. It applies to all contracts covered by Davis-Bacon.

3. *Davis Bacon Act*

   The Davis-Bacon Act requires that workers receive no less than the prevailing wages being paid for similar work. Prevailing wages are computed by the U. S. Department of Labor (DOL) and are issued in the form of a federal wage decision for each classification of work.

   Davis-Bacon wage rate provisions apply when HOME/CDBG funds are involved with equipment purchases that require installation and installation involves "more than an incidental amount" of construction work. Davis-Bacon wage rate provisions do not apply to equipment purchases where the cost of installation is only an incidental amount of construction activity.

   Wage provisions apply to all construction, alteration or repair contracts over $2,000 **except** for:

   (a) Contracts for rehabilitation or new construction of a residential property containing less than less than eight (8) units in a CDBG undertaking.

   (b) Contracts for rehabilitation or new construction of a residential property containing less than twelve (12) HOME-assisted units.

   (c) Force account employees of a state or political subdivision (other than a public housing agency), including situations where one political subdivision contracts with another using such employees, may work at their standard rate of pay, even if less than prevailing wage rates.

(For more information on if Davis-Bacon applies to your project, see the following section entitled "Applicability of Davis-Bacon Requirements")

B. Applicability of Davis-Bacon Requirements

HOME

- Applies to any contract for the construction of affordable housing containing twelve (12) or more HOME-assisted units, regardless of whether HOME funds are used for construction or non-construction activities (non-construction activities include real property acquisition, architectural and engineering fees, and other professional services). In some cases, Davis Bacon requirements may be triggered when HOME funds are used to provide down-payment assistance.
    - A HOME project with twelve (12) or more HOME-assisted units that is constructed under multiple contracts each containing less than twelve (12) HOME-assisted units is not covered. Please note HOME regulations prohibit breaking a single project into multiple contracts for the purpose of avoiding Davis-Bacon.
        - Ex/ X Not-For-Profit receives an award to complete a twenty (20) unit owner occupied rehabilitation project where an individual contract is awarded out for each unit. If four (4) contractors are awarded contracts to complete rehabilitation on five (5) units each, then Davis-Bacon would not apply.
    - If multiple HOME projects each containing less than twelve (12) assisted units are grouped into a contract(s) for construction that covers a total of twelve (12) or more assisted units, the contract is covered.
        - Ex/ X Not-For-Profit receives HOME funding to complete three (3) separate rental new construction projects in town. Upon completion X Not-For-Profit will own and manage all three (3) properties. Additionally, they have received common bank financing for all three (3) properties. Project #1 contains six (6) HOME-assisted units, Project #2 contains six (6) HOME-assisted units, and Project #3 contains six (6) HOME-assisted units. Project #1 is awarded to ABCD Construction under one contract. Projects #2 and #3 are lumped in together under one (1) contract and awarded to EFGH Construction. Davis-Bacon would not apply to ABCD Construction but would apply to EFGH Construction.
- Applies to affordable housing containing twelve (12) or more units assisted with HOME funds regardless of whether HOME funds are used for construction or non-construction activities. Such property may be one (1) building or multiple buildings owned and operated as a single development.

CDBG

- Applies to all of the following activities that are funded in whole or in part by CDBG funds:
    - (1) the rehabilitation or new construction of residential property containing a total of eight (8) or more units (this includes both assisted and non-assisted or market rate units); or
    - (2) the construction, alteration and/or repair, or painting of a public building or facility; or
    - (3) any construction work on non-residential property valued at more than $2,000.
- Therefore, if CDBG funds finance only a portion of the construction work, labor standards are applicable to the entire project. CDBG can finance other activities than "construction work" which do not trigger Davis Bacon requirements, such as real property acquisition, architectural and engineering fees, other services, and other non-construction items.
    - Property is defined as one (1) or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative, or condominium project.
        - Ex. X Developer will be rehabilitating three (3) apartment buildings each consisting of five (5) units and located on one (1) tract of land. CDBG funds will provide the financing to rehabilitate one (1) of these buildings. Upon completion, X developer will own the property. Davis-Bacon does apply to this project because CDBG funds are financing a portion of the project, it consists of the rehabilitation of fifteen (15) units, all fifteen (15)

units will be under the same ownership, and the property is located on contiguous lots (in this case one tract of land).

- Applies to the construction, alteration and/or repair, or painting of a public building or facility.
- Applies to any construction work on a non-residential property valued at more than $2,000.00
- Applies to all migrant seasonal farm worker housing projects.

C. Step-by-Step Outline of the Davis Bacon Requirements

1. Submit the "Notice of Labor Standards Officer" to your IHCDA Compliance Auditor once award agreement is received (Exhibit A).
    - The Labor Standards Officer is the person your organization will appoint to administer and enforce the Federal labor standards provisions associated with your award. Duties will include but not be limited to:
        - Ensuring the correct wage determination is being used.
        - Verifying the eligibility of contractors and subcontractors.
        - Reviewing weekly certified payrolls submitted by contractors and subcontractors.
        - Monitoring contractors and subcontractors and conducting site visits.
        - Conducting the required employee interviews.
        - Investigating and resolving Labor Standards violations.
        - Corresponding with and providing information to your IHCDA Compliance Auditor.

2. Request a Wage Decision from your IHCDA Compliance Auditor (Exhibit B).

3. Prepare Bid Documents - the following must be physically included in the bid documents:
    - Federal Labor Standards Provisions - HUD Form 4010 (Exhibit C); and
    - The Wage Decision

4. Follow the procurement standards outlined in Chapter 10.

5. Maintain a list of those entities/persons that request a bid packet.

6. A Pre-Bid Conference should be held by the recipient/architect approximately three (3) weeks prior to bid opening. At this conference you should briefly go over the Davis Bacon requirements and the construction/rehabilitation that needs to be completed; therefore, allowing for the entities to submit a competitive bid. Keep minutes of this conference for review by your IHCDA Compliance Auditor.

7. Wage Decision Update
    - Ten (10) days prior to bid opening, submit to your IHCDA Compliance Auditor the 10 Day Wage Update (Exhibit D), to verify that the wage decision has not been modified.
    - In the event that the contract is not awarded within ninety (90) days of bid opening, the wage rate must again be verified and is subject to modification. If there is a change in the wage decision, you must give the wage decision to each entity/person that received a bid packet.

8. Open all bids publicly – and maintain a log of bids as they are opened.

9. Prepare bid tabulation

10. Retain copy of minutes of bid opening

11. Complete the Contractor and Subcontractor Eligibility Process (Exhibit E)

12. Award contract at a public meeting. Retain copy of minutes. Include in the contract:
    - Federal Labor Standards Provisions - HUD Form 4010 (Exhibit C);
    - Wage Decision;
    - Federal Contract Provisions (Exhibit F); and
    - Davis Bacon Contract Provisions (Exhibit G)

13. Submit the "Notice of Contract Execution" to your IHCDA Compliance Auditor (See Procurement Chapter).

14. Contact IHCDA to schedule a Pre-Construction Conference – then submit Exhibit H - Notice of Pre-Construction Conference to your IHCDA Compliance Auditor

15. Pre-Construction Conference (given by your IHCDA Construction & Design Review Analyst and IHCDA Compliance Auditor).
    - Every contractor/subcontractor must be present
    - The General Contractor will sign off on the Pre-Construction Conference Packet
    - Sign-in sheet must be kept as well as minutes – forward a copy of both to IHCDA

16. Volunteers – if you plan on using volunteers, it must be approved by IHCDA. In your request, you must include the following:
    - The individual must truly be a volunteer;
    - The individual cannot receive compensation;
    - The individual can be paid for out of pocket expenses (hotel, travel, etc.); and
    - The individual cannot be employed as a contractor on the project and volunteer time.

17. Submit the "Notice of Start of Construction" to your IHCDA Compliance Auditor (Exhibit I).

18. Weekly, check Contractor's and Subcontractor's weekly payrolls against the wage decision to ensure compliance with prevailing wages.

19. Conduct interviews of Contractor's and Subcontractor's employees.

20. Submit the "Notice of Completion/Final Inspection" (Exhibit K) to your IHCDA Compliance Auditor.

21. If applicable, submit the "Final Wage Compliance Report" (Exhibit L) to your IHCDA Compliance Auditor. *****Please note: If at any point during the award term, the recipient discovers a violation of the Davis-Bacon wage requirements has occurred, IHCDA <u>must</u> be notified immediately. *****

D. Types of Wage Decisions

<u>Residential Construction</u>
Includes the construction, alteration, or repair of single-family houses and apartment buildings of no more than four (4) stories** in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.

<u>Building Construction</u>
Includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, and equipment or supplies. This includes the installation of utilities and of equipment; as well as incidental grading, utilities, and paving.

Heavy/Highway Construction

Heavy construction includes those projects that are not properly classified as either "building," "highway," or "residential." It generally includes above ground work such as bridges, dams, docks, water and sewer line projects, and some drainage projects.

Highway construction includes construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

**Please note that residential developments of five (5) or more stories are subject to a commercial Davis-Bacon wage decision. A commercial wage decision would be either a Building or Heavy/Highway Construction decision depending on the type and scope of the project. Both public facilities (such migrant/seasonal farm worker housing) and developments of less than five (5)stories that involve significant commercial development may also be subject to the commercial wage decision. All other residential developments should be subject to the residential wage rates, which are significantly lower than commercial wage rates.

E. Requesting Additional Wage Classifications

In some instances you will find that a certain classification needed for your job is not included in the wage decision. In this case you must request an additional job classification and rate from your IHCDA Compliance Auditor. In your request you should include the job title for which you are seeking an additional job classification and rate and a detailed description of the type of work being completed by this job classification. Your request will then be forwarded onto HUD for a final approval.

Once your request has been approved, your IHCDA Compliance Auditor will forward onto you a formal letter of approval from the U.S. Department of Labor. Once this letter is received, the additional job classification and rate will go into effect on the first day in which work under the classification is performed. This letter should be included in all construction contracts.

F. Use of Apprentices and Trainees

Apprentices and trainees may work at less than the prevailing rates, if they are registered in a bona fide apprenticeship or training program registered with the U.S. Department of Labor or a Department of Labor-recognized State Apprenticeship Council.

The allowable ratio of apprentices and trainees to journeyman on the job site is the allowable ratio under the approved program.

- If a contractor or subcontractor employs apprentices and trainees in such a number that exceeds the allowable ratio under the program all apprentices and trainees are considered improperly employed and will be entitled to the rate for the classification of work which they are performing.

G. Weekly Payroll Reports

Weekly certified payroll reports must be kept on Department of Labor payroll form WH-347 (Exhibit M). Instructions for completing this form can be found in Exhibit N. A fill-able form WH-347 along with instructions for completing it can be found on the Department of Labor website at http://www.dol.gov/whd/forms/wh347instr.htm.

Additional forms that may be used to assist you in ensuring compliance with the required wages and fringe benefits include:

- The monthly payroll report summary (Exhibit L)

  - Can help summarize each month the payroll information being collected from the weekly payroll reports.
- The project wage rate sheet (Exhibit Q)
  - Can be used to breakdown the required wages and fringe benefits to be paid for each job classification being utilized on the project.
  - Serves as a checks and balances between the information the Labor Standards Officer is reviewing on the weekly certified payrolls and what is required to be paid.

H. Fringe Benefits

The definition of fringe benefit is:

- The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and
- The rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected (D-B Act. 40 U.S.C, Sec 3141)

Bona fide fringe benefits include:

- Health, life, dental, vision or other similar insurance premiums paid by the employer
- Pension or retirement contributions made by the employer into a plan recognized by the Internal Revenue Service
- Expenses of certain recognized apprenticeship or training programs
- Vacation/holiday pay may be considered as long as the employee would receive any unused amounts at termination of employment, and other paid leave

Payroll deductions required by law are not considered fringe benefits and would include:

- Social security
- Worker's compensation
- Unemployment insurance
- Taxes
- Court ordered payments

The following are also not considered bona fide fringe benefits:

- Travel time
- Bonus payments
- Use of company tools or equipment
- Use of company vehicle
- Uniforms or safety shoes

If bona fide fringe benefits are being paid in addition to the minimum required wages, the contractor/subcontractor must include a breakdown of those fringe benefits either on the payroll form or as an attachment to the payroll form.

If bona fide fringe benefits are not being paid in addition to the minimum required wages, the contractor/subcontractor must pay at a minimum the required wages plus the required fringe benefits for the applicable classification in cash.

- Ex/ The wage decision in the contract for a particular job requires electricians to be paid $15.00/hr in wages and $5.00/hr in fringe benefits. Contractor A is not paying any fringe benefits to his electricians but does have a couple of them working on this job. Therefore, Contractor A must pay his electricians $20.00/hr in wages ($15.00/hr in required wages plus $5.00/hr in required fringe benefits) for this job since he is not paying fringe benefits.

I. Employee Interviews

IHCDA requires a minimum of ten percent (10%) of each trade working on the project be interviewed. Form HUD-11 (Exhibit O) should be used when conducting these interviews. Instructions for completing this form can be found in Exhibit P.

J. Interim Monitoring Requirements

Halfway through the award term or at fifty percent (50%) of funds drawn, whichever is sooner, IHCDA will conduct an interim monitoring to ensure compliance with the labor standards provisions. Focus points will include weekly collection and review of the certified payroll reports, correctly paying the required wages and fringe benefits, and conducting the required employee interviews. This interim monitoring is required and any issues found during the review must be addressed before additional claims to IHCDA will be released for payment.

Please refer to the IHCDA Monitoring Handbook in Chapter 16 (Program Monitoring and Audit) of this manual for information on what we'll be reviewing during this interim monitoring review.

K. Restitution Requirements

In cases where restitution is required to be paid to workers who were not paid the required minimum wages and fringe benefits IHCDA must see the following:

Restitution less than $1,000.00

- Original payroll reports for affected employee(s);
- Correction payroll reports for affected employee(s);
- A copy of the reimbursement check that was sent to the employee;
- A signed and dated receipt from the employee showing they did indeed receive payment; and
- Final Wage Completion Report (Exhibit L).

Restitution greater than $1,000.00

- Original payroll reports for affected employee(s);
- Correction payroll reports for affected employee(s);
- A copy of the reimbursement check that was sent to the employee;
- A signed and dated receipt from the employee showing they did indeed receive payment;
- Statement of future compliance from contractor/subcontractor on company letterhead; and
- Final Wage Completion Report (Exhibit L).
- IHCDA will prepare and send to HUD a HUD 5.7 Enforcement Report along with a Schedule of Back Wages Due Report (Exhibits R and S)

L. Retainage Requirements

IHCDA will hold the final five percent (5%) of your award until the final monitoring has been completed and all findings and concerns associated with it have been resolved.

M. Pre-Construction Conference Checklist

The following outlines the materials that will be covered at the Davis Bacon Pre-Construction Conference.

A. General Information regarding Contractor/Subcontractors

B. Equal Employment Opportunity
   1. Title VI – Civil Rights Act of 1964
   2. Section 504 – Rehabilitation Act of 1973
   3. Age Discrimination Act of 1975
   4. Executive Order 12138: Women Business Enterprise Policy
   5. Executive Order 11063
   6. Executive Order 11246, as amended by Executive Order 11375
   7. Section 3: Housing and Urban Development Act of 1968
   8. Minority/Women Business Enterprises
   9. Affirmative Action Program
   10. OFCCP Subcontract Notification
   11. Monthly Employment Utilization Report
   12. Employer Information Report
   13. Other Requirements

C. Labor Standards

   1. Ineligible Contractors and Subcontractors
   2. Overtime
   3. Copeland Anti-Kickback Act
   4. Posters at the Construction Site
   5. Other Labor Standards Requirements

D. Davis Bacon Requirements

   1. General Requirements
   2. Workers Not Listed on the Wage Decision
   3. Classifications
   4. Apprentices
   5. Weekly Payroll Requirements
   6. Fringe Benefits
   7. Self-employed Owners
   8. Disputes
   9. Compliance

E. Forms you will receive at the Pre-Construction Conference

   1. Federal Labor Standards Provisions (HUD-4010)
   2. Section 3 Report
   3. OFCCP Subcontract Notification
   4. Monthly Employment Utilization Report
   5. Employer Information Report (EEO-1)
   6. Civil Rights Poster (Equal Employment Opportunity is the Law)
   7. Fair Housing Poster (Equal Housing Opportunities)

8. Certificate of Accessibility
9. Federal IOSHA poster
10. Federal Polygraph poster
11. Secretary of Labor's Wage poster (Notice to Employees)
12. Indiana Code Wage Deductions
13. Form WH-347
14. Form WH-348
15. Record of Employee Interview (form HUD-11)

Chapter 10 – Procurement Procedures

A. Introduction

This section outlines requirements that must be followed when procuring all materials, supplies, equipment, and construction or professional services related to a CDBG or HOME award. The purpose of these requirements is to ensure that recipients of a CDBG or HOME award follow *competitive* procurement procedures.

Note that any procurement action that takes place for the award *regardless of the funding source* must follow the procurement process outlined in this chapter, e.g. even if matching funds will be used to pay for the architectural services, those services must be procured using one (1) of the approved methods that follow.

Also, these standards must be used in *all* phases of procurement, including procurement made prior to, but in expectation of, the issuance of the award.

It is recommended that award recipients consult with their legal counsel prior to initiating procurement activities.

B. Procurement by Local Units of Governments

The most stringent procurement standard applies to procurement by cities, towns, and counties. Both state and federal law govern this type of procurement.

Applicable Federal Regulations
- CFR Part 85
- OMB Circular A-102
- OMB Circular A-87

Applicable Indiana Procurement Laws (applicable to cities, towns, and counties)
- Public Purchases Law - materials, equipment, goods and supplies IC-36-1-9.
- Public Works Law - Construction, alteration, or repair of any public building or any other work or improvement of any character IC-36-1-12.

These standards apply whether staff, a sub-recipient, or a contractor of the local unit of government receiving the funds performs the procurement action.

The majority of this Chapter (sections F to K) covers these standards.

C. Procurement by Not-for-Profit Organizations

If a not-for-profit organization is the recipient of a CDBG or HOME award, it is also required to follow *competitive* procurement standards. However, the not-for-profit may choose to either follow the local unit of government procedures OR utilize their own procurement standards.

If the not-for-profit chooses to utilize their own procurement standards, the standards must be pre-approved by IHCDA. A sample procurement policy is available as Exhibit K to this chapter.

Note that not-for-profits receiving federal grants are subject to certain federal requirements:

Applicable Federal Regulations

- CFR Part 84
- OMB Circular A-110

Thus, IHCDA strongly encourages not-for-profits to consult with their legal counsel when writing their procurement standards, to ensure they are complying with these requirements.

If a not-for-profit does not have written procurement standards in place, OR if the not-for-profit's procurement standards do not meet the requirements of OMB Circular A-110, then the not-for-profit must then follow the procurement requirements of local units of government as described in sections F-K of this chapter.

An exception to these requirements is for HOME, CDBG, and Development Fund projects funded in conjunction with Section 42 Rental Housing Tax Credits (RHTCs). In those cases, the project falls under the rules of the Qualified Allocation Plan (QAP) which does not require procurement procedures be followed.

D. Procurement by For-Profit Organizations

Private individuals and business associations (corporations, partnerships, sole proprietorships, etc.) are not usually subject to restrictions on purchases. However when using Federal funds some controls are required.

1. **Sole-Source Procurement:** Where a private individual or business association wishes to select a contractor with which it has an ongoing relationship, using sole source procurement, a *cost-price analysis* must be done to ensure that the bid is in line with reasonable and customary charges for similar work (see "Cost-Price Analysis" in this chapter).

2. **Competitive Procurement**

   a. **Awards Made As Grants:** Competitive procurement may be by competitive negotiation and does not require publication. Proposals should be requested from at least two (2) qualified contractors, including at least one (1) MBE/WBE contractor.

      The for-profit grantee should open the sealed bids and select the "lowest and best" bid. All bids received must be kept for review by IHCDA. If there is substantial deviation in bids (ten percent (10%) or more) and the lowest bid is not selected, the reason for non-selection must be noted in the file. Substantial deviation from the written bid specifications or inability to meet time constraints of the bid are acceptable reasons for non-selection. However, bid specifications must not have been so narrowly written as to preclude otherwise qualified bidders.

   b. **Awards Made as Loans:** This category applies only to loans which are scheduled for repayment. Loans which are "forgivable" must be treated as a grant for purposes of procurement. The process is the same as with grants (above); however, if the for-profit organization wishes to select a bid other than the "lowest and best," it must pay the difference between the "lowest and best bid" received and the bid actually selected.

An exception to these requirements is for HOME, CDBG, and Development Fund projects funded in conjunction with Section 42 Rental Housing Tax Credits (RHTCs). In those cases, the project falls under the rules of the Qualified Allocation Plan (QAP) which does not require procurement procedures be followed.

E. Purchasing Officer Responsibility

Grantees should designate a purchasing officer for CDBG and HOME purchases and procurement activities. Written procurement procedures should be in place to guide the purchasing officer. Small communities/organizations may designate the community's legal counsel, consultant, or other responsible person as the purchasing officer. The purchasing officer is responsible for the following:

1. Determining the need for procurement of supplies, equipment, construction, or services based on the project plan.
2. Assigning appropriate persons to prepare specifications, manage solicitations, and negotiate contract terms.
3. Monitoring solicitation of bids including preparation of bid specifications, advertising, receipt, and evaluation of bids.
4. Participating in the final selection of contractors.
5. Overseeing pre-construction activities and negotiations.
6. Overseeing the execution of contracts.
7. Determining that the purchase is in compliance with the conflict-of-interest requirements: no member, officer, or employee of the award recipient or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during their tenure, or for one (1) year thereafter, shall have any direct or indirect interest in any contract, subcontract, or proceeds thereof, financed in whole or in part with CDBG or HOME funds.

F. Four Allowable Methods of Procurement; Basic Requirements for Local Units of Government

There are four (4) allowable methods of procurement, depending on the type of goods or services being procured and who is doing the procurement. These are: 1) competitive sealed bids, 2) competitive negotiation, 3) small purchases, and 4) non-competitive and sole source purchases. A synopsis of each method and process is found in the following sections; however, this information should not be considered a substitute for reviewing the applicable state laws and federal circulars.

Following are the basic requirements for Local Units of Government:

1. All construction contracts procured by a local unit of government must be through the competitive sealed bid method. Purchases may not be made in multiple increments to avoid formal competitive sealed bid procedures.

2. Procurement of materials and supplies estimated to be in excess of $25,000 must be procured through the competitive sealed bid method. Purchases may not be made in multiple increments to avoid formal competitive sealed bid procedures.

3. Professional services over $25,000, such as engineering or consulting services, must be procured by the competitive negotiation method if the competitive sealed bid method is not used. Purchases may not be made in multiple increments to avoid formal competitive sealed bid procedures.

G. Competitive Sealed Bids (Invitation for Bids)

Competitive sealed bids are solicited through formal advertising, such as in the newspaper legal section. A fixed price contract is awarded to the lowest responsible bidder whose bid conforms to all the material terms and conditions of the bid invitation, technical specifications, and is the lowest in price. The contract award may be a fixed sum, or a unit price with ceiling, but it cannot be a cost plus percentage of cost contract. Such contracts are not allowed under federal regulations.

When using competitive sealed bids, the award recipient must provide all prospective bidders with a competitive description of the items or services to be purchased. This description should avoid specific brand requirements, although "brand name or equal" descriptions may be used as an example of functional or quality requirements. The procurement must lend itself to a firm fixed price contract that allows selection of a successful bidder primarily on price.

In addition, two (2) or more responsible vendors must be willing and able to compete for the contract. If only one (1) bid is received the award recipient must perform a "cost-price analysis" to substantiate the reasonableness of the bid price received (See "Cost-Price Analysis" in this Chapter).

The basic process to follow when using the Competitive Sealed Bid method is as follows.

1. **Prepare Technical Bid Specifications**: These specifications should provide complete and accurate descriptions of materials, products, and services to be provided. The specifications should address any concerns identified during the environmental/historic review. Where applicable, the architect or engineer must certify that handicapped access standards have been or will be satisfied, or specify the basis for exemption.

2. **Obtain Davis-Bacon Wage Decision:** If the project has been determined to require Davis-Bacon wages, secure the applicable wage rate decision(s) from your IHCDA Real Estate Production Analyst and include them in the bid documents and construction contracts. To obtain applicable wage rate decisions, the award recipient must submit the "Request for Wage Determination" form to IHCDA. (See Labor Standards information in Chapter 9)

3. **Prepare the project bid terms and conditions.** The award recipient's attorney should review the bid documents for the following:
   a. Technical specifications.
   b. City, town, or county, as well as federal and state requirements.
   c. CDBG or HOME related requirements.
   d. Cost and pricing information.
   e. Method of payment.
   f. Advertisement for bid (as required by state law).
   g. Bidders information specifying method of bidding, bid evaluation, and contract award.
   h. Contract form.
   i. For contracts over $100,000:
      1) Bid Proposal Form (Indiana General Form No. 96) required for public works projects with contracts to exceed $100,000 (Exhibit F of this Chapter).
      2) Bonding forms (bid, performance, and payment bonds) (See "Bonding" in this chapter).
      3) Section 3 requirements. (See Section 3 information in Chapter 7)
   j. For Davis-Bacon Projects: Current prevailing federal wage publication (See Labor Standards information in Chapter 9).

4. **Publication:** Bid advertisements must be published at least fourteen (14) days before the bid is due. The bid advertisement must be published twice in a general circulation newspaper at least seven (7) days

apart, and the second ad must be published seven (7) days before bids are opened [public advertisement requirements are detailed under Indiana Law I.C. 5-3-1-2(e)]. The advertisement should:

a. Include the place and date where plans and specifications are available for review.
b. Include the place, date, and time fixed for receiving bids.
c. Include bonding and certification requirements.
d. State the goal of ten percent (10%) participation by MBE/WBE firms (see sub-section 6 below).
e. State the goals/obligations related to Section 3 (see Section 3 chapter).
e. For Davis-Bacon projects, the advertisement should specify that the project is subject to Davis-Bacon prevailing wages. The current prevailing federal wage publication must be incorporated in bid packets for all applicable procurement (See Chapter 9).

5. **Davis-Bacon Pre-Bid Conference:** For Davis-Bacon projects, the award recipient must conduct a pre-bid conference. (See Chapter 9.)

6. **MBE/WBE Requirements:** IHCDA has a goal of ten percent (10%) participation by MBE/WBE firms in HOME and CDBG funded projects. Therefore efforts must be made (and documented) to attract proposals from minority-owned businesses and women's business enterprises. The preferred method is to send a certified letter inviting the firm to bid. Such letters should be sent to at least two (2) such firms for each procurement action. Other acceptable forms of solicitation include: 1) E-mail with return/read receipt; and 2) Hand delivery and signed receipt. The State of Indiana maintains a directory of MBE/WBE firms at http://www.in.gov/idoa/2352.htm.

7. **(Optional) Preparation of a Bidder's List**: Award recipients, in order to alleviate the publication requirement each time projects go out to bid, may want to create a bidder's list. To create a bidders list, the award recipient must publish at least twice in a newspaper of general local circulation. The advertisements must be at least seven (7) days apart, with the second publication made at least seven (7) days before the deadline for submitting a request to be placed on the bidder's list [public advertisement requirements are detailed under Indiana Law I.C. 5-3-1-2(e)]. The advertisement must specify any requirements contractors must satisfy in order to be placed on the bidders list. These requirements may include, but are not limited to, the submission of financial statements, statements of experience, proposed plans for performing the work, documentation of insurance, licensing, and/or bonding, and equipment available.

   Thereafter, each time a project activity goes out to bid, the award recipient must notify all contractors on the bidders list, as well as document efforts to solicit minority and women owned business enterprises. The notification should inform contractors where bid documents are available for review.

   At any point in time, a contractor may request to be placed on or deleted from the bidder's list. Additionally, the bidders list should be updated every six (6) months. To update the bidder's list, the recipient should follow the publication requirements as well as contact each non-responsive contractor that is on the bidder's list to ask if it would like to remain on the bidder's list.

8. **Maintaining Bids:** Grantees should maintain a log of bidders who were sent or submitted bid documents. All bids received during the bidding period must be logged with the name of the bidder and the time and date of receipt. The sealed bids must be secured unopened in a safe place. No bid should be accepted if it is late.

9. **Amendments to Bid Documents (including revisions to wage rates):** Amendments to the bid documents, including those revisions of wage rate decisions, must be sent to all potential bidders who obtained the original bid documents. Amendments can be issued up to seventy-two (72) hours prior to bid opening; if

amendments are not issued within seventy-two (72) hours prior to the bid opening, the date must be extended exactly one (1) week.

10. **Bid Opening & Evaluation**

    a. Contracts for work on public property, including public facilities and improvements, must be awarded in a public meeting. All bids should be read aloud during this meeting. Maintain minutes of the meeting to document the project, time, and date of the bid opening, and the bidders and bid amounts in the order they were opened.

    b. Where procurement is performed on behalf of an individual, such as in an owner-occupied rehabilitation award, the bid opening should include the property owner and a representative of the award recipient or not-for-profit sub-recipient. Formal minutes are not required, but meeting notes are recommended.

    c. A *bid tabulation sheet* must be completed showing the name and bid price of each bidder, and whether the bid was responsive. The grantee should review all bids to determine if each is legally and technically responsive. Each bidder must be evaluated on its ability to perform. The award recipient should consider the integrity, experience, performance history, and capacity of the contractor to perform within the stated time period, as well as cost when making the decision.

    d. If the contract was not awarded to the lowest bidder, a detailed, written explanation must be prepared.

    e. Unsuccessful bidders must be promptly notified.

11. **Time Limits:** The award recipient has sixty (60) days from the date of bid opening to (a) award the contract or reject all bids or, (b) reject all bids. Notice to proceed must also be provided to the successful bidder within sixty (60) days of bid opening (IC 36-1-12-6).

12. **Cost-Price Analysis:** Two (2) or more responsive vendors must be willing and able to compete for each contract. If only one (1) bid is received, the award recipient must perform a "cost-price analysis," as described below, to substantiate the reasonableness of the bid price received. Additionally, award recipients should consult with their IHCDA Production Analyst prior to completing a cost-price analysis. Two (2) options are given and either option is an acceptable measure:
    a. Request from the single bidder a breakdown of the labor costs, material costs, and profit from his/her bid. This information will allow the procuring agency to evaluate reasonableness of the amount of profit built into the bid and the appropriateness of the material and labor costs. The federal regulations do not establish any maximums for these three (3) categories; however, a reasonableness test should be made in relation to the scope of work being bid.
    b. Ask another contractor that performs the type of work that was bid to provide an estimate of cost. This estimate must be on the letterhead of the contractor and must be in writing.

13. **Bids Exceeding Project Budget:** If all the bids exceed the amount budgeted for the project, the award recipient cannot negotiate with the low bidder to bring the contract within the budget limits. The award recipient can reject all bids, provide needed funds from other sources, or re-allocate award funds. However, prior to a re-allocation of award funds, the award recipient may need to submit an award modification request to IHCDA for approval (See information on Modifications in Chapter 13).

    If the award recipient has reason to believe that available funds are likely to be inadequate for the full scope of work proposed, the award recipient should ask all bidders to submit deductible alternatives to the project can proceed without a second bid solicitation. If deductible alternatives are requested, the

document must specify the method and order in which deductible alternatives will be applied in determining the low bid. Drawings must clearly show the deductible alternative(s).

14. **Other Requirements <u>Prior to Signing Contracts</u>**

    a. **Release of Funds:** Prior to contract award, the award recipient must ensure all compliance and environmental clearances have been met. <u>Contracts may not be executed until the award recipient receives both a written notice of Release of Funds from IHCDA for the applicable budget line item and written notice from DHPA that the Section 106 Review Process has been completed</u> (refer to the IHCDA website for Environmental Review information). Failure to comply with these release procedures may result in disallowance of all applicable costs.

    b. **Verification of Contractor Eligibility:** Prior to contract award, the award recipient must complete the Verification of Contractor/Subcontractor eligibility process. See Exhibit C of this chapter for instructions on completing this process.

    c. **Bonding Requirements:** The successful bidder must meet all bonding requirements prescribed by Indiana law (see "Bonding Requirements" in this chapter). Award recipients should seek the assistance of legal counsel in regard to bonding requirements.

15. **Contract Provisions:** All contracts must include specific provisions as described in section P of this chapter.

16. **Davis-Bacon Requirements:**

    a. **Notice of Contract Award**: Where the project is covered by Davis-Bacon wage rates, the grantee must send a "Notice of Contract Award" to the IHCDA Labor Standards Officer and to the Department of Labor (DOL) area office within ten (10) days of contract award. Copies should also be retained by the grantee in its project files. This information must also be filed by the contractors for all subcontracts over $10,000.

    b. **Pre-Construction Conference:** For Davis-Bacon projects, a pre-construction conference must be held to acquaint the contractor with federal requirements. IHCDA staff will brief the contractor on the payment process, federal wage requirements, minority/women business development goals, forms to be used and how the award recipient may use this meeting, or a similar one, to review the contractor's records and accounting systems. Pre-construction conference minutes must be prepared to document the subjects discussed at the meeting. A list of federal regulations pertinent to procuring and managing CDBG & HOME construction contracts can be found in Chapter 9. This list may serve as the agenda for the pre-construction conference.

    c. **Notice of Start of Construction**. For Davis-Bacon projects, send a "Notice of Start of Construction" to IHCDA Labor Standards Officer. (See Labor Standards chapter.)

17. **Notice to Proceed:** Send a "Notice to Proceed" to the contractor. (See Labor Standards chapter.) This document notifies the contractor that construction may begin.

18. **Grantee's Contract File:** The grantee should maintain a contract file containing the following:
    a. Description of contractor selection method.
    b. All bids received.
    c. Bid tabulation.
    d. Verification of contractor eligibility.
    e. Contract for services.

f. Records of progress payments, including retainage.
g. Contract change orders, if any.

The Award recipient should use this file to monitor the contractor throughout the construction period.

H. Competitive Negotiation (RFP) Procedure

The competitive negotiation method is recommended for all procurement of professional services. The procurer prepares a formal Request for Proposals (RFP) and requests proposals from at least two (2) or more qualified firms or individuals. Negotiations should be conducted with more than one (1) of the responding sources. The basic process to follow when using the Competitive Sealed Bid method is as follows.

1. Prepare the Requests for Proposal

a. The RFP must not be prepared or solicited by those firms or individuals who will be submitting proposals.

b. The RFP should include these elements, at a minimum:
   1) Scope of Services - detailed description of the extent and type of work to be performed.
   2) Time Requirements - performance period.
   3) Proposal Instructions - the format of the proposal.
   4) Evaluation of Proposals - The award recipient must identify all significant evaluation factors (and their relative importance), including price or cost where required, technical expertise, past experience, price, staffing, etc. and how the proposals received will be scored.
   5) Federal, state, and local regulations applicable to the award.
   6) Considerations for Bidding - any additional requirements not pertaining to the scope of services that should be considered when preparing a proposal.

2. Solicit for Proposals

a. Proposals must be solicited from at least two (2) qualified sources to permit reasonable competition.

b. The RFP must be publicized.

c. IHCDA has a goal of ten percent (10%) participation by MBE/WBE firms in HOME and CDBG funded projects. Therefore efforts must be made (and documented) to attract proposals from minority-owned businesses and women's business enterprises. The preferred method is to send a certified letter inviting the firm to bid. Such letters should be sent to at least two (2) such firms for each procurement action. Other acceptable forms of solicitation include: 1) E-mail with return/read receipt; and 2) Hand delivery and signed receipt. The State of Indiana maintains a directory of MBE/WBE firms at http://www.in.gov/idoa/2352.htm.

d. The award recipient must retain documentation of the RFP distribution process.

3. Evaluation of Proposals

a. When proposals or statements of qualification are received, each should be evaluated by the award recipient based upon pre-established criteria. Evaluation criteria commonly used include the following, at a minimum:
   1) Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project.

2) Past record of performance on such federally-funded contracts within the State of Indiana, and a list of other clients served including type of work, timeliness, quality requirements, and cost control. References submitted by interested bidders should be contacted.
3) Capacity of the firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
4) Familiarity of the firm with the type of problems applicable to the project.
5) Price

b. The review process for both statements of qualification and proposals in response to a Request for Proposal should be thorough, uniform, and well-documented. The review process is to be conducted by a committee or board which, to the greatest extent possible, includes persons with the appropriate technical skills. Reviewers must have no conflicts of interest with the firms or individuals under review, such as family relationships, close friendships, or business partnerships.

c. Negotiations should be conducted with more than one (1) of the sources submitting proposals. Retain verifiable documentation recording the negotiations process.

d. Award must be made to the responsible firm or individual whose proposal will be the most advantageous to the project, considering price and other factors. Unsuccessful bidders must be promptly notified. When the award is made to a responsible bidder not having the lowest price, the award recipient must document its reasons for not selecting the lowest proposed price.

4. Establish a Professional Contract File

The grantee should maintain a contract file containing the following:

a. A description of the method used to select architect, engineer, or consultant;
b. Qualification statements or proposals received;
c. Negotiation methods;
d. Cost and pricing data supporting the contract;
e. Verification of contractor eligibility;
f. Contract for services;
g. Records of progress payments, including retainage withheld; and
h. Contract change orders, if any.

I. Small Purchases Procedures (For services and supplies ONLY, not construction contracts.)

Small purchase procedures are those relatively simple and informal procurement methods appropriate for procurement of services, supplies, or other property, costing not more than $25,000.

1. **Services Under $25,000**: Although competitive negotiation is the recommended method for procuring all professional services, the small purchase procedure is also acceptable.
   a. At a minimum, two (2) quotes shall be reviewed from qualified, responsible firms.
   b. At a minimum, one (1) quote attempt must be documented from an MBE/WBE firm.
   c. Receipt of these price quotes must be well-documented and a record of the procedure used must be maintained by the award recipient.
   d. If a firm is selected on a basis other than price, the reason for the selection must be well-documented and maintained by the award recipient.

2. **Supplies and Materials Under $25,000:** When the small purchases method is used for procuring supplies and materials, the award recipient may purchase on the open market <u>or</u> may invite quotes from not less than two (2) vendors.

a. If the award recipient purchases on the open market, at least two (2) informal price quotations should be obtained using the "Informal Price Quotation Form" (Exhibit A).
b. If the award recipient chooses to invite formal quotes, a "Request for Quotation Form" (Exhibit B) should be completed.

J. Non-Competitive and Sole Source Purchases

Competitive procurement should be used whenever possible. Non-competitive proposals may be used only when the other three (3) methods are not feasible, and award files must document such a determination.

Non-competitive negotiation may only be used in one (1) of the following circumstances:
1. Public urgency will not permit a delay for competitive solicitation;
2. The item desired is available from only one (1) source; or
3. After solicitation of a number of sources, competition is determined inadequate.

Any grantee wishing to utilize sole source procurement must first obtain approval from IHCDA. This can be accomplished by sending a letter that details the efforts undertaken to obtain multiple bids and the reason sole source procurement was selected.

Note that while this method shortens the procurement process; there must still be written bid specifications for construction services and a written scope of services for professional service contracts.

Again, sole source procurement is discouraged and must be well documented to avoid denial or disallowance by IHCDA staff and Indiana State Board of Accounts examiners.

K. Administrative and Other Professional Services

1. Administrative Services by Staff of a Local Government Award Recipient

A city, town, or county award recipient may elect to perform some or all administrative and professional services functions in-house. The award recipient may be reimbursed for the direct costs of administrative and other professional services functions. All reimbursement payments must be made to the city, town, or county, "force" account.

Award recipient employees may not be paid extra for performing award administration during the course of their standard work schedule. However, if an employee is selected to perform the services through a competitive procurement process, the services must be performed on their own time (not during regular work hours), and they may receive reimbursement above their standard salary.

2. Administrative Services by a Contractor

A contractor may be a for-profit entity, a not-for-profit, or a municipal employee. A contractor may perform administrative or professional services as a stand-alone activity or in conjunction with other activities.

The competitive negotiation method is recommended for all procurement of professional services, regardless of dollar amounts, and is required for all services contracts over $25,000 if the competitive sealed bid method is not used.

Administrative and services costs may not be bid by "fixed price", except for repetitive, low cost services such as legal opinions for title, or accounting review of pro-forma. All other procurement of services must be at an hourly rate, with an estimate of the number of hours required to accomplish the task. Different activities may be bid at different rates. Both the rates and the number of hours for the task must be available for review by the award recipient, sub recipient; IHCDA, HUD, or their designated representatives.

3. Administrative Services by a Sub-Recipient

a) Distinction between Sub-recipients and Administrators

1) Sub-recipient not-for-profits may serve as the administrator for the award recipient without competitive procurement as long as the following conditions are met:

i. The sub-recipient is also operating the funded housing activity; and

ii. That activity is a usual and customary activity of the sub-recipient;

2) Not-for-profit entities that wish to only provide administrative services, whether to an award recipient or sub-recipient, may only be procured through competitive procurement that meets the applicable requirements for the procurer.

b) The sub-recipient is reimbursed on a direct cost basis (costs actually incurred and so documented) only for costs that are reasonable and necessary to project administration.

c) Grantees and their sub-recipients must execute a written sub-recipient agreement that includes:

1) A statement of work describing the work to be performed, a schedule for completing the work, and a budget. These items must be described in sufficient detail to allow the award recipient (recipient governmental unit) to effectively monitor the sub recipient's performance;

2) A description of what records the sub-recipient must keep and what records it must submit in order to assist the award recipient in meeting its record-keeping and reporting requirements;

3) A description of how any program income expected to be generated will be handled;

4) A statement of applicable uniform administrative requirements such as Treasury Circulars A-110 and A-128;

5) A clause for suspension and termination of agreements for noncompliance and convenience;

6) A statement of reversion of CDBG-funded assets at the time the agreement expires;

7) A statement of any federally approved indirect cost allocation plans and the name of the approving cognizant agency(s);

8) A description of other program requirements such as labor standards or fair housing requirements, with the exception that sub-recipients do not assume the award recipient's environmental responsibilities;

9) A copy of the not-for-profit's 501(c) tax exempt certification should be attached to the agreement.

d) The award recipient has the responsibility of monitoring its sub-recipients. While IHCDA does not prescribe how that monitoring should take place, we suggest that the award recipient at least follow the monitoring guidelines found in the Program Monitoring & Audit chapter (Chapter 16). Ultimately, it is the award recipient that will be held accountable for all aspects of award administration and program compliance.

L. Contractor Verification

Prior to bid award, grantees must verify that all contractors bidding on the project are not listed on the HUD Debarred list. To check the status, complete the process outlined in Exhibit C. Do not execute a contract until you have completed this process in order to ensure that the entity is not on the HUD Debarred List.

M. Insurance

1. Award recipients will be required to provide proof of adequate builder's risk insurance during construction and property insurance following construction for the assisted property throughout the affordability period of the award. Specific requirements are as follows:

   a. Construction Period

      1) Owner-Occupied Rehab: Contractor liability and/or property insurance that includes coverage for work done by contractors.

      2) Other Rehab: Builders risk, contractor liability and/or property insurance that includes coverage for work done by the contractors.

      3) New Construction: Builders risk and/or property insurance that includes coverage for work done by the contractors is required throughout the construction period.

   b. Affordability Period

      1) Homeowner or Homebuyer: Adequate property insurance (beneficiary loan documents must stipulate).

      2) Rental: Adequate property insurance must be maintained throughout the affordability period. (This is required for all properties assisted through open or closed awards.)

2. Policy Requirements

   a. If a contractor liability policy is used, it must name IHCDA as additionally insured.

   b. If a builder's risk policy is used, it must name IHCDA as both a loss-payee and an additionally insured.

   c. If a homeowner policy is used, nothing needs to be added to the policy. Once the lien is placed on the home, the entity placing the lien automatically becomes a loss payee.

   d. The builder's risk or contractor liability policy can be in the name of the recipient, contractor, owner of the property, or sub-recipient.

   e. The builders risk coverage must be for the replacement value of the property, increasing as appropriate throughout the construction period to the full replacement value at construction completion.

   f. The value of the contractor liability must be, at a minimum, for the replacement value of the property. Additionally, if the contractor employs persons, the policy must also include workers compensation.

   g. The value of the property insurance must be, at a minimum, for the replacement value of the property.

N. Bonding Requirements

For any construction contracts or subcontracts exceeding $100,000, the following is required:

a. A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

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

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

d. Where bonds are required, either:

   1) The bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, “Surety Companies Doing Business with the United States;” OR

   2) In lieu of acquiring the payment and performance bonds, IHCDA will accept an irrevocable line of credit listing IHCDA as the sole beneficiary and equal to (a) the the greater of the IHCDA award amount or (b) twenty five percent (25%) of the total construction contract. The line of credit must be issued for the entire construction period plus one (1) year following construction completion.

O. Conflict of Interest

Award recipients shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees, or agents engaged in the awarding and administration of contracts supported by CDBG funds. No employee, officer or agent of the award recipient shall participate in selection, awarding, or administration of a contract supported by CDBG funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when one (1) of the following has a financial or other interest in the firm selected for an award:

1. An employee, officer or agent;
2. Any member of his or her immediate family;
3. His or her partner; or
4. An organization that employs, or is about to employ, any of the above.

The award recipient’s officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. However, award recipients 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 of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the award recipient’s officers, employees, or agents or by contractors or their agents.

For more information see Conflicts of Interest chapter (Chapter 6).

P. Required Contract Provisions

All contracts must include the following provisions.

1. Effective date of contract.
2. Names and addresses of award recipient or sub-recipient and contractor.
3. Names of representatives of award recipient or sub-recipient and contractor who will act as liaison for administration of the contract.
4. A citation of the authority of the award recipient under which the contract is entered into and the source of funds.
5. Contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
6. Provisions for termination by the award recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
7. Scope of Services:
   a) Detailed description of extent and character of the work to be performed.
   b) Time for performance and completion of contract services, including project milestones, if any.
   c) Specification of materials or other services to be provided by both parties, (e.g., maps, reports, printing, etc.).
   d) Clause requiring records to maintained throughout the applicable records retention period.
   e) An access to records clause including a provision that all negotiated contracts awarded by recipients shall include a provision to the effect that the state, the recipient, HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the contractor which are pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.
   f) A Conflict of Interest Clause.
   g) Provisions for compensation of services, including the basis for submission of billings as the work progresses and specification of the total contract amount.
8. Bonding and Insurance Requirements, as applicable (see sections M and N of this chapter).
9. Federal Contract Provisions (See Exhibit D):
   a) Equal Employment Opportunity - Executive Order 11246: Equal Opportunity Clause, goals for female and minority participation and implementing regulations
   b) Rights to Inventions Made Under a Contract or Agreement
   c) Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended, Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15)
   d) Byrd Anti-Lobbying Amendment (31 U.S.C.1352)
   e) Debarment and Suspension (Executive Orders 12549 and 12689)
10. Construction Contracts and Subcontracts for Davis-Bacon Projects must also include the following (See Labor Standards chapter)**:**
    a) Federal Wage Determination with modifications
    b) Federal Labor Standards Provisions (HUD 4010)
       i. Davis-Bacon Act
       ii. Contract Work Hours and Safety Standards Act
       iii. Copeland "Anti-Kickback Act"
    c) Contractors and Subcontractors Certifications (HUD 1421 and 1422)
    d) OFCCP Subcontractor Notification
    e) EEO-1 Report
    f) CC-257 Monthly Utilization Report

g) U.S. Department of Labor Notices (jobsite): WH 1321, WH 1462, and OSHA 2203 publications

11. Section 3 requirements (See Section 3chapter).

Q. Additional Requirements for Public Projects

1. If construction or alternation of any public building is estimated to cost more than $50,000, work must be performed pursuant to and in compliance with plans and specifications approved by a licensed architect or engineer (IC 36-1-12-7).

2. A municipal utility may maintain, extend, and install services without adopting plans and specifications and without awarding a contract, if such work is performed by the employees of such utility. However, the award recipient must coordinate such "force account" with IHCDA, and all applicable federal wage requirements must be followed.

3. Retainage Requirements

   a) When a local unit of government enters into a contract in excess of $100,000 for any public work (other than for highways, roads, streets, alleys, bridges and appurtenant structures situated on streets, alleys and highway rights-of-way), a portion of all payments shall be retained until all contracted and subcontracted work has been satisfactorily completed.

   b) The retained portion shall be placed in an escrow account selected by mutual agreement between the award recipient, contractor, and subcontractor. The escrow agent may be a commercial bank, savings and loan institution, or IHCDA.

   c) Any interest income on retained funds should go to the contractor. To determine the amount of retainage to be withheld, the award recipient shall have the choice of:

      1) Withholding no more than ten percent (10%) of the dollar value of all work satisfactorily completed until the public work is fifty percent (50%) completed, and nothing further after that; or
      2) Withholding no more than five percent (5%) of the dollar value of all work satisfactorily completed until the public work is substantially completed.

   d) IHCDA recommends also retaining payments on contracts below $100,000 to ensure quality work. IHCDA also recommends that escrow accounts be interest-bearing and that interest income be given to the contractor(s) upon completion and acceptance of the work performed.

R. Notice of Contract Execution

After you have executed a contract, complete Exhibit E, "Notice of Contract Execution", and submit via email to the IHCDA Real Estate Coordinator. Additionally, this form requests insurance information that is being utilized for this activity. IHCDA staff will ensure that this form has been submitted prior to paying claims on your awards. If amendments or change orders are issued to the contracts, submit a revised notice with both the original contract amounts listed and the revised contract amounts listed.

The following codes are used to complete *Exhibit E: Notice of Contract Execution*:

Type of Trade Code:	Racial/Ethnic Codes:
1 - New Construction	1 - White

2 - Rehabilitation
3 - Project Management/Administration
4 - Professional
5 - Education/Training
6 - Architect/Engineering/Appraisal
7 - Other

2 - Black Americans
3 - Native Americans
4 - Hispanic Americans
5 - Asian or Pacific Islander
0 - Public Agency/Non-Profit

S. CDBG Disclosure Form (Exhibit F)

For CDBG projects, a CDBG Disclosure Form (HUD 2880) must be completed by all award recipients at the time of award execution. If the recipient answered "No" to the threshold questions in Part 1 of this form, then no further action is necessary. However, if the recipient answered "Yes" to the threshold questions in Part I of this form, then Part II of this form must be completed as individual contracts are awarded.

T. Award Recipient and Contractor Debarment Procedures

1. In order to address potential recurring problems, the State of Indiana has codified statutory proceedings which apply to any federal or state program administered by the State agencies, including IHCDA.

2. A person and/or contractor may be debarred if any of the following have occurred within a reasonable period of time before institution of debarment proceedings:

   a) Serious or repetitive violation of any federal or state law, or IHCDA program regulation or instruction.
   b) Serious or repetitive failure to perform contractual obligations or carry out representations or warranties to IHCDA or to any award recipient under any program administered by IHCDA.
   c) Acts of misconduct indicating a lack of business integrity directly affecting responsibility to participate in IHCDA programs, including but not limited to false representation, misappropriation of funds, embezzlement, theft, forgery, fraud, negligent service, bribery, falsification of records, and receipt of stolen property.
   d) Serious or repetitive violation of any non-discrimination or equal opportunity requirements in connection with any program administered by IHCDA.
   e) Debarment from any agency of the federal government or of any state government.

3. Award recipients and contractors receiving awards or compensation under IHCDA's HOME/CDBG program who commit serious or repetitive violations of HOME/CDBG regulations or this *Award Manual* are subject to such debarment proceedings. Those award recipients and/or contractors who are debarred by IHCDA from further participation in IHCDA's HOME/CDBG program will be given the right to appeal such debarment.

4. The U.S. Department of Housing and Urban Development (HUD) has also established debarment procedures. Contractors receiving awards or compensation under IHCDA's HOME/CDBG program who commit serious or repetitive violations of HOME/CDBG regulations may also be debarred by HUD.

Environmental Review

For more information on Environmental Review requirements, refer to the "Environmental Review User's Guide." This guide is available as Chapter 11 Exhibit A.

Chapter 11 Exhibit B lists further resources for information on Environmental Review.

Chapter 11 Exhibit C includes all Environmental Review forms.

Chapter 11 Exhibit D includes all Environmental Review sample notices.

Historic Review

For more information on Historic Review requirements, refer to the "Historic Review Resource Guide." This guide is available as Chapter 11 Exhibit E.

Chapter 12 – Funds Management

This chapter outlines the process for setting up your specific development with IHCDA, how to draw funds from IHCDA, and what must be submitted to complete your development. The Funds Management files are available in the Chapter 12 Exhibits.

Part I of this chapter outlines the funds management requirements for HOME.
Part II of this chapter outlines the funds management requirements for CDBG.
Part III of this chapter outlines the funds management requirements for CDBG-D.

Due to the large size of this chapter, the full text is available as Chapter 12 Exhibit A entitled "Funds Management Instructions."

Additionally, please refer to the following exhibits:
Exhibit B- "Administration Funds Draw Policy"
Exhibit C- "Policy for Drawing Funds for Developer Fees"

Chapter 13 – Modification Procedures

A. Introduction

At some point during the progress of your award, your award agreement may require a modification. Possible reasons for requesting a modification include:

1. Change of award ending date;
2. Change in project activities, site or area;
3. Reallocation of funds budgeted between approved activities;
4. A change in the use of principal and interest payments received by the recipient;
5. A change in private sector participants, investment, or housing goals; or
6. A change in any conditions listed in the Technical Corrections to your award agreement.

Modification requests are reviewed by IHCDA staff to determine if the recipient has proceeded in a timely and responsible manner, if the proposed modification presents new problems in meeting federal or state regulatory or policy requirements, or if the request in any way changes the review factors (including point awards) which initially led to funding. Where the proposed modification significantly alters the project from the original agreement, it may be advisable for the recipient to voluntarily return the award and reapply for funding when the project is solidified or when project obstacles have been overcome.

All modification requests submitted to IHCDA need to be in a letter format and submitted with an original signature of the chief executive officer or executive director of the recipient. These requests should be submitted to your Real Estate Production Analyst. A modification is not considered granted or denied until you receive a formal letter from IHCDA outlining a response to your request.

Note of Caution: When any modification is anticipated, the recipient must also consider the impact of the proposed modification on other regulatory requirements (e.g., a change in project location or participants may trigger a new environmental review). Recipients should carefully review the anticipated changes against all regulatory requirements to determine the full range of possible impacts including unanticipated expenses or even the possibility that the proposed project will no longer be eligible for funding.

B. Types of Modifications

There are two (2) types of modifications: minor program modifications and major program modifications. If a modification request includes both major and minor changes, the modification request will be considered a major modification request for review purposes.

Minor Program Modifications

A minor modification includes changes to the award such as expiration date extensions and budget reallocations. If the recipient requests a minor program modification and no other changes, the modification can be accomplished through an exchange of letters between the recipient and IHCDA.

When requesting a minor modification, a ***detailed justification*** must be included in the request. The chief executive officer of the recipient must sign the request. After reviewing the request, IHCDA will respond in writing to the request by either approving or denying it.

When a minor modification is approved, IHCDA will send the recipient a contract modification agreement in the form of a PDF file signed by a signatory of IHCDA. The recipient must print two (2) copies, sign both, return one (1) contract modification agreement to IHCDA, and place the other one in the recipient's project file.

Award Extension

An important minor modification is a request for a change of the expiration date. If an award cannot be fully drawn down by its stated date, a request for modification of expiration date must be submitted to IHCDA, and a modified project schedule must be attached. Since funds cannot be drawn after award expiration, it is recommended that modification requests be submitted well in advance of the expiration date.

Changes in award expiration dates are **NOT** automatic. In signing the award agreement, the recipient has certified that the project can be completed within the time period specified. The recipient has not fulfilled its contractual obligations when award funds are not expended within the time frame specified in the award agreement. In addition, IHCDA is required by HUD to meet certain performance standards for expenditure of funds. As a result, it is the policy of IHCDA to permit changes in award expiration dates only when the recipient can demonstrate that:

a) It could not have reasonably foreseen the delays; ***and***

b) It acted responsibly and in a timely manner to overcome the delays; ***and***

c) It informed IHCDA immediately upon learning that the project could not be completed within the time frame specified in the award agreement; ***and***

d) All aspects of the project can be ***completed*** within a very short period of time after the original end date -- usually not to exceed six months.

In all other instances, it is recommended that the recipient voluntarily return the award and reapply for funding when the project is ready to proceed or, where possible, consult with IHCDA to consider redesign of the project to allow earlier completion.

If you have determined that you would like to move forward with an extension to the expiration date, the modification request must include, but is not be limited to, the following information:

- Explanation as to why the modification is needed; and
- Detailed timeline by site address of what has transpired to date, please include all site addresses; and
- Detailed timeline by site address for completion of the project; and
- Signed modification request from the chief executive officer of the award recipient.

Budget Reallocation

When requesting a budget modification, the modification needs to include, but is not be limited to, the following information:

- Explanation as to why the modification is needed; and
- What led to the change in the costs attributable to the line item, e.g. requesting money to be moved into rehabilitation – additional costs due to historic preservation of existing windows; and
- Revised Budget; and

- Signed modification request from chief executive officer of the award recipient.

Major Program Modifications

A major modification is a substantial change in terms of the project purpose, scope, location, or beneficiaries. The recipient should allow a minimum of thirty (30) days for approval when requesting a major modification.

Types of modifications that can result in major modifications are:

a. Adding an additional activity to an existing award

b. Changing from one eligible activity to another

When a HOME recipient requires a substantial modification, IHCDA must receive a letter requesting the major modification from the award recipient's chief executive officer, a copy of the revised Project Budget (if applicable), and a modified project schedule.

When a CDBG or CDBG-D recipient desires to request substantial changes in terms of the project purpose, scope, location, or beneficiaries, the award recipient must provide citizens with reasonable advance notice of, and opportunity to comment on, activities which are proposed to be added, deleted, or substantially changed from the unit of general local government's application to the state. Before requesting a substantial modification from IHCDA, the recipient must do one (1) of the following:

a. Hold a public hearing to obtain citizen's viewpoints. The recipient must publish a legal notice announcing the public hearing in a local newspaper of major circulation at least ten (10) calendar days prior to the public hearing date.

b. Publish a legal notice in a local newspaper of major circulation specifying the proposed program change and providing citizens information for submitting comments to the proposed change. Citizens must be given at least ten (10) calendar days to comment on the proposed major modification before the request is submitted to IHCDA, and the recipient must respond to citizen comments within fifteen (15) working days where practicable.

c. If the recipient determines that neither of the above options is feasible, the recipient may submit a request to its IHCDA Real Estate Production Analyst to utilize an alternative method of informing citizens about the proposed change.

The award recipient must submit the following to IHCDA: a letter requesting a major modification executed by the recipient's chief executive officer, a copy of the revised project budget (if applicable), a modified project schedule, and an original publisher's affidavit for the public notice.

Award Agreement Changes

When requesting an award agreement change - e.g. decreasing the number of units served or income beneficiary restrictions - the modification needs to include, but is not limited to, the following information:

- Explanation as to why the award recipient cannot fulfill the requirements stated in its initial application for funding; and
- The steps taken to meet the original requirements; and
- Description of beneficiaries that the recipient is planning to serve, number of units that it is planning to serve, etc.; and

- Signed modification request from the chief executive officer of the award recipient.

Please note that if you are increasing the number of units that will be served, you do not need to request approval from IHCDA; however, you are still bound to meet the beneficiary restrictions that were stated in the initial application approved by IHCDA.

Rent Limit Adjustments - HOME

Federal HOME regulations prohibit IHCDA from making supplemental HOME awards during a HOME-funded developments' affordability period, unless the award is made within one year of project completion or the supplemental funding assists a homebuyer in acquiring housing previously assisted with HOME funds [see 24 CFR 92.214(a)(7)].

HUD states at 24 CFR 92.252(g) that changes in the rent limits over time should be sufficient to maintain the financial viability of a development. However, the regulations go on to say, "HUD may adjust the HOME rent limits for a project, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly."

If award recipients find that the published rent limits are insufficient for a specific HOME-funded development, IHCDA will consider a request to adjust the 40% or 30% AMI rent limits to 60% or 50% units, for example. In this case, IHCDA would forward the request to HUD on the recipient's behalf. The petitioner would be required to demonstrate how the increased rents would continue to be affordable for the targeted areas.

Substantial Reconstruction

There are instances where "Substantial Rehabilitation" is insufficient. Improvements to the substandard house are either not enough to bring the house up to standards and make it structurally a safe living environment or the cost to rehabilitate the home may exceed the cost of simply replacing the home.

This policy summary addresses those rehabilitation projects where a determination must be made regarding the need and eligibility for substantial reconstruction of housing owned and occupied by low and moderate-income persons. *PRIOR APPROVAL BY THE IHCDA IS REQUIRED FOR ALL SUBSTANTIAL RECONSTRUCTION PROJECTS.*

For each request, the following definition applies and the following conditions must be met:

Substantial Reconstruction**:** Substantial reconstruction is defined to include the rebuilding of existing housing, on the same foundation or the same footprint, standing on a site at the time that owner eligibility is determined by the local unit of government. Rooms may be added outside the footprint of the housing being reconstructed in order to alleviate occupancy issues, but the reconstruction housing must essentially be similar to the original housing. Reconstruction also includes replacing an existing substandard unit with a new or standard unit of manufactures housing with the manufactured housing qualifying under the IHCDA's Manufactured Housing Policy and its six (6) criteria. Efforts must be made to assure that the replacement housing preserves the character of the structure replaced and the surrounding neighborhood. Housing must meet all applicable new construction building standards. *Substantial Reconstruction applies to owner occupied projects only*.

A. Conditions: Substantial reconstruction waivers will be considered only in the following situation: The housing that is being reconstructed is part of a neighborhood rehabilitation effort in which the unit of local government is carrying out or proposes to carry out housing rehabilitation activities, and the housing to be reconstructed would otherwise be a part of the housing rehabilitation in that neighborhood, and the unit of local government determines:

1) that the housing to be reconstructed is unsuitable for rehabilitation. Housing that is unsuitable for rehabilitation is housing that is substandard and not financially or structurally feasible for rehabilitation. The award recipient or its agents must document this determination. Such documentation should include inspection forms and cost estimates for rehabilitation and cost estimates for reconstruction which *demonstrates that the cost of substantial reconstruction is significantly less than the cost of rehabilitation*; and

2) the *estimated cost of reconstruction is at least twenty percent (20%) less than the estimated cost of purchasing comparable newly constructed housing* (including land) located in that neighborhood or in a comparable neighborhood of the unit of local government (for purposes of this paragraph, comparable newly constructed housing means a newly constructed residential structure of approximately the same size on a lot of approximately the same size); and

3) the *estimated cost of the reconstruction is less than the fair market value of the reconstructed housing and land* based on an appraisal obtained before reconstruction; and

4) the unit is located on land held by the beneficiary in fee-simple title or 99-year leasehold and is the principal residence of the beneficiary.

5) the property is subject to the resale restrictions or recapture provisions. (See Deed Restrictions Chapter). *Note*: resale restrictions or recapture provisions must be recorded and are the only instruments to be used in protecting the public investment.

B. All requests for approval to undertake substantial reconstruction activities must include the following information:

1) Cost estimates for rehabilitating the existing structure.
2) Cost estimates for the reconstructed housing.
3) Estimate of cost to purchase comparable newly constructed housing in the same or comparable neighborhood.
4) A copy of the appraisal for the unit that is to be reconstructed.
5) Written justification of efforts to assure the preservation of character for the replacement housing along with photos of the existing structure, neighboring properties and blueprints and front elevations of the replacement structure.
6) A Budget Modification requesting to reallocate funds to the “Not Feasible For Rehab” line item.
7) A complete sources and uses of funds for the project address. Please specify the terms of any private financing involved in the project.
8) A certified abstract of title and attorney’s opinion of title.
9) Beneficiaries of substantial reconstruction projects should, if financially able, participate in the financing of the project. If the beneficiaries’ financial participation in the project is at least fifty percent (50%) of the project costs (as identified in items seven (7) above) then no further client information is required. Otherwise, the following information on the client must be submitted to the IHCDA:
   (a) Size of household.
   (b) Annual income.
   (c) Current mortgage amount.
   (d) Total debts (not including mortgage).
   (e) Estimated cost for taxes and insurance on reconstructed property.
   (f) A list of any credit history problems (i.e., bankruptcy, pending lawsuits, loan defaults, etc.).
   (g) Justification for beneficiary level of financial participation.

C. All requests for waivers will be approved or denied in the discretion of the IHCDA following a review and evaluation of the justifications listed in support of the waiver request and a review and evaluation of the current status of the request.

C. Effective Date of Modification

Unless otherwise communicated in writing to the award recipient by IHCDA, all modifications will become effective as of the date that the modification agreement is signed by a signatory of IHCDA.

D. Modification Checklist

IHDA has provided a checklist that will help you in determining if you are submitting all of the necessary information for a modification request. See Exhibit A: Modification Checklist.

Chapter 14 - Construction Standards & Physical Inspections

A. Construction Standards

All housing that is constructed or rehabilitated must meet the stricter of the Indiana State Building Code, local building codes, or manufacturer's instructions.

All projects that use HOME funds for rehabilitation or acquisition must comply with the IHCDA Rehabilitation Standards (See Exhibit A).

B. Requirements for Physical Inspections on Assisted Properties

All IHCDA-assisted units, including but not limited to HOME, CDBG, CDBG-D, and Development Fund, must be inspected twice during the award period.

The first inspection will occur at the completion of the documented scope of work and prior to the IHCDA Inspector's final physical inspection. This inspection should be used to document and minimize any and all issues that are discovered before IHCDA's inspection. This inspection must be completed by a licensed home inspector. If paid staff of the award recipient completes the work on a home, then an outside, third party inspector must be used for this. If an outside contractor is procured to complete the work, then staff of the award recipient will be permitted to conduct such an inspection. It is not required that this inspection reference any issues with code but should be documented if discovered.

The second inspection will be conducted upon completion of the construction for the award. The IHCDA Inspector will conduct the physical inspections. Prior to inspection, the Inspector will schedule a time to visit the properties and you are responsible for making arrangements with any owners/tenants of the properties. This final inspection by IHCDA will enforce any and all code requirements set forth by the stricter of the Indiana State Building code, local code, or manufacturer's instructions.

Who can conduct the third party inspections required by IHCDA's new policy?

The required inspections must be completed by a licensed residential housing inspector, engineer, or architect. The inspector must have a current license with the State of Indiana Professional Licensing Agency (PLA). For information on who is licensed, how to become licensed or how to renew/update your license, please see their website at http://www.in.gov/pla/hi.htm

What types of projects is this rule applicable to?

This should be for new projects funded after July 1, 2010 that do not have executed inspection contracts. Existing projects awarded prior to this date are not required, but encouraged to do so.

Are there any exceptions to this rule for having a licensed housing inspector?

Yes, projects that have architects and engineers that certify construction performance and completion are exempt from this requirement.

At the time of physical inspection, the following must be available:

- **Work Write-up**: A complete and detailed work write-up outlining the specifics completed in each unit. The work write-up must be specific to that unit and outline work completed in each room of that unit. For new construction, a listing of the work completed to date will suffice. A copy of this information should be given to the Inspector upon or before arrival.

For example: Electrical Work: Replace counter-top receptacles in the kitchen and in the bathroom with GFCI receptacles.

Replace main electrical panel located in laundry room with a new 100 amp, 16 circuit breaker panel.

- **Access to all units**: There must be access to all the units (whether vacant or occupied) within the project/development. This will require a staff person of the award recipient, sub-recipient, or administrator to be present when inspecting the units.

C. Requirements for Energy Audits (Rehabilitation Only)

As part of IHCDA's new Strategic Investment process, the policy includes a requirement that all units to be rehabilitated must have an energy audit conducted on them in order to assess and address items that will provide the greatest impact on the home/unit and ensure that funds are being used in the most efficient manner regarding energy conservation. For clarification purposes, please see the following guidance on who may conduct such audits for IHCDA-assisted units.

- An individual that maintains and currently holds an appropriate Building Professionals Institute (BPI) Certification;
- A RESNET-certified auditor;
- A certified HERS (Home Energy Rating System) Rater; or
- An individual that has successfully completed IHCDA's energy auditor training program.

D. Requirements for New Construction Projects

New construction projects must be built to at least the minimum standard set by the National Association of Home Builders (NAHB). Information regarding these requirements can be found on the NAHB website at http://www.nahbgreen.org/.

E. Ongoing Compliance Physical Inspections

All rental projects will be subject to ongoing physical inspections throughout their affordability period. For additional guidance, please refer to Exhibit C: IHCDA's "Physical Inspection Compliance Guide."

A. Affordability Periods

Housing assisted under IHCDA's SIP must meet the affordability requirements in accordance with 24 CFR 92.252 for rental housing or 92.254 for homeowner housing throughout the entire affordability period (the "Affordability Period") as defined in 24 CFR 92.252(e) for rental housing or 24 CFR 92.254(4) for homeowner housing and described in the tables below. **The affordability period begins on the date of closeout.**

HOME Affordability Periods

Amount of HOME subsidy per unit:	**Affordability Period**
Under $15,000	5 years
$15,000 - $40,000	10 years
Over $40,000 – or any rehabilitation/refinance combination activity	15 years
New construction or acquisition of newly constructed transitional, permanent supportive, or rental housing	20 years
RHTC Combo Deals	Term of Rental Housing Tax Credit Compliance/Extended Use Period

CDBG Affordability Periods

Permanent Rental Housing:

Amount of CDBG subsidy per unit:	**Affordability Period**
Under $15,000	5 years
$15,000 - $40,000	10 years
Over $40,000	15 years

(*NOTE: CDBG rental projects cannot be new construction, so there is no separate new construction affordability period listed in this chart)

Owner-Occupied Rehabilitation:

Amount of CDBG subsidy per unit:	**Affordability Period**
Under $5,000.00	***1 year***
$5,000 - $10,000	2 years
Over $10,000	3 years

CDBG-D Affordability Periods

Permanent Rental Housing:

Amount of CDBG subsidy per unit:	Affordability Period
Under $15,000	5 years
$15,000 - $40,000	10 years
Over $40,000	15 years
New Construction (regardless of amount)	20 years
RHTC Combo Deals	Term of Rental Housing Tax Credit Compliance/Extended Use Period

Owner-Occupied Rehabilitation:

Amount of CDBG subsidy per unit:	Affordability Period
Under $5,000	1 year
$5,000 - $10,000	2 years
Over $10,000	3 years

B. HOME Lien and Restrictive Covenants

The award recipient will be required to ensure that the restrictions referenced below are utilized in order to preserve the affordability of HOME assisted units.

Resale Guidelines - HOME

Homebuyer Program

Resale restriction. The award recipient must ensure that a resale restriction in the form of a lien and restrictive covenant is executed and recorded on any property constructed, rehabilitated, or acquired, in whole or in part, with HOME Funds in the form of a development subsidy. A development subsidy consists of the difference between the cost of producing the unit and the fair market value of the property. If the homebuyer determines that it no longer intends to use the property as its principal residence, resale restrictions require the homebuyer to sell the property to a low-income family that will use the property as its principal residence. The term "low income family" shall mean a family whose gross annual income does not exceed eighty percent (80%) of the median family income for the geographic area published annually by HUD. The purchasing family should pay no more than twenty-nine percent (29%) of its gross family income towards the principal, interest, taxes and insurance for the property on a monthly basis. The homeowner selling the property will be allowed to receive a fair return on investment, which will include the homeowner's investment and any capital improvements made to the property.

If HOME funds are provided to the homebuyer as a grant, the HOME funds will be subject to a resale restriction.

The award recipient will be required to repay IHCDA for any HOME funds utilized for any housing constructed, redeveloped, rehabilitated, or acquired that does not remain affordable in accordance with 24 CFR 92.254 for homeowner housing, as applicable, for the entire Affordability Period. Under resale guidelines the Affordability Period is based upon the total amount of program funds invested into the unit.

The award recipient must execute a lien and restrictive covenant prepared by IHCDA.

Recapture Guidelines - HOME

Homebuyer Program

Recapture Provisions. The award recipient must ensure that a recapture provision in the form of a lien and restrictive covenant is executed and recorded on any property purchased, in whole or in part, by a homebuyer that receives a direct subsidy ("homebuyer subsidy") in an amount greater than or equal to One Thousand and 00/100 Dollars ($1,000) in HOME Funds. A homebuyer subsidy consists of any financial assistance that reduces the purchase price from fair market value to an affordable price, or otherwise directly subsidizes the purchase (e.g., down-payment or closing cost assistance, interest subsidies subordinate financing, or any other assistance that reduces the purchase price from fair market value to an affordable price).

If the homebuyer no longer utilizes the property as its principal residence during the Affordability Period described in the applicable table, the amount to be recaptured is the shared net proceeds of a prorated amount of the homebuyer subsidy. The proration shall be based on the length of time the homebuyer has occupied the property as its principal residence in relation to the Affordability Period (as outlined in the forgiveness schedules listed below). Any net proceeds that exist will be shared between IHCDA and the homebuyer. If there are not any proceeds, there is no amount to recapture.

The net proceeds are the total sales price minus all loan and/or lien repayments. The net proceeds will be split between the IHCDA recipient and borrower as outlined according to the forgiveness schedule below for the Affordability Period associated with the property.

If a homebuyer subsidy is provided to the homebuyer as a loan, the HOME funds will be subject to a recapture provision.

If there is both development subsidy and homebuyer subsidy or just homebuyer subsidy, a recapture provision must be implemented.

The award recipient must execute a lien and restrictive covenant prepared by IHCDA.

The award recipient is ultimately responsible for repaying IHCDA for any HOME funds utilized for assisting housing that does not remain affordable in accordance with 24 CFR 92.254 for the entire Affordability Period. Under recapture guidelines the Affordability Period is based upon the total amount of the homebuyer subsidy that the homebuyer received in HOME funds.

Owner Occupied Rehabilitation

If a homeowner receives HOME funds to rehabilitate or repair its home as a part of IHCDA's owner occupied repair program, the award recipient must ensure that a recapture provision is executed and recorded on the property. If the homeowner no longer utilizes the property as its principal residence during the Affordability Period, the amount to be recaptured is the shared net proceeds of a prorated amount of the amount of the total amount of funding utilized to repair or rehabilitate the property. The proration shall be based on the length of time the homeowner has occupied the property as its principal residence in relation to the Affordability Period (as outlined in the forgiveness schedules listed below). Any net proceeds that exist will be shared between IHCDA and the

homeowner. If there are not any proceeds, there is no amount to recapture. The net proceeds are the total sales price minus all loan and/or lien repayments.

The award recipient is ultimately responsible for repaying IHCDA for any HOME funds utilized for any housing rehabilitated, or repaired that does not remain affordable for the entire Affordability Period. The Affordability Period is based upon the total amount of HOME funds invested into the unit.

The award recipient must execute a lien and restrictive covenant prepared by IHCDA.

Rental Projects

The award recipient must ensure that a lien and restrictive covenant is executed against every property constructed, rehabilitated, or acquired, in whole or in part, with HOME funds. Upon occurrence of any of the following events during the Affordability Period, the entire sum secured by the lien, without interest, shall be due and payable by developer and/or owner upon demand. Repayment may be demanded upon: (1) Transfer or conveyance of the real estate by deed, land contract, lease, or otherwise, during the Affordability Period; (2) Commencement of foreclosure proceedings by any mortgagee (or deed in lieu of foreclosure), within the Affordability Period; (3) Units not being used as a residence by a qualifying tenant or not leased according to the HOME Program affordability requirements. The award recipient will be responsible for repaying IHCDA for any HOME funds utilized for any housing constructed, redeveloped, rehabilitated, or acquired that does not remain affordable in accordance with 24 CFR 92.252 for the entire Affordability Period. The Affordability Period is based upon the total amount of HOME funds invested into the development.

5-Year Affordability Period

Number of Years Since Completion	% of HOME Funds Recaptured
1 Year	80%
2 Years	60%
3 Years	40%
4 Years	20%
5 Years	0%

10-Year Affordability Period

Number of Years Since Completion	% of HOME Funds Recaptured
1 Year	90%
2 Years	80%
3 Years	70%
4 Years	60%
5 Years	50%
6 Years	40%
7 Years	30%
8 Years	20%
9 Years	10%
10 Years	0%

15-Year Affordability Period

Number of Years Since Completion	% of HOME Funds Recaptured
1 Year	93%
2 Years	87%
3 Years	80%
4 Years	73%
5 Years	67%
6 Years	60%
7 Years	53%
8 Years	47%
9 Years	40%
10 Years	33%
11 Years	27%
12 Years	20%
13 Years	13%
14 Years	7%
15 Years	0%

20-Year Affordability Period

Number of Years Since Completion	% of CDBG Funds Recaptured
1 Year	95%
2 Years	90%
3 Years	85%
4 Years	80%
5 Years	75%
6 Years	70%
7 Years	65%
8 Years	60%
9 Years	55%
10 Years	50%
11 Years	45%
12 Years	40%
13 Years	35%
14 years	30%
15 Years	25%
16 Years	20%
17 Years	15%
18 Years	10%
19 Years	5%
20 Years	0%

C. CDBG & CDBG-D Lien and Restrictive Covenants

The award recipient will be required to ensure that the restrictions referenced below are utilized in order to preserve the affordability of CDBG and CDBG-D assisted units.

Rental Housing

The award recipient must ensure that a lien and restrictive covenant is executed against every multi-family or rental property constructed, rehabilitated, or acquired, in whole or in part, with CDBG or CDBG-D Funds. Upon occurrence of any of the following events during the Affordability Period, the entire sum secured by the lien, without interest, shall be due and payable by the award recipient or owner upon demand. Repayment may be demanded upon: (1) Transfer or conveyance of the real estate by deed, land contract, lease, or otherwise, during the Affordability Period; (2) Commencement of foreclosure proceedings by any mortgagee (or deed in lieu of foreclosure), within the Affordability Period; (3) Units not being used as a residence by a qualifying tenant or not leased according to the CDBG or CDBG-D Program affordability requirements. The award recipient must execute and record a lien and restrictive covenant on the property. The award recipient must execute a lien and restrictive covenant prepared by IHCDA. The award recipient is ultimately responsible for repaying IHCDA any CDBG or CDBG-D funds invested into any development that does not meet the affordability requirements throughout the Affordability Period. The Affordability Period is based upon the total amount of CDBG or CDBG-D funds invested into the development.

Owner-Occupied Rehabilitation

If a homeowner receives CDBG or CDBG-D funds to rehabilitate or repair its home as a part of IHCDA's owner occupied repair program, the award recipient must ensure that a recapture provision is executed and recorded on the property. The lien and restrictive covenant must stipulate the following requirements: (1) the home must remain the homeowner's principal residence throughout the Affordability Period; and (2) if the homeowner sells the property during the Affordability Period, the home must be sold to an income eligible household.

If the homeowner no longer utilizes the property as its principal residence during the Affordability Period, the amount to be recaptured is the shared net proceeds of a prorated amount of the amount of funding utilized to repair or rehabilitate the property. The proration shall be based on the length of time the homeowner has occupied the property as its principal residence in relation to the Affordability Period (as outlined in the forgiveness schedules listed below). Any net proceeds that exist will be shared between IHCDA and the homeowner.

If the homeowner sells the property another a low-income family that will use the property as its principal residence throughout the remainder of the affordability period, the homeowner will not be required to repay the funds. The term "low income family" shall mean a family whose gross annual income does not exceed eighty percent (80%) of the median family income for the geographic area published annually by HUD.

The purchasing family should pay no more than twenty-nine percent (29%) of its gross family income towards the principal, interest, taxes, and insurance for the property on a monthly basis. The homeowner selling the property will be allowed to receive a fair return on investment, which will include the homeowner's investment and any capital improvements made to the property. The award recipient must execute a lien and restrictive covenant prepared by IHCDA. The award recipient is ultimately responsible for repaying IHCDA any CDBG or CDBG-D funds invested into any unit that does not meet the affordability requirements throughout the Affordability Period. The Affordability Period is based upon the total amount of CDBG or CDBG-D funds invested into the unit.

The following tables are all based on the number of months/years that have passed since the date the project was completed.

1-Year Affordability Period

Number of Months Since Completion	% of CDBG Funds Recaptured
6th Month	50%
1 Year	0%

2-Year Affordability Period

Number of Years Since Completion	% of CDBG Funds Recaptured
1 Year	50%
2 Years	0%

3-Year Affordability Period

Number of Years Since Completion	% of CDBG Funds Recaptured
1 Year	67%
2 Years	34%
3 Years	0%

5-Year Affordability Period

Number of Years Since Completion	% of CDBG Funds Recaptured
1 Year	80%
2 Years	60%
3 Years	40%
4 Years	20%
5 Years	0%

10-Year Affordability Period

Number of Years Since Completion	% of CDBG Funds Recaptured
1 Year	90%
2 Years	80%
3 Years	70%
4 Years	60%
5 Years	50%
6 Years	40%
7 Years	30%
8 Years	20%
9 Years	10%
10 Years	0%

15-Year Affordability Period

Number of Years Since Completion	% of CDBG Funds Recaptured
1 Year	93%
2 Years	87%
3 Years	80%
4 Years	73%
5 Years	67%
6 Years	60%
7 Years	53%
8 Years	47%
9 Years	40%
10 Years	33%
11 Years	27%
12 Years	20%
13 Years	13%
14 years	7%
15 Years	0%

20-Year Affordability Period

Number of Years Since Completion	% of CDBG Funds Recaptured
1 Year	95%
2 Years	90%
3 Years	85%
4 Years	80%
5 Years	75%
6 Years	70%
7 Years	65%
8 Years	60%
9 Years	55%
10 Years	50%
11 Years	45%
12 Years	40%
13 Years	35%
14 years	30%
15 Years	25%
16 Years	20%
17 Years	15%
18 Years	10%
19 Years	5%
20 Years	0%

D. Termination of Affordability Period

The affordability restrictions must terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure, or assignment of an FHA insured mortgage to HUD. The housing provider of CDBG, CDBG-D, or HOME funds may use purchase options, rights of first refusal, or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the development.

E. Recording of Lien and Restrictive Covenant Agreement or LRCA

The award recipient shall be responsible for recording the Lien and Restrictive Covenant Agreement (LRCA) and any amendments thereto in the Office of the Recorder of the county in which the property is located.

Homebuyer/OOR

The award recipient's final claim will be held until IHCDA receives a copy of the executed and recorded lien for all assisted units under the award.

Rental

IHCDA will not issue a release of funds letter until a copy of the executed and recorded lien has been received.

F. Rental Housing Compliance and Reporting

Guidance on rental housing compliance and ongoing reporting requirements can be found in the rental compliance manuals available on our website at http://www.in.gov/ihcda/2519.htm. For additional questions on ongoing compliance, please contact an IHCDA Compliance Auditor.

Chapter 16 – Program Monitoring & Record Retention

A. Introduction

The purpose of monitoring is to verify that the program is progressing as planned, that necessary records are being maintained, that contracts and purchase orders are appropriate and are being met in accordance with the required procurement procedures, and that specific program requirements and objectives are being met.

The purpose of an audit is to determine, upon completion of all activities, that the award was administered in accordance with all applicable state and federal laws, and in full compliance with award objectives.

B. Self-Monitoring

To anticipate and correct problems at the earliest possible stage, the recipient should perform periodic self-monitoring. Complex projects require more frequent monitorings, whereas simple projects may require only one (1). In any event, it is particularly recommended that a self-monitoring be completed prior to a visit by an Indiana Housing and Community Development Authority (IHCDA) Compliance Auditor or State Board of Accounts Auditor.

The recipient can use the sample monitoring handbook found in Exhibit A of this chapter to self-monitor. The handbook is a sample of the monitoring tool the IHCDA Compliance Auditor uses when performing a monitoring visit. Since this tool frequently updates, this version is a sample of version available at the time of manual revision. IHCDA Compliance Auditors may use a revised version of this tool when they monitor your development.

If, after performing this self-monitoring, the recipient decides that assistance is needed, assistance should be requested from IHCDA. IHCDA Compliance Auditors are available to do a "Progress Check." A Progress Check is an interim monitoring but no "findings" or "concerns" will be made at the time of the Progress Check.

C. IHCDA Closeout Monitoring

For those projects determined to need special attention, IHCDA may conduct one (1) or more monitoring visits while award activities are in full progress. Some of the more common factors that would signal special attention include: activity appears behind schedule, previous audit or monitoring findings of recipient or administrative firm, high dollar amount of award, inexperience of recipient or administrative firm, and/or complexity of program. These visits will combine onsite technical assistance with compliance review. If the recipient's systems are found to be nonexistent or are not functioning properly, actions taken by IHCDA could include suspension of funding until appropriate corrective actions are taken or termination of funding altogether.

All recipients will receive at least one (1) monitoring from the Indiana Housing and Community Development Authority. The recipient must ensure that all records relating to the award are available at IHCDA's monitoring. The IHCDA Monitoring Handbook is found as Exhibit A of this chapter. This is the handbook that staff will utilize in the monitoring of your award implementation.

1. Monitoring Review

Onsite Monitoring Review

- Compliance Auditor will contact recipient to set-up monitoring based on award expiration and completion/close-out documentation submitted and approved.
- Recipient will receive a confirmation letter stating date, time, and general monitoring information.
- On date of monitoring, IHCDA staff will need: files, an area to review files, and a staff person available to answer questions.
- Before leaving, IHCDA staff will discuss known findings and concerns, along with any areas that are in question.

Desktop Monitoring Review

- Compliance Auditor will request information/ documentation from award recipient in order to conduct the monitoring. IHCDA staff will give approximately thirty (30) days for this information to be submitted.
- IHCDA staff will review information/ documentation submitted and correspond via the chief executive office the findings of the desk-top review. However, if during the course of the review additional information/ documentation is needed, staff will contact the award administrator.

2. Results of Monitoring Review

Upon completion of the monitoring visit, the recipient will receive a formal monitoring letter. The letter will list those areas of compliance that were reviewed and detail the results of the review. Determinations must be classified as (1) satisfactory; (2) Findings - clear statutory or regulatory violations; (3) Concerns – missing or unclear issues involving statutory or regulatory violations or issues not involving a statutory or regulatory requirement.

Satisfactory is reported when the review results in a determination that the recipient is meeting its statutory and regulatory responsibilities.

Findings are reported when the review of the recipient's performance reveals a specific, identifiable violation of a statutory or regulatory requirement about which there is no question or there is inadequate support documentation to verify meeting statutory and regulatory responsibilities.

Concerns are reported when the results of the review are inconclusive, that is, they raise a question of whether or not a violation of a statutory or regulatory requirement has occurred, or compliance can be demonstrated or involves and issue that is not a statutory or regulatory requirement, but may involve management or program improvements. Concerns may also be raised where the recipient is in technical compliance with statutory or regulatory requirements, but appears to circumvent the intent of those requirements.

3. Determination and Responses

A review letter is submitted to the recipient within thirty (30) days of completion of the monitoring review and will require the recipient to provide a written response to any findings, questions of performance and/or concerns within thirty (30) days of receipt of the letter. The letter will summarize all positive and negative conclusions and the basis for those conclusions.

For a finding, the recipient is normally requested to explain, within a specified period, what steps it will take to remedy and/or prevent a recurrence of the violation.

For a concern, the recipient is asked for specific information to resolve the question, within a specified period. If the state suggests certain actions, those suggestions are fully optional; the recipient may choose to adopt those actions or present alternatives of its own design.

4. Clearing findings/concerns

The recipient must submit a response to identified issues within thirty (30) days of receipt of the monitoring letter. That response may include a request for additional time to research the issue or prepare the response. It is most imperative that recipients adhere to the monitoring response schedule. Where a recipient fails to be responsive or timely, sanctions may be imposed.

If the recipient indicates it has taken specific actions to clear a finding, the reviewer must verify that these actions have taken place before clearing the finding. If the nature of the violation is serious, or if it represents a recurrence of a previously identified issue, the reviewer may need to verify that corrective measures have been adopted before clearing the finding. Once the review indicates that satisfactory action has taken place, the reviewer will send a letter to the recipient indicating that the finding has been resolved.

Upon review of information submitted in response to a concern, the reviewer will determine if the information is satisfactory. If there is no doubt that the statutory or regulatory requirement has been met, the reviewer will send a letter indicating that the matter is resolved. If the response leads the reviewer to the conclusion that a statutory or regulatory violation has taken place, the reviewer will make a finding. The recipient will receive written notice that a finding has been made in the matter and will be given a specific action to resolve the finding.

5. Sanctions

If the review or monitoring results in any negative determination, or if IHCDA otherwise has reason to believe that the recipient has failed to comply in a substantial or serious manner with any requirement of the Federal Act or other program guidelines, IHCDA may elect to take action in order to (1) prevent a continuation of the deficiency, (2) mitigate, to the extent possible, the adverse effects or consequences of the deficiency, or (3) prevent a recurrence of the deficiency. In some instances, IHCDA action is dictated by the nature of the violation and the sanction may be specifically prescribed under federal law or regulation. IHCDA may pursue one (1) or more of the following sanctions to correct violations and/or deficiencies in recipient compliance:

(1) Request the recipient to submit additional information pertinent to the negative determinations and the recipient's proposal for corrective action;

(2) Issue a letter of warning that advises the recipient or its administrator of the deficiency and puts the recipient or its administrator on notice that more serious sanctions will be imposed if the deficiency is not corrected or is repeated; advise the recipient that a certification will no longer be acceptable and that additional information or assurances will be required;

(3) Advise the recipient to suspend disbursement of funds for a questioned activity or to a recipient whose activities are determined not to have satisfied the applicable performance criteria under the Federal Act;

(4) Advise the recipient to reimburse its program account, the Federal Treasury or the state in any amounts improperly expended;

(5) In the case of a determination that the recipient or any recipient has failed to comply substantially with any provision of the Federal Act or state law, refer the matter to the US and/or State Attorneys General with a recommendation that appropriate civil action be instituted;

(6) Condition the use of funds from any other allocation or program income upon appropriate corrective action by the recipient;

(7) Any other action or remedy under state or federal law including, but not limited to, instituting debarment procedures against the recipient and/or its administrator or sub-recipient.

6. Resolution of Disagreements

Where the recipient believes the determination of the reviewer has been incorrect and resolution through normal monitoring resolution procedures has not been successful, the following steps should be followed:

a. The recipient should request, in writing, a hearing with the Compliance and Asset Manager, at which hearing both the recipient and the reviewer shall be present. Such a request should be received by IHCDA within the prescribed response period;

b. If resolution is not reached, the recipient or IHCDA may petition the State Board of Accounts for an Audit Position Statement;

c. If resolution is not reached and the issue involves interpretation of federal requirements, either party may appeal the decision by requesting the Indiana Housing and Community Development Authority to request a written determination from the US Department of Housing and Urban Development. For issues involving state requirements, such request for a ruling may be made to the State Attorney General. In the event of such action, both parties shall prepare summary position statements. Both statements shall be simultaneously submitted to the appropriate agency, with a request for written determination prepared by IHCDA. Based on the results of such determination, IHCDA will prepare a final determination which will be signed by the Executive Director of IHCDA, said determination to be final and conclusive.

D. OMB Circular A-133 Audit

OMB Circular A-133 governs the audit requirements of states, local governments, and non-profit organizations. OMB Circular A-133 rescinds OMB Circular A-128. OMB Circular A-133 is effective July 1, 1996, and shall apply to audits of fiscal years beginning after June 30, 1996.). In the State of Indiana, responsibility of local units of government audits lies with the State Board of Accounts, (SBA).

OMB Circular A-133 requires the following:

- Non-federal entities that expend $500,000 or more in Federal Funds (all sources) during a fiscal year are required to have a single audit as outlined in OMB Circular A-133.

- Non-federal entities that expend less than $500,000 in Federal Funds (all sources) during a fiscal year are exempt from Federal Audit requirements for that year, but records must be made available for review or audit by representatives of IHCDA, HUD and/or General Accounting Office (GAO).

The following lists many of the significant changes that occurred because of the implementation of OMB Circular A-133.

Once an A-133 Audit has been completed, the recipient retains the responsibility for follow-up and corrective action on all audit findings. In fulfilling this responsibility, the recipient must prepare a Summary Schedule of Prior Audit Findings. This summary schedule reports the status of all audit findings included in the prior year's Schedule of Findings and Questioned Costs relative to Federal awards. The summary schedule should also include audit findings reported in the prior audit's summary schedule of prior year's audit that were not listed as corrected. The summary schedule should explain the following:

1. When audit findings were fully corrected, the summary schedule need only list the audit findings and state the corrective action taken.

2. When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

3. When corrective action is significantly different from corrective action plan or in the Federal agency's management decision, the summary schedule shall provide an explanation.

4. When the recipient believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the Federal clearinghouse;
(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and
(iii) A management decision was not issued.

The results of audits must be submitted to IHCDA within one (1) month of the issuance of the auditors' report.

The auditee shall submit a data collection form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data collection to be submitted includes (1) financial statements and Schedule of Expenditures of Federal Awards; (2) the Summary Schedule of Prior Audit Findings; (3) the auditors' reports; and (4) the Corrective Action Plan.

The data collection form is designed to provide information about the auditee, its auditor, its Federal programs, and the results of the audit. The description of the data collection form's contents specifies 16 different items that can be grouped into five general categories:

1. Information about the auditor and auditee;
2. Identification of the Federal awarding agencies that will receive a copy of the reporting package;
3. Information about Federal award programs;
4. Information about the risk-based approach used by the auditor in selecting major programs; and
5. Information about the reports issued by the auditor.

E. Costs of State Board of Accounts (A-133) Audits

Because the award has already undergone administrative closure and deobligation of residual award funds in most cases, it would be difficult to reimburse such costs from HOME funds. Therefore, recipients will be expected to bear the costs of the final audit from local funds. The recipient may include the estimated costs of the final A-133 as part of its local match for the award (based upon SBA estimates).

F. Ongoing Compliance Monitoring

All rental projects will be subject to ongoing compliance monitoring throughout their affordability period. This will consist of both (1) a review of annual owner certifications of compliance and (2) periodic onsite or desktop tenant file audits. For additional information on ongoing compliance requirements for rental projects, please refer to the compliance manuals available on IHCDA's website at http://www.in.gov/ihcda/2519.htm.

G. CDBG Record Retention and Custodial Requirements

1. Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of five (5) years, with the following qualifications:

    a. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

    b. Records for nonexpendable property acquired with federal funds shall be retained for three (3) years after final disposition.

    c. When records are transferred to or maintained by IHCDA, the three-year retention requirement is not applicable to the award recipient.

2. The retention period starts from the date of the submission of the final expenditure report.

3. Award recipients must receive authorization from IHCDA if they desire to substitute microfilm or scanned copies in lieu of original records.

4. IHCDA shall request transfer of certain records to its custody from award recipients when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, IHCDA may make arrangements with award recipients to retain any records that are continuously needed for joint use.

5. IHCDA, HUD, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of award recipients and sub-recipients to make audits, examinations, excerpts, and transcripts.

6. Unless otherwise required by law, no federal grantor agency shall place restrictions on award recipients that will limit public access to the records of award recipients that are pertinent to an award except when the agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 USC 552) if the records had belonged to the grantor agency.

H. HOME Record Retention and Custodial Requirements

1. All records pertaining to each fiscal year of HOME funds must be retained for the most recent five (5) year period, except as provided below:

    a. For rental housing projects, records may be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents, and project

inspections must be retained for the most recent five-year period, until five years after the affordability period terminates.

b. For homeownership housing projects, records may be retained for five years after the project completion date, except for documents imposing recapture/resale restrictions which must be retained for five years after the affordability period terminates.

c. Written agreements must be retained for five years after the agreement terminates.

d. Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with 24 CFR 92.353.

e. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required retention period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

2. Award recipients must receive authorization from IHCDA if they desire to substitute microfilm copies in lieu of original records.

3. IHCDA shall request transfer of certain records to its custody from award recipients when it determines that the records possess long-term retention value. However, in order to avoid duplicate record keeping, IHCDA may make arrangements with award recipients to retain any records that are continuously needed for joint use.

4. IHCDA, HUD, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of award recipients and sub-recipients to make audits, examinations, excerpts, and transcripts.

5. The award recipient must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.