

Chapter II

Major Compliance Requirements and Procedures

Section 1: Applicable Laws and Regulations

Certain State and Federal laws, as well as regulations and Executive Orders, are applicable in part or in whole to the CDBG program. To assist Recipients in meeting applicable requirements, the Department of Community Affairs provides guidance in the form of this Manual, on-site technical assistance, and through the sponsorship of workshops and training conferences. To obtain copies of federal publications, requests should be addressed to:

The Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

Many of the specific federal laws, regulations, and Executive Orders pertaining to Housing, Community Development, Fair Housing, Labor, and Environmental regulations are also available on the World Wide Web. A good starting point is www.hud.gov. Information is also available from:

Code of Federal Regulations: <http://www.gpoaccess.gov/ecfr/>
Community Connections @ 1-800-998-9999

The applicable laws, regulations and Executive Orders (classified in general by compliance area) include but are not limited to:

General:

1. The Housing and Community Development Act of 1974, as amended and as implemented by the most current HUD regulations (24 CFR Part 570)
2. Annual Action Plan for FFY 2012 Consolidated Funds
3. State Community Development Block Grant Program Regulations (24 CFR Part 570, Subpart I)
4. Title 50, Chapter 18, Article 4, Official Georgia Code, Georgia Open Records Act

Financial Management:

5. 24 CFR Part 85
6. Federal OMB Circular A-133
7. Federal OMB Circular A-87

Civil Rights:

8. Title VI - Civil Rights Act of 1964
9. Section 109 - Title I - Housing and Community Act of 1974
10. Title VIII of the Civil Rights Act, 1968 (Fair Housing Act), as amended
11. Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990
12. Executive Order 11246 - Equal Employment Opportunity, as amended by Executive Order 11375, Parts II and III
13. Executive Order 11063 - Equal Employment Opportunity, as amended by Executive Order 12259.

14. Section 3 of the Housing and Development Act of 1968, as amended Section 118 of Title I, Community Development and Housing Act, 1974, and implemented by HUD regulations
15. Georgia Department of Community Affairs Civil Rights Compliance Certification Form
16. Age Discrimination Act of 1975
17. Executive Order 12432: National Priority to Develop Minority and Women Owned Businesses
18. Section 504 of the Rehabilitation Act of 1973 and implementation regulation (24 CFR Part 8)

Labor Standards:

19. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), as supplemented by Department of Labor regulations
20. The Davis-Bacon Act (40 U.S.C. 276(a) to (a-7), as supplemented by Department of Labor Regulations
21. The Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations

Acquisition/Relocation:

22. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (46 U.S.C. 4601) and Regulations at 49 CFR, Part 24
23. Georgia Real Estate Appraiser Licensing and Certification Act (O.C.G.A. Section 43-39-A-1 thru 43-39 A-27)
24. The Georgia Relocation Assistance and Land Acquisition Policy Act of 1973
25. The Georgia Urban Redevelopment Law (OCGA, Section 36-61-1, et. seq.)

Housing:

26. The Truth in Lending Act (Regulation Z)
27. Title I Consumer Protection Act (PL 90321)
28. The Lead Base Paint Poisoning Prevention Act (42 U.S.C. 4831-5 et al) and HUD implementing regulations (24 CFR Part 35)
29. The Residential Lead-Based Paint Hazard Reduction Act of 1993 (PL 102-550).
30. The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C., 5401 et. seq., as amended)
31. Manufactured Housing Act (O.C.G.A. Sections 8-2-130 and 160 et. seq.)
32. Construction Industry Licensing Board Act (O.C.G.A. Section 43-14-8)
33. Georgia State Uniform Construction Codes Act (O.C.G.A. Section 8-2-21)
34. The Fire Administration Authorization Act of 1992 (PL 102-522)

Environmental:

35. The National Environmental Policy Act (NEPA) of 1969, as amended by Executive Order 11991 of May 24, 1977 and the Council on Environmental Quality's (CEQ) NEPA Regulations, 40 CFR Parts 1500-1508
36. Environmental Review Procedures for the CDBG Program, 24 CFR Part 58
37. The National Historic Preservation Act of 1966, as amended, particularly Section 106
38. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971
39. The Reservoir Salvage Act of 1960, as amended, particularly Section 3, as amended by the Archeological and Historic Preservation Act of 1974
40. Flood Disaster Protection Act of 1973, as amended
41. Executive Order 11988, Floodplain Management, May 24, 1977
42. Executive Order 11990, Protection of Wetlands, May 24, 1977

43. Georgia Air Quality Act of 1978 (OCGA Section 12-9-1, et. seq.) to regulate air pollution and protect air quality
44. Shore Assistance Act of 1977 (OCGA Section 12-5-230, et. seq.)
45. Georgia Hazardous Waste Management Act (OCGA 12-8-60, et. seq.)
46. Georgia Health Code (OCGA 31-3-1, et. seq.) regulates individual sewerage treatment systems
47. The Coastal Zone Management Act of 1972, as amended
48. The Safe Drinking Water Act of 1974, as amended
49. The Endangered Species Act of 1973, as amended, particularly Section 7
50. The Archeological and Historic Preservation Act of 1974
51. The Coastal Resources Barriers Act of 1982
52. The Wild and Scenic Rivers Act of 1968, as amended
53. The Clean Air Act Amendments of 1970, as amended
54. HUD Environmental Standards (24 CFR, Part 51) Environmental Criteria and Standards
55. Georgia Coastal Marshlands Protection Act of 1970
56. Georgia Groundwater Use Act of 1972 (OCGA Section 12-5-170, et. seq.)
57. Georgia Safe Drinking Water Act of 1977 (OCGA Section 12-7-1, et. seq.)
58. Georgia Erosion and Sedimentation Act of 1975 (OCGA Section 12-7-1, et. seq.)
59. Georgia Solid Waste Management Act (OCGA Section 12-8-20, et. seq.) for collecting garbage or operating a landfill
60. Georgia Water Quality Control Act (OCGA Section 12-5-20, et. seq.)
61. Farmland Protection Policy Act of 1981 (and the regulations at 7CFR Part 658)

Other:

62. Georgia Handicap Accessibility Law (OCGA, Title 30, Chapter 3) concerning handicapped accessibility to public buildings
63. Georgia House Bill 1079 as amended by House Bill 513 (O.C.G.A § 36-91-1 through §36-91-95) Note: DCA has adopted this as the procurement regulation for CDBG
64. OCGA 13-10-90: Contracts for Public Works, Security and Immigration Compliance
65. OCGA 50-36-1: Verification of Lawful Presence within United States

Section 2: Environmental Review Requirements

General Environmental Condition: Environmental review responsibilities as outlined in this section are a general condition of all CDBG grants and must be completed prior to implementation and committal (obligation) of any funds for the approved project. Generally this is accomplished through submittal of the proper documentation as outlined below.

The federal regulation governing the environmental review process is 24 CFR Part 58 and can be found in the Appendix II of this Manual or on the Web at <http://portal.hud.gov/portal/page/portal/HUD/topics/environment>.

A recipient may not drawdown, obligate or expend funds for a covered activity until DCA has approved the Request For Release of Funds and Certifications, unless the recipient has completed and/or submitted a Finding of Exemption and a Statutory Checklist (if applicable) as specified in this section.

Environmentally Related Special Conditions: All applications that were funded have been reviewed by the Georgia Department of Natural Resources (DNR) for compliance with Georgia environmental laws and regulations. As a result of DNR's review, grants may have Special Conditions attached to specific budget line items. These Special Conditions specify actions, which must be taken by the Recipient prior to implementation. In some cases (such as floodplain or historic preservation compliance) these Special Conditions must be complied with as part of the environmental review. CDBG funds cannot be drawn down, obligated or expended for any activity with a Special Condition until the Special Condition has been cleared by DCA through issuance of a Grant Adjustment Notice.

Environmental Special Conditions usually concern:

- Historic Preservation (Section 106 Review);
- Floodplain Requirements;
- Wetland Requirements;

It is important to note that in the area of environmental review compliance, meticulous adherence to all procedures is the only safeguard against costly delays, potential refunds of CDBG money and legal actions. Use of the forms found in this Manual will provide proper documentation. Any deviation may endanger your CDBG funds.

The recipient's certifying official is responsible for ensuring that all environmental requirements are met and must sign any official environmental documents.

The certifying official must be the chief elected officer or a person designated as the certifying official by resolution of the governing body.

The Environmental Review Record (ERR): Each CDBG program must have a written record of the environmental review undertaken. The purpose of this file is to document that the grantee has complied with all environmental laws and regulations and considered the environmental effects of the project prior to committing funds for construction.

This written record or file is called the "Environmental Review Record" (ERR) and must be available for public review. It must contain a description of the program and of each of its activities, as well as any other document, notice or information, and public comments received pertinent to the environmental review carried out by the Recipient. The ERR will vary in length and content depending upon whether the activities are exempt from all environmental reviews, categorically excluded from NEPA requirements, are found to have no significant impact on the environment, or require preparation of a full environmental impact statement.

The Environmental Review Record generally will contain the following documents:

- ◆ Environmental Review for Activity/Project that is Exempt or Categorical Excluded not subject to 24 CFR 58.5, or
- ◆ Environmental Review for Activity/Project that is Categorical Excluded subject to 24 CFR 58.5, or
- ◆ Environmental Assessment and documentation (maps, plans, etc).
- ◆ Statutory Checklist and evidence of compliance with the laws listed at 24 CFR Part 58.5
- ◆ Compliance Documentation Checklist and evidence of compliance with the laws listed at 24 CFR Part 58.6

- ◆ Certification of Exemption for grant administration and design costs;
- ◆ Copies of Environmental Public Notices (including proof of publication), including:
 - Concurrent Notice of the Finding of No Significant Effect and Notice of Intent to Request Release of Funds,
 - Notice of Early Public Review (Floodplains and Wetlands);
 - Notice of Explanation (Floodplains and Wetlands).
- ◆ Correspondence with environmental regulatory agencies (including documentation that the Concurrent Notice was submitted);
- ◆ Comments received pursuant to the Public Notices and the response from the local government;
- ◆ Evidence the Request for Release of Funds was submitted to DCA, and
- ◆ Release of Funds Letter from DCA.

The basic steps in the environmental review process in compliance with the National Environmental Policy Act (NEPA) and other applicable environmental laws and regulations are as follows:

Step 1: Exempt Projects/Activities:

Determine if any activity is exempt from NEPA requirements and other environmental reviews. If it is exempt, the Recipient is only required to document in writing that the activity is exempt and meets the conditions for exemptions. This documentation must be maintained in the Recipient's ERR file. Use of this format is required as a means of establishing documentation and compliance.

A copy of the Environmental Review for Activity/Project that is Exempt or Categorically Excluded Not Subject to Section 58.5 for grant administration and design costs does not have to be mailed to DCA. The Recipient shall maintain this form for these activities in the program files.

All other activities found to be exempt or excluded must be included on an Environmental Review for Activity/Project that is Exempt or Categorically Excluded Not Subject to Section 58.5 form and mailed to DCA. Once DCA has cleared the general conditions, funds may be drawn down using standard procedures for the activity exempted.

Exempt Activities Include:

- ◆ Environmental studies, including historic preservation clearances necessary to comply with applicable laws;
- ◆ Design and engineering costs associated with carrying out an approved eligible CDBG activity;
- ◆ Eligible administrative costs.
- ◆ Activities funded because of imminent threats to health and safety, if they do not alter environmental conditions and are for improvements limited to actions necessary only to stop or control the effects of imminent threats or physical deterioration. (This includes most Immediate Threat and Danger Grants);

- ♦ Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- ♦ Inspections and testing of properties for hazards or defects;
- ♦ Purchase of insurance;
- ♦ Purchase of tools;
- ♦ Technical assistance and training;

♦ Any of the categorical exclusions listed in Step 2 below can also become exempt **provided** that there are no circumstances which require compliance with any other environmentally related federal laws (such as floodplains, wetlands or historic preservation) listed in Section 1. **The Environmental Review for Activity/Project that is Categorically Excluded Subject to 58.5 form must be submitted to DCA to document that they do not apply.**

Step 2: Categorically Excluded Projects/Activities:

If the activity or project is not exempt from NEPA assessment requirements, the Recipient should next determine if it is categorically excluded from NEPA.

Categorical exclusion refers to a category of activities for which no environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see 24 CFR 58.2(a) (3)) in which a normally excluded activity may have a significant impact.)

The following activities are excluded from NEPA requirements **but not from the requirements of the "other environmental laws or regulations" which are listed at 24 CFR Part 58.5** (See Appendix II) Part 58.5 includes flood plain, wetland and historic preservation compliance requirements.

- ♦ Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
- ♦ Special projects directed at the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
- ♦ Rehabilitation of buildings and improvements when the following conditions are met:
 - ♦ In the case of multifamily residential buildings:
 - ✓ Unit density is not changed more than 20 percent;
 - ✓ The project does not involve changes in land use from residential to non-residential; and
 - ✓ The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
 - ♦ In the case of non-residential structures, including commercial, industrial, and public buildings:
 - ✓ The facilities and improvements are in place and will not be changed in

- size or capacity by more than 20 percent; and
 - ✓ The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
- An individual action on a one to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.
 - Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.
 - ♦ Combinations of the above activities.

Categorical exclusions not subject to 58.5.

When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the Recipient does not have to submit a RROF to DCA.

- Tenant-based rental assistance;
- Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state, and federal government benefits and services;
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;
- Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;
- Activities to assist homeownership of existing or new dwelling units not assisted with federal funds, including closing costs and down-payment assistance to home buyers, interest buy-downs and similar activities that result in the transfer of title to a property;
- Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

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

Important Note: If a Project consists of several activities, some of which are categorically excluded from review and some of which are not excluded from review, the Recipient must conduct an environmental assessment on the **entire project**, (STEP 3).

Step 3: Complete the Environmental Assessment:

If a project is neither exempt nor categorically excluded from review, the Recipient must prepare an Environmental Assessment using the Environmental Checklist and a Statutory Checklist for the entire project. Note that the project includes all activities, no matter what the funding source.

The Environmental Checklist is found in Appendix I and on DCA's website at:

www.dca.ga.gov/communities/CDBG/programs/CDBGforms.asp

For assistance, the Recipient should contact its CDBG Program Representative or Michael Casper, CDBG Compliance Manager, at (404) 679-0594.

When completing the environmental assessment, the Recipient should review the following essential points:

1. Complete one assessment for the entire project, including all component activities no matter what the source of funds. Define the project area and identify all potential impacts, whether beneficial or adverse.
2. Document how each item on the checklist was considered, including how determinations of "not applicable" were made. Documentation should be verifiable and include the person(s) contacted, the date of contact, and/or the authority/report being used as documentation.

Use the HUD Environmental Assessment Tool found at the following website for assistance with documentation:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment

3. Consider and discuss all alternatives to the project, including different locations, and the "no build alternative".
4. Consider and discuss any possible mitigation measures to minimize or alleviate any possible negative effects.
5. Anticipate any possible citizen or public interest group objections and include an assessment of their concerns.
6. Coordinate the assessment with all agencies responsible for environmental compliance, such as Georgia Department of Natural Resources, U.S. Fish and Wildlife Service, etc.

Other Requirements:

In addition to the laws and authorities specified in 24 CFR Part 58.5, grantees must comply with and address the following requirements regardless of whether the activity is exempt or categorically excluded:

- Flood Disaster Protection Act of 1973
- Coastal Barrier Resources Act, and
- Runway Clear Zone as defined in 24 CFR part 51

The environmental review of multi-family housing with five or more dwelling units (including leasing) or the development of non-residential property (buildings such as Head Start Centers, Senior Centers, etc.) must include, as part of the environmental assessment, an evaluation of previous uses of the site or other evidence of contamination on or near the site to ensure that the occupants of proposed sites are not adversely affected by hazardous materials, contamination, toxic chemicals and gases, and radioactive substances. Typically this would be a "Phase One Environmental Assessment" conducted in accordance with American Society for Testing and Materials (ASTM) E1527-05 Standard.

Grantees shall use current techniques by qualified professionals to undertake any investigations determined necessary (24CFR Part 58.5 (i)(2)(ii)).

Environmental Professional must be

- Professional Engineer or Geologist with 3 years of relevant fulltime experience; or
- Licensed or certified to perform All Appropriate Inquiries (AAI) and three years of relevant fulltime experience; or
- Engineering or Science Baccalaureate degree or higher and three years of fulltime relevant experience; or
- The equivalent of 10 years relevant experience.

Step 4: Public Notice: Finding of No Significant Effect and Intent to Request Release of Funds (Concurrent Notice)

If the assessment indicates that the project will have no significant effect on the quality of the human environment, the Recipient should:

1. Have the Certifying Officer sign the "Finding of No Significant Impact",
2. Publish a "Concurrent Notice" in a local newspaper of general circulation. All environmental notices may be published either in the legal or non-legal section of the paper.

The Concurrent Notice is a notice to the public that the Recipient has conducted an environmental review and found that the project will have no significant environmental effects and intends to request from DCA release of funds. The public is given at least 15 days to comment before the Recipient requests release of funds. There is a provision for 30 days public comment and/or a Public Hearing for projects that are expected to generate local controversy.

A sample "Concurrent Notice" is found in the Appendix. Pay special attention to including the proper dates (comment periods) and the other required information that must be added to the Notice by the Recipient prior to publication.

3. Send copies of the published "Concurrent Notice" to the following:

Georgia Department of Community Affairs
Office of Community Development
60 Executive Park South
Atlanta, Georgia 30329-2231

The Recipient should document in its ERR that the Notice has been sent to the above address.

4. No sooner than 16 days after publication, upon expiration of the 15 day local comment period, and after acting on any local comments received, the Recipient should submit to DCA a signed Request for Release of Funds and Certifications (RROF/Certifications) form with a copy of the published Notice. The RROF must be properly completed and signed by the Certifying Officer of the Recipient. DCA cannot approve the RROF/Certifications before 15 calendar days have elapsed from the time of its receipt or from the time specified in the Notice, whichever is later. This time period is to allow DCA to consider any public objections. (See 24 CFR 58.75 in Appendix II for permissible bases for objections.)

If no public objections are received, and upon expiration of the period for objections to the Release of Funds, DCA will issue a letter releasing the funds for the activity and clearing the environmental general condition.

Re-evaluation of Assessment Findings (Amendments, Revisions, etc.)

A Recipient must re-evaluate its environmental assessment when:

1. An amendment to the activity or program is proposed,
2. New circumstances and environmental conditions are discovered during implementation which may affect the project or have a bearing on its impact, or
3. An alternative not considered in the original environmental assessment is selected for implementation.

The purpose of the re-evaluation is to determine if the original Finding of No Significant Effect is still valid. If it is, but data or conditions upon which it was based are changed, the Recipient must amend its original assessment and update its ERR by including the re-evaluation and its determination based on its findings. This update should be sent to DCA.

If the Recipient determines that the original Finding is no longer valid, the Recipient must notify DCA and prepare a new Environmental Assessment according to the procedures specified in Step 3 above.

Environmental Impact Statement

If the Environmental Assessment indicates that the activity may significantly affect the quality of the human environment, and that an Environmental Impact Statement will be required, the Recipient should immediately contact DCA for assistance.

Floodplain and Wetland Compliance Requirements

NOTE: HUD has implemented Regulatory Changes to the Floodplain Management and Protection of Wetlands (Memo dated December 17, 2013 located in the Appendix).

A) Prohibition on Construction of New Structures and Facilities in Coastal High Hazard Areas (V Zones) (24 CFR part 551(c)).

Structures are defined by FEMA regulations at 44 CFR 9.4 to mean walled or roofed buildings, including mobile homes and gas or liquid storage tanks. Infrastructure includes roads, bridges, and utility lines.

B) Use of Preliminary Flood Maps and Advisory Base Flood Elevations (24 CFR part 55.2(b)(1))

The change requires the use of FEMA preliminary flood maps and advisory base flood elevations, where available. The rule clarifies that, when available, the latest interim FEMA information, such as an Advisory Base Flood Elevation or preliminary map or study, is the best available

information for the designation of flood hazard areas or equivalents. If the latest information has a lower Base Flood Elevation (BFE) than the effective Flood Insurance Rate Map (FIRM), the latest FEMA information is then used for Part 55 purposes and throughout the decision making process. If FEMA information is unavailable or insufficiently detailed, other Federal, state, or local data may be used as "best available information"

C) Broadened use of the 5 Step Process for selected actions (24 CFR part 55.12(a))

Rehabilitation of residential and nonresidential properties that is not a substantial improvement, does not significantly increase the footprint in a floodplain or wetland, does not result in a 20 percent increase in the number of dwelling units or in the average peak number of customers and employees, and does not convert a nonresidential to a residential land use may use the 5 Step process.

The 5 Step Process foregoes Steps 2, 3, and 7 of the 8 Step process.

If any activity is proposed to take place in a designated 100-year floodplain or a wetland area, the Recipient must do the following prior to completing the environmental review:

1. Provide early notice and information to the public and interested parties so they can comment. Publish "Notice of Early Public Review". It must be published at least 15 days prior to the Concurrent Notice, in the same manner and sent to the same agencies and groups, as well to as the Federal Emergency Management Agency (FEMA). (3003 Chamblee-Tucker Rd, Atlanta, Ga. 30341 Telephone: (770) 220-5224.
2. Identify and evaluate practical alternatives and possible adverse impacts. Use the Environmental Assessment Checklist to document this step.
3. Where avoidance of floodplains or wetlands cannot be achieved, design the project so as to minimize effect to or from floodplain or wetlands.
4. Prepare and circulate a "Notice of Explanation" that there is no practicable alternative to locating an action in or affecting a floodplain or wetland. The same audience and means of distribution used in #1 above should be used for this finding. This second notice can be published at the same time as the "Concurrent Notice" concerning environmental review.

Copies of the two required notices are found in Appendix I.

Additional Wetland Compliance Requirements

All Recipients must also comply with Executive Order 11990 and Section 404 of the Clean Water Act which pertain to protection of wetland areas.

Executive Order 11990 is a public notification, planning, and review process similar to the process described for floodplain compliance. (Notice of Early Public Review and Notice of Explanation) As part of that process, if a wetland must be affected, a Section 404 Permit from the Army Corps of Engineers may be required. The Section 404 Permit can be used in lieu of the first five steps of the 8 Step Process. The recipient can submit the Army Corps of Engineers Section 404 permit and will be required to complete only the last three steps of the 8 Step Process and avoid the requirements of §55.20 (a) through (e).

Only individual Section 404 permits issued by State Agencies may be used in lieu of the first five steps of the E.O. 11990 process under this regulation.

Proposed actions in both a floodplain and a wetland require the 8 step process regardless of the issuance of a Section 404 permit. If the Section 404 permit is required, it must be obtained prior to publication of the Notice of Explanation.

Each step must be documented in your ERR and completed prior to publication of the Concurrent Notice or FONSI.

The initial step is to determine if your project is located in a wetland area. This is best done by consulting wetland maps that are available through the U.S. Fish and Wildlife Service for most of Georgia. Contact the Georgia Geologic Survey, Room 400, 19 Martin Luther King, Jr. Drive, Atlanta, Georgia 30334. Telephone: (404) 656-3214. If a map is not available, contact the Federal Fish and Wildlife Service, (404) 331-3580.

If the activity is located in a wetland area, a mitigation plan to deal with possible adverse effects may be required by the Corps of Engineers as part of the Section 404 permit.

Historic Preservation (Section 106) Compliance

All CDBG grants no matter what the project are subject to compliance with Section 106 of the National Historic Preservation Act and the Regulations of the Advisory Council on Historic Preservation (36 CFR Part 800).

The Advisory Council web site has additional information about the regulation at <http://www.achp.gov/work106.html>.

Outline of Historic Preservation Compliance

(Note this process has been modified by the Programmatic Agreement between the State and the Advisory Council for housing activities.)

1. Determine if National Register eligible properties are in the project impact area (Recipient and HPD).
2. Determine effect of project on eligible properties: (Recipient and HPD.)
 - a. If **no effect**, document the file and complete environmental review.
 - b. If effect is **not adverse**, report to Historic Preservation Division for concurrence. Document file and complete environmental review once concurrence is received.
 - c. If effect **is adverse**:
 - i. Examine alternatives and mitigation possibilities.
 - ii. Develop a Memorandum of Agreement (MOA) between Recipient, HPD and possibly Advisory Council to specify what steps will be taken to minimize or mitigate adverse effect.
 - iii. Complete environmental review once MOA is signed.
 - iv. Implement the MOA, including mitigation.

Housing Activities Compliance with Section 106

During 1997, DCA entered into a Programmatic Agreement with the State Historic Preservation Division and the Advisory Council on Historic Preservation. This Agreement changes the way historic preservation compliance works for housing related projects and is applicable to **all** housing activities. A copy of the Agreement is on the DCA Website and in Appendix II.

Public Facility Compliance with Section 106

Prior to funding, each public facility application was reviewed by the Historic Preservation Division (HPD) at the Georgia Department of National Resources (DNR). The purpose of the review is to identify properties which might be eligible for the National Register of Historic Places and which might be affected by the project.

If eligible properties are affected, the Historic Preservation regulations must be followed as part of the environmental review process.

Compliance with Section 106 regulations must be completed **prior** to publication of the environmental public notice(s).

Special Conditions related to historic preservation concerns and compliance may be placed on grants identified by the HPD. These conditions must be cleared before funds are obligated for construction.

Requirement to Consult with Native Americans

June 15, 2012 HUD published a Notice the states that CDBG Recipients "must consult with tribes to determine whether a project may adversely affect historic properties of religious and cultural significance, and if so, how the adverse effect could be avoided, minimized or mitigated." This is applicable to projects on and off tribal lands and to many of Georgia's CDBG Recipients. The HUD Notice (CPD-12-006) and the HUD Assessment Tool describe in detail the required protocol. Note that the revised Request for Release of Funds and Certification (form HUD 7015.15) includes a certification that this protocol was followed. Not all projects that require Section 106 review require consultation with Indian tribes. Consultation with federally-recognized tribes is required when a project includes activities that have the potential to affect historic properties of religious and cultural significance to tribes. These types of activities include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible, or atmospheric changes, work on a building or structure with significant tribal association, or transfer, lease or sale of historic properties of religious and cultural significance.

A copy of the Notice and revised RROF/Certification can be found in Appendix 2 of this Manual and on the web at the following website:

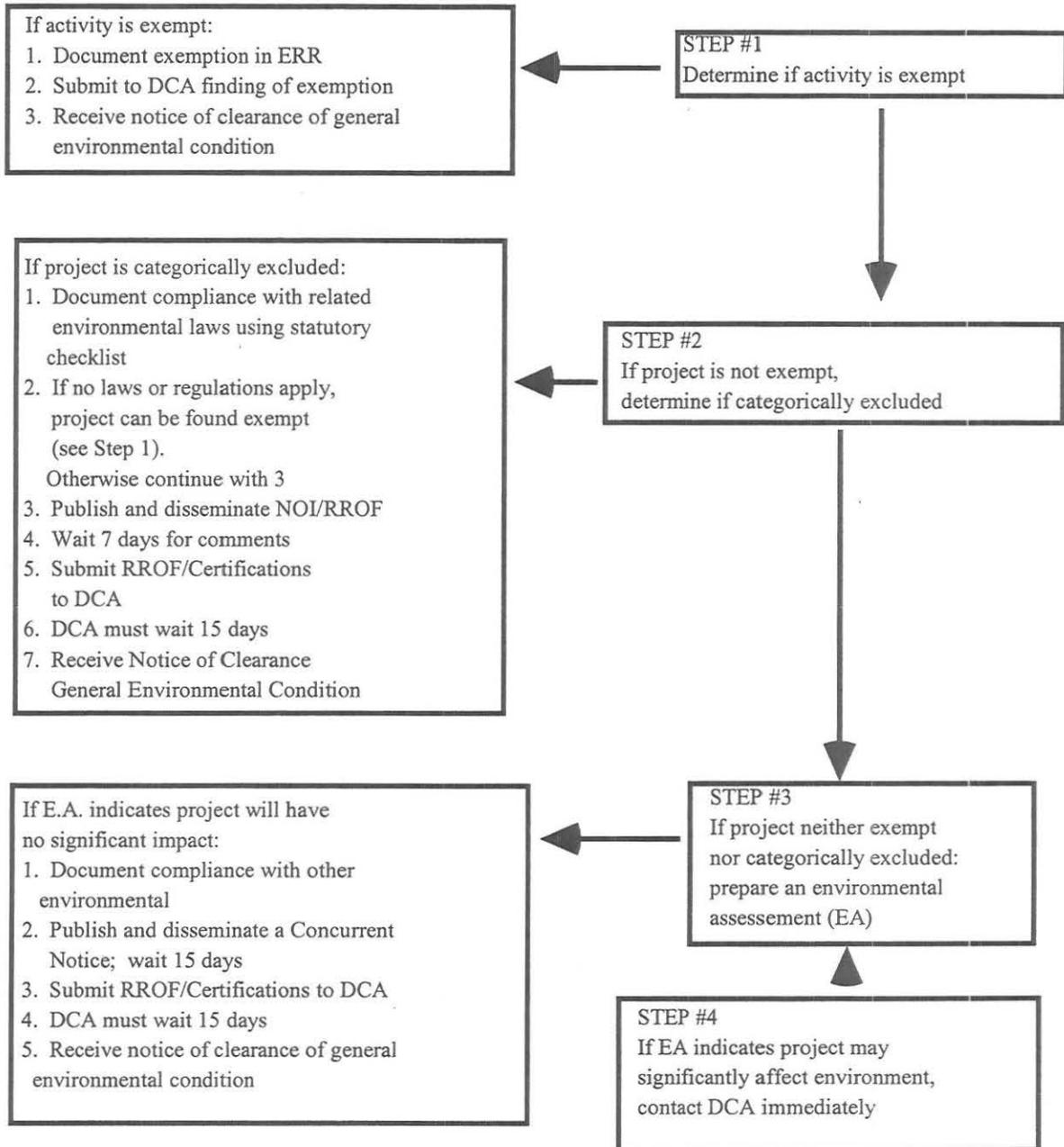
http://portal.hud.gov/hudportal/documents/huddoc?id=env_notice_tribe_con.pdf

Additional tools for compliance can be found at the HUD Environmental Assessment Tool at the following website:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/atec

If the tribe does not respond to the invitation to consult within 30 days (if e-mailed) or 35 days (if mailed), the grantee should document the invitation and lack of response in the ERR, further consultation is not required.

OUTLINE OF ENVIRONMENTAL REVIEW PROCESS



Note on counting days: all time periods are counted in calendar days. The first day of a time period begins at 12:01 a.m. On the day following the publication date of the notice initiates the time period. Example: a Concurrent Notice is published on March 1. The 15 day local comment period extends through March 16. The RROF/Certifications can be submitted on March 17. The DCA 15 day period begins on the date the RROF/Certifications is received or the date for objections to DCA specified in the Notice, whichever is later.

Section 3: Federal Labor Standards and Requirements

The major applicable laws and regulations relating to labor standards are:

- The Davis-Bacon Act.
- The Copeland "Anti-Kickback" Act.
- The Contract Work Hours and Safety Standards Act.

In addition, the U.S. Department of Labor (DOL) has issued Regulations that supplement the laws listed above. Please note that Labor Standards laws and regulations are also applicable to construction contracts administered by another party on behalf of the Recipient, including the Department of Transportation (DOT), Regional Development Centers (RDCs), Consultants, etc. The Recipient must remember that it is ultimately responsible for its CDBG program. Therefore, Recipients are strongly encouraged to closely monitor their contracts. Recipients are also required to maintain all applicable records in their official CDBG files.

- a. **The Davis-Bacon Act** is applicable to **all** contracts for construction, alteration and/or repairs in excess of \$2,000 which involve CDBG funds (including Redevelopment Fund projects and EIP direct loans), with the exception of rehabilitation of a "project" designed for residential use by fewer than 8 families. If CDBG funds are used to finance only a portion of the construction work, labor standards are applicable to the entire construction work. Contact your Field Representative if you have any questions about applicability.

The requirements of Davis-Bacon include:

1. The minimum wages to be paid to contract laborers and mechanics (including apprentices) must be based on DOL's determination of the prevailing wage rates for the locality.
2. Recipients can obtain wage rate determinations by submitting a request to DCA's CDBG Administration Section using a Request for Determination form. (A sample form DCA-WRI can be found in the Appendix.) **The request for a wage rate determination should be submitted to DCA at least 30 days in advance of the anticipated bid advertising date. It should not be requested so early as to cause multiple modifications to be issued.**
3. The CDBG Recipient should examine the Wage Rate Determination to be sure all needed classes of laborers or mechanics are listed in the wage determination. The Recipient must request additional classification not included be added to the wage decision. The Recipient must make this request in writing to the DCA Compliance Officer.
4. Ten (10) days before the bid opening date, the Recipient must contact DCA to determine if there have been any modifications to the wage rate decision already received.
5. Changes, modifications, etc., to wage decisions published less than 10 days prior to bid opening do not apply if the Recipient's files include documentation establishing that reasonable time to notify all participants was not available.

6. If the Recipient fails to include a wage decision, or for any reason the wrong wage decision is included, the Department of Labor may issue a special wage decision reflecting the proper rates. Those rates must be incorporated into the contract and be retroactive to the beginning of the construction. The Recipient can either terminate and re-solicit or incorporate the wage decision by change order, provided the contractor is compensated for any increases in wages resulting from the change.
7. If a contract has not been awarded within 90 days of bid opening the Recipient must confirm the correct wage rate determination to be used.
8. Cross withholding allows for agency withholding of funds for wage restitution from a prime contractor under a current Davis-Bacon contract for under payments made under an unrelated Davis-Bacon contract which may have been with another agency.

b. The Copeland "Anti-Kickback" Act requires that:

1. Payment to employees must be made *at least once a week* and without subsequent deductions or rebate on any account except for "permissible" salary deductions.
2. The Recipient must obtain **original** payrolls and "Statements of Compliance" from contractors and subcontractors (through the general) weekly. These documents must be maintained by the Recipient for three years after completion of the work. The Recipient must check these payrolls upon receipt for accuracy and compliance with requirements.
3. The basic records supporting the payrolls must also be maintained by each employer and the Recipient for three years after completion of the work.

c. The Contract Work Hours and Safety Standards Act requires that for contracts of \$100,000 or more:

1. Laborers and mechanics shall not work in excess of forty (40) hours in any workweek unless they receive overtime compensation at a rate not less than one and one-half times the basic rate of pay for those overtime hours. The contractor or subcontractor shall be liable to any affected employee for his unpaid wages.
2. Contractors in violation of the Contract Work Hours and Safety Standards Act (overtime law) are also liable to the United States for liquidated damages, computed at \$10.00 per day for each employee who worked overtime and was not paid overtime wages. Funds may be withheld from contractors and subcontractors to satisfy unpaid wages and liquidated damages. (See information concerning wire transfer of these CDBG funds at d. (16) below.)
3. Contractors and subcontractors must be advised in writing that if they are aggrieved by the withholding of a sum of liquidated damages, they have the right to appeal within 50 days. Written appeal must state the reason for liquidated damages and should be addressed to DCA.

Department of Labor (DOL) guidelines include a number of other requirements listed below. Recipients should note that they are responsible for insuring compliance by contractors and subcontractors. Inclusion of appropriate clauses in the contracts, as well as monitoring by the Recipient, is therefore very important.

DOL guidelines require that:

1. The prime contractor shall be responsible for compliance by any subcontractor with all labor provisions.
2. The contractor must make pertinent records available for review and permit on the job interviews of employees.
3. Contractors and subcontractors may be terminated for noncompliance and will be liable for any excess cost involved in completing the work.
4. **Prior to awarding any prime contract, Recipients must submit to DCA the name of the proposed prime contractor for clearance.** (This can be done by telephone or by using the sample form included in the Appendix.) Any person or firm who has been declared ineligible because of previous instances of noncompliance may not participate in any contract involving CDBG funds.
5. The contractor must furnish a certification from the Bureau of Apprenticeship and Training for each apprentice employed on the project. All apprentices must be identified in each payroll submission. The ratio of apprentices to journeymen must not exceed the approved ratio under their respective program and their wage rate must not be less than prescribed under those programs.
6. All applicable Equal Employment Opportunity requirements, Copeland Act requirements, and Contract Work Hours and Safety Standards Act requirements must be met. See the "Sample Contract Clauses" package available from the Office of Grant Administration.
7. All contracts entered into by the contractor with subcontractors must include the same provisions as those of the major contract with respect to federal laws.
8. Exceptions are made for volunteer services on a case-by-case basis. Contact DCA for information and approval.
9. Wage decisions and DOL posters must be displayed in a permanent place on the jobsite.
10. The Recipient must monitor the construction *and conduct on-the-job interviews* with workers on the jobsite. A suggested form (DCA-WR3) is included at the end of this Chapter. The Recipient may use this form or a facsimile to gather the required information. The purpose of these interviews is to ensure workers are properly classified and paid and are not forced to give up part of their pay. A representative number from each trade and subcontractor should be interviewed.
11. Underpayment of wages and fringe benefits of \$1,000 or more must be reported to DCA and the Department of Labor.

12. A **pre-construction conference** must be held with all interested parties to discuss labor standards and compliance requirements. Minutes should be taken and a copy maintained in the Recipient's file.
13. NEW: Contractors should be informed of the requirements to comply with Section 3 during the Conference.

Your CDBG Program Representative should be notified of the Pre-Construction Conference.

14. A **Notice of Contract Action** should be completed and sent to the DCA Labor Compliance Officer each time a contract award or construction start action is taken. (See Form DCA-WR6.) Please attach a copy of the certified and itemized bid tabulation at the time of contract award.
15. A **Final Wage Compliance Report** must be submitted to DCA before final close out of the grant. (See Form DCA-WR4.)
16. Note that any funds collected because of violations of Federal Labor Standards resulting in liquidated damages or wage restitution must be transferred to the U.S. Treasury via a wire transfer. In the event this situation arises, DCA will provide you with detailed instructions regarding the wire transfer procedures.

SAMPLE LABOR FORMS
(Located in Appendix I)

DCA-WR1	Request for Wage Rate Determination
DCA-WR2	Clearance of Prime Contractor
DCA-WR3	Record of Employee Interviews
DCA-WR4	Final Wage Compliance Report
DCA-WR6	Notice of Contract Action
WH-347	Weekly Payroll Report for Contractors and Subcontractors—May use substitute if all info is included
WH-348	Statement of Compliance-used if an alternate Payroll form is used

Section 4: Acquisition of Property and Relocation Requirements

The acquisition of property, including rights-of-way, permanent easements, fee simple acquisition, demolition of occupied or occupiable housing units, and the displacement of any person or business in any project that includes CDBG funds is regulated by federal law and regulations. Disposition or the sale of property acquired with federal funds is also regulated by state law. The major applicable related laws and regulations include:

- The Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, (The Uniform Act) and as implemented by DOT regulations at 49 CFR Part 24. This law and regulation governs the acquisition of property and easements and also requires relocation benefits be paid to any person(s) (regardless of their income) or business displaced as a result of a CDBG assisted project. A copy of the regulation, 49 CFR Part 24 is available from DCA or on the web at <http://ecfr.gpoaccess.gov/cji/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl>.

The Uniform Act in general requires property be appraised prior to acquisition and the payment of Fair Market Value based on the appraisal.

- Section 104(d) of the Housing Community Development Act of 1974, as amended, and as implemented by HUD regulations at 24 CFR Part 570.606 and 24 CFR Part 42. This is available from DCA or on the above-listed website. This regulation requires the replacement of any occupied or occupiable "low and moderate income housing unit" demolished or converted as a result of a CDBG assisted activity and requires additional relocation assistance (generally beyond what would be required by the Uniform Act) for low and moderate income tenants actually displaced.
- The Georgia Urban Redevelopment Act, OCGA, Section 36-61-1, et. seq. This State law sets forth the requirements which must be followed when a public agency acquires private property for reuse or redevelopment by another private entity.
- Real Estate Appraiser, Licensing and Certification Act, OCGA, 43-39A-1 through 43-39A-27 and the rules of the Real Estate Appraisers Board. These requirements are in addition to the minimum appraisal standards in the Uniform Act regulations.

Before proceeding with any relocation activity or property acquisition be sure to review the Uniform Act regulations, the HUD Handbook 1378, "Tenant Assistance Relocation and Real Property Acquisition", and applicable HUD regulations described above. DCA also offers written material, including the required brochures available in Spanish and English and on-site compliance assistance.

Section 5: Neighborhood Revitalization/Multi-Activity Requirements

Home Owner Participant Files: Recipient and Program Administrator Responsibilities.

1. All program records including *original home owner participant's files* must be maintained at a secure location in control of the recipient political jurisdiction. Under no circumstances will individual Homeowner Participant files, information, data, statistics, income, or other identifying information contained therein be available for public review or inspection except as may be required by law.
2. The Program Administrator, if a separate entity not affiliated with, or under direct control of the recipient governmental body, may maintain a copy of Homeowner Participant files in an off-site location until such time as the grant has been closed.

All off-site program records including home owner participant's files must be maintained at a secure location under the direct control of the Program Administrator. Under no circumstances will individual Homeowner Participant files, information, data, statistics, income, or other identifying information contained therein be available to any third party not affiliated with the recipient jurisdiction, the Department of Housing and Urban Development (HUD), the Georgia Department of Community Affairs (DCA), its agents or other individuals authorized by DCA except as may be required by law.

3. All copies of home owner participant files under the control of the Program Administrator including information, data, statistics, income, or other identifying information contained within the participant files will be turned over to the recipient within three business days of the close of the grant.
4. All records pertaining to the awarded DCA grant that have been created, developed, obtained, copied, or otherwise reproduced by the Program Administrator including all contracts, documents, plans, specifications, information, financial data, statistics, income, or other identifying information contained within the participant files are considered the property of the Recipient Political Jurisdiction.

Recipients not following these requirements are subject to sanctions by DCA.

A: General

Housing rehabilitation can be a complex and varied activity. Although each Recipient's local rehabilitation program will be different, reflecting different property standards and approaches to solving local housing needs, some basic requirements are applicable to all since they are based in law or regulation.

For the most part, these laws and regulations which are generally applicable include the following:

- **The Common Rule 24 CFR 85** (See Chapter III, Section 3 of this manual) applies if the local government is a direct party of the construction contract.
- **Federal Labor Standards** - only in certain situations (see Chapter III, Section 3 of this manual).
- The **Lead-Based Paint Hazard Elimination in CDBG Programs** (24 CFR Part 35). These rules have recently been updated and expanded to include inspection, testing, risk assessments, hazard control or abatement, safe work practices, clearance and notification/disclosure requirements.
- **Section 3 Clause of the Urban Development Act of 1968**, and as implemented by HUD regulations at 24 CFR Part 135 applies (regardless of the dollar amount of the contract) in the following situations:
 - If the Recipient contracts directly for rehabilitation services or acts as an agent for the homeowner, i.e., signs the rehabilitation contract.

- If the Recipient provides homeowners with a list of contractors eligible to participate in the local rehabilitation program, the Recipient should assure that eligible Section 3 business concerns located or owned in part by residents of the area are also included on the list.
- If the individual homeowner contracts directly for rehabilitation services and the Recipient is not a party to the contract, the Section 3 requirements do not have to be followed.
- **Section 104(d) of the Housing and Community Development Act** is applicable if rental units are converted to non "low and moderate income dwelling units" or if occupied or occupiable housing units are demolished. See HUD regulations at 24 CFR Part 570.606 and 24 CFR Part 42 included in the Appendix.
- **The Uniform Relocation Assistance and Real Property Acquisition Act of 1970**, as amended, and as implemented by DOT regulations 49 CFR Part 24, is applicable if tenants or homeowners (regardless of income) are displaced in conjunction with a CDBG activity.
- **The Truth-In-Lending Act (Regulation Z) (USC 1601, et. seq.)** which applies to any loan transaction between the Recipient and the homeowner provided the Recipient meets the criteria of being a "creditor", as defined by the Federal Reserve System.

For specific aid on how to implement a rehabilitation program, DCA staff is available on request to provide technical assistance. A manual entitled **Guidelines for CDBG Residential Rehabilitation Programs** is also available. It includes sample forms as well as suggested approaches and procedures to assist Recipients in implementing rehabilitation programs. In addition, a housing rehabilitation workshop will be offered by DCA. Attendance at this workshop is essential for all grantees doing or considering housing activities.

B. Substantial Reconstruction of Housing

The "substantial reconstruction" of housing is an eligible activity under the Housing and Community Development Act. While the term "substantial reconstruction" is not defined, it includes constructing a replacement house on the same property when the need for the reconstruction was determined prior to or during rehabilitation.

Substantial reconstruction of housing is limited to housing owned and occupied by low and moderate-income persons and must be located on the same property as the original residential structure. The existing foundation does not have to be used if it is not feasible to do so.

When this activity for a particular identified house is included in the approved CDBG Application, no additional actions are required. In addition, on a case-by-case basis, the CDBG recipient can request approval of reconstruction in situations where rehabilitation was planned but later deemed not feasible upon a detailed inspection or after rehabilitation work begins.

Approval by DCA is based on the demonstrated economic viability of reconstruction as

an alternative to acquisition and/or relocation if the dwelling unit is not feasible for rehabilitation.

C. Escrow Account Policies (Optional)

The following are DCA policies and procedures for administering optional escrow accounts for single family rehabilitation:

1. Terms of the construction contract between the owner and the contractor must expressly provide for payments through the escrow account. The owner must authorize the recipient (in writing) to maintain the account and provide a written statement accounting for all funds deposited and disbursed from the account at the completion of the rehabilitation.
2. All rehabilitation funds drawn down and placed in the escrow account must be deposited into **one interest bearing checking account** in an FDIC-insured financial institution. Separate bank accounts shall not be established for individual loans and grants. The account should be reconciled each month.
3. The amount of funds deposited into an escrow account shall be limited to the amount expected to be disbursed within 10 working days from date of deposit.
4. If the escrow account, for whatever reason, at any time contains funds exceeding 10 days cash needs, the grantee must immediately transfer the excess funds to its program account. In the program account, the excess funds shall be treated as funds erroneously drawn in accordance with DCA Financial Management requirements and must be returned to DCA if they exceed \$5,000.
5. Recipients may initially establish and maintain a reasonable balance if required by the depositor to earn interest and avoid a service charge. This exception must be approved in advanced by DCA. A request for an exception should include documentation from the depository concerning the interest rate paid, account type and minimum balance requirements to earn interest.
6. A recipient is permitted to draw down funds initially for deposit into an escrow account only **after** the property owner has executed the contract with the contractor selected to perform the rehabilitation work.
7. Interest earned on the escrow account must be remitted to DCA on a quarterly basis.
8. Rehabilitation Escrow Funds cannot be intermingled with other CDBG funds. An approved accounting system must be in place to assist monitors and auditors to effectively track the deposit and disbursement of escrow funds on an individual case basis.
9. In situations where there is more than one private lender participating in a leverage loan program, recipients may establish an escrow account at each participating institution. This exception must be approved in advance by DCA. All other escrow requirements will apply to this exception.
10. If a recipient fails to comply with these policies, DCA reserves the right to prohibit the continued use of their rehabilitation escrow account and may impose other program sanctions.

D. Lead-Based Paint Hazard Control Policies

The U.S. Department of Housing and Urban Development (HUD) has issued a regulation to protect young children from lead-based paint hazards in housing that is financially assisted by the federal government or being sold by the government. The final regulation, "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance," was published in the Federal Register on September 15, 1999 and became effective September 15, 2000. The requirements apply to housing built before 1978, the year lead-based paint was banned nationwide for consumer use.

The regulation puts all of HUD's lead-based paint regulations in one part of the Code of Federal Regulations (24 CFR Part 35), making it much easier to find HUD policy on the subject. HUD estimates that about 2.8 million housing units were affected by the regulation during its first five years.

Lead poisoning can cause permanent damage to the brain and other organs, and can result in reduced intelligence and behavioral problems. More than 800,000 children younger than 6 years old living in the United States have lead in their blood that is above the level of concern set by the Centers for Disease Control and Prevention (CDC).

A large portion of these children are in families of low income and are living in old homes with heavy concentrations of lead-based paint. The most common sources of childhood exposure to lead are deteriorated lead-based paint and lead-contaminated dust and soil in the residential environment.

HUD estimates that the regulation will protect more than two million children from exposure to lead. The estimated net benefits (that is, benefits minus costs) from the first five years are \$2 billion, mostly from increased lifetime earnings, but also including reductions in medical and special education costs. Additional benefits that have not been estimated in dollar terms include reduced family time and anxiety involved in caring for lead-poisoned children, increased stature and hearing ability, reduced hypertension in later life, and reduced juvenile delinquency and crime.

The regulation is issued under sections 1012 and 1013 of the Residential Lead Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992. Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, the basic law covering lead-based paint in federally assisted housing. The new regulation appears within title 24 of the Code of Federal Regulations as part 35 (24 CFR 35).

The regulation sets hazard identification and reduction requirements that give much greater emphasis than existing regulations to reducing lead in house dust. Scientific research has found that exposure to lead in dust is the most common way young children become lead poisoned. Therefore, the new regulation requires dust testing after paint is disturbed to make sure the home is lead-safe.

Specific requirements as they pertain to CDBG-assisted housing rehabilitation depend on the type and amount of financial assistance, the age of the structure, and whether the dwelling is rental or owner-occupied.

A summary of the hazard reduction requirements for the various types of housing

programs is attached to the Questions and Answers issued in association with this regulation and has been provided to CDBG grantees. More detailed information is available in training and guidance material, in the regulation itself, and in HUD's explanation of the regulation, published in the Federal Register and available from DCA.

Common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children. On April 22, 2008, EPA issued a rule requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning. Under the rule, beginning in April 2010, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination.

More information about the Renovation, Repair, and Painting Rule can be found at the following web site: <http://www.hud.gov/offices/lead/training/rrp/rrp.cfm>.

Types of Housing Covered

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

Types of Housing Not Covered

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

For More Information

Copies of the regulation and additional explanatory material are available from DCA, Office of Grant Administration. General questions can also be answered by the National Lead Information Center at (800) 424-LEAD, or TDD (800) 526-5456 for the hearing impaired. You can also download the regulation and other educational materials at www.hud.gov/lea.

Section 6: Fair Housing and Equal Opportunity (FHEO)

A. General

The regulations pursuant to Title I of the Housing and Community Development Act require applicants to assure through certification that all activities will be conducted in accordance with Section 109 of the Act (the nondiscrimination clause), Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and Executive Orders 11246 and 11063. These requirements are briefly described below:

1. *Title VI of Civil Rights Act of 1968* Nondiscrimination in any programs or activities receiving Federal financial assistance.
2. *Section 109 of Title I - Housing and Community Development Act of 1974*
Nondiscrimination in any program or activity subject to the provisions of this title.

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 part under this Title.

Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

3. *Title VIII of the Civil Rights Act of 1968, as amended*
Prohibition against discrimination based on sex.
4. *The Fair Housing Law*
Provides protection against the following acts, if they are based on disability, race, color, religion, sex, national origin, or family status:
 - Refusing to sell or rent to, deal or negotiate with any person
 - Discriminating in terms or conditions for buying or renting housing
 - Discriminating by advertising that housing is available only to persons of a certain family status, race, color, religion, sex, or national origin
 - Denying that housing is available for inspection, sell or rent when it really is available
 - "Blockbusting" - For profit, persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood
 - Denying to anyone the use of or participation in any real estate services, such as brokers' organizations, multiple listing services or other facilities related to the selling or renting of housing
 - Denying or making different terms or conditions for home loans by commercial lenders, such as banks, savings and loan associations and insurance companies
5. *Executive Order 11063 - Equal Opportunity in Housing, as amended by Executive Order 12259.*

All departments and agencies are directed to take all action necessary and appropriate to prevent discrimination in housing and related facilities owned or operated by the federal government or provided with federal financial assistance

and in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans insured or guaranteed by the federal government.

6. *Executive Order 11246 - Equal Employment Opportunity, as amended by Executive Order 11375.*

Part II - Employment under Federal contracts. Non-discrimination in employment by government contractors and subcontractors.

Part III - Federally assisted construction contracts. Non-discrimination in employment under federally assisted construction contracts. Parts II and III are administered by the Department of Labor.

7. *Section 3 of the Housing and Development Act of 1968, as amended and as implemented by HUD regulations at 24 CFR Part 135.*

Section 3 provides that to the greatest extent feasible, training and employment opportunities shall be made available to lower 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. The "project area" is the county in which the grant is made.

Section 3 Report:

Note that DCA currently collects information about Section 3 Accomplishments on the Web Based Reporting System. HUD's recent emphasis on Section 3 will require updated reporting forms that will be available on DCA's online reporting system.

The U.S. Department of Housing and Urban Development (HUD) requires that recipients of federal funds submit an annual report to capture Section 3 Hiring Information as well as efforts made by recipients of federal funds to hire Section 3 persons.

All local government recipients (i.e., CDBG, CDBG-R, NSP1, EIP, and RD grantees) must complete a separate Section 3 Report for each grant award over \$200,000 that was under construction during the reporting period. The report should capture all Section 3 hiring done by local governments and their contractors, if any, during the reporting period. The reporting period is from July 1 of each year to June 30 of the following year.

In addition, if the local government has entered into any contracts exceeding \$100,000 using CDBG funds, the Section 3 Report must capture all Section 3 hiring done by the contractor, if any, during the reporting period. If a subcontractor has been awarded subcontracts exceeding \$100,000, then the subcontractor information is also required.

All active CDBG Recipients must complete a report. If a project was not under construction during the reporting period (July 1 through June 30), Recipients should indicate this by noting this on the report.

The reporting form is part of the on-line reporting system and instructions with the report form contains specific guidance concerning the information you will have to submit based on the type of activity you engaged in during the reporting period.

Access to the on-line Section 3 Report and Instruction is through the On-Line Quarterly Report system and can be found at this web site:
<http://communityfinance.dca.ga.gov/cdfd.html>

Review this HUD website for more information:
<http://www.hud.gov/offices/fheo/section3/section3.cfm>

B. Equal Opportunity Construction Contract Provisions

Certain types of construction contracts for public works and housing rehabilitation must include specific contract clauses pertaining to the Section 3 Clause, Executive Order 11246 and Title VI of the Civil Rights Act. Refer to Chapter III, Section 3, for more information or contact your Program Representative.

C. Affirmatively Furthering Fair Housing

Local government officials, in agreeing to accept CDBG funds, certify that they will "affirmatively further fair housing". This section of the Recipients' Manual outlines various options available to local government in meeting this grant obligation.

While the law does not specify what type of action recipients must take, it is clear that by virtue of receipt of CDBG funds, local government recipients are obligated to take some sort of action to affirmatively further the national goal of fair housing.

DCA does not dictate what sort of action recipients must take. DCA must, however, monitor local government recipients to determine what sorts of actions are taken. To accomplish this monitoring DCA has developed a **Fair Housing Checklist** which will be completed by the CDBG Program Representative as part of the normal project review process. A copy of this checklist is in the Appendix of this Manual.

In order to document what you have done to affirmatively further Fair Housing, it is important to keep records of actions taken. Copies of brochures provided to relocates, minutes of meetings where fair housing is discussed and any other records must be available for review by your CDBG Program Representatives.

The following checklist of possible fair housing activities is not meant to be all inclusive. It is meant to suggest the range of activities which would satisfy your obligation. Technical assistance is available from DCA if you wish to implement any of these suggestions.

Possible Actions to Affirmatively Further Fair Housing

- Analyze any impediments to fair housing choice which may exist in your community. Contact HUD or DCA for an analysis of any fair housing complaints

from your area.

- Review local zoning laws and procedures to determine whether they contribute to, or detract from, progress in fair housing. Establish a collection of zoning and land use planning material to have available for the use of local fair housing groups as well as recipient staff.
- Provide funding for local fair housing groups (eligible under the CDBG Program) or provide financial or technical assistance to citizens wishing to organize such a group.
- Adopt a local Fair Housing Ordinance or a resolution supporting the state and/or federal law.
- Distribute brochures outlining fair housing law to persons attending community meetings or CDBG Public Hearings.
- Post a fair housing poster at City Hall or Courthouse.
- Require owners of rental property receiving CDBG-assisted rehabilitation loans to sign fair housing agreements as a condition of receiving assistance.
- Develop an active public information and educational campaign to promote fair housing awareness in the community.
- Include a discussion of fair housing in public meeting agendas.
- Provide persons relocated to new housing with fair housing information and referrals.

Remember to document and keep records of everything you do in the area of fair housing.

Fair Housing Resources

- HUD, "Your Housing Rights: Live Where you Want to Live" (Fact Sheet). Copies are available from HUD.
- Fair Housing Poster, available from DCA.
- Sample "Certification of Property Owners Participating in CDBG Rental Rehabilitation Loan Program to Affirmatively Market Vacant Units", available from DCA/CDBG Section.

D. Section 504 Requirements

Local government recipients and sub-recipients must comply with Section 504 of the Rehabilitation Act of 1973, as amended. This requirement is similar to the "Americans with Disability Act" (ADA) which is also applicable. HUD published implementation regulations (24 CFR Part 8) as a final rule on June 2, 1988.

The general requirement is that no otherwise qualified individual with a disability (physical or mental) shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, denied benefits, or otherwise be subjected to discrimination under any program or activity that receives CDBG assistance. The definition of disability includes physical and mental factors and also includes those who may be regarded as handicapped (such as the spouse or children of a person with AIDS). Both building accessibility and employment practices are covered by Section 504.

There are seven (7) specific requirements which have an immediate effect on CDBG Recipients:

1. CDBG recipients must file an assurance of compliance. The Certified Assurances in the CDBG Application included this assurance.
2. CDBG recipients must issue periodic public notices of non-discrimination. This can be accomplished by including appropriate language in public hearing notices. The sample hearing notices included in this Manual reflects this requirement.
3. Employment practices are also covered by Section 504. Any CDBG recipient employing 15 or more persons must:
 - a. Designate at least one person to coordinate efforts to comply with the regulation (Section 504 Coordinator); and
 - b. Adopt formal grievance procedures that incorporate due process standards and that provide for the prompt and equitable resolution of discrimination complaints.
4. Communications: When a recipient communicates with applicants and beneficiaries by telephone, a telecommunication device for deaf persons (TDD's) or an equally effective system is required. The Georgia Relay Service (voice at 1-800-255-0135 or TDD at 1-800-255-0056 or at 711) is also available to provide this service.
5. All meeting and public hearing spaces must be accessible and procedures should be in place to ensure that persons with impaired vision or hearing can notify the local government that assistance is required. As applicable, please complete the DCA Meeting Checklist located in Appendix 1.
6. The regulations require each recipient to conduct a self-evaluation. The evaluation must be done in consultation with interested persons, including individuals with handicaps or organizations representing such people.
7. When the self-evaluation identifies structural changes as being required, a written transition plan must also be prepared. The transition plan sets forth the steps necessary to complete the changes, including a time schedule. The plan should identify the agency official responsible for implementation of the plan.
8. Grant recipients and their grantees/contractors share joint responsibility for carrying out activities in conformance with applicable Section 504 requirements. As such, grantees should ensure the following:
 - Take steps to ensure effective communication with applicants, beneficiaries, and members of the public. [24 CFR 8.6]
 - Take steps to ensure that employment activities, including job announcements, recruitment, interviews, hiring, work assignments, promotions and dismissals, do not discriminate on the basis of disability. [24 CFR 8.10 - 8.13]

- Ensure that all non-housing programs are operated in a manner that does not discriminate on the basis of disability and that new construction and alterations of non-housing facilities are made accessible in accordance with applicable standards. [24 CFR 8.21]
- Operate existing housing programs in a manner that does not discriminate on the basis of disability, and take steps, as needed, to ensure that existing housing programs are readily accessible to and usable by persons with disabilities. Develop and implement a transition plan to assure compliance. [24 CFR 8.24]
- Provide reasonable accommodations which may be necessary for a person with a disability to use or participate in the program, service or activity; unless the recipient can demonstrate that the accommodation will result in an undue financial and administrative burden or a fundamental alteration in the nature of the program, service or activity. A reasonable accommodation is an adaptation or modification to a policy, program, service, or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job. Reasonable accommodations may include, but are not limited to, adjustments or modifications to buildings, facilities, dwellings, and may also include provision of auxiliary aids, such as readers, interpreters, and materials in accessible formats.[24 CFR 8.4, 8.11, 8.20, 8.21, 8.24, 8.25, 8.33]
- Pay for a reasonable accommodation needed by the individual (e.g., a ramp to a unit) unless providing that accommodation would be an undue financial and administrative burden or a fundamental alteration of the program.[24 CFR 8.4, 8.11, 8.20, 8.21, 8.24, 8.25, 8.33]
- Ensure that all new construction of housing facilities is readily accessible to and usable by persons with disabilities, and meets the requirements of applicable accessibility standards. [24 CFR 8.22 and 8.32]
- Ensure that substantial alterations, when undertaken, meet the requirements for new construction. [24 CFR 8.23(a)] Ensure that all other alterations, to the maximum extent feasible, meet the requirements of the applicable accessibility standards. [24 CFR 8.23(b)]
- Conduct any required needs assessments (for recipients who are public housing agencies) to determine the extent to which the housing needs of persons with disabilities are being met in the recipient's program and in the community. [24 CFR 8.25]
- Distribute accessible dwelling units throughout projects and sites and make such units available in the same ranges of sizes and amenities to provide housing choices for persons with disabilities that are the same as those provided to others. [24 CFR 8.26]
- Adopt suitable means to ensure persons with disabilities are made aware of the availability of accessible units and to maximize use of accessible units by individuals needing the features of these units. [24 CFR 8.27]
- Conduct any required self-evaluations of programs, services, and activities to determine if they are programmatically and physically accessible to persons with disabilities, and involve persons with disabilities in these evaluations. [24 CFR 8.51]
- Recipients with 15 or more employees - designate an employee to ensure the recipients' programs, services and activities meet the requirements of Section 504; adopt a grievance procedure to effect due process standards and prompt and equitable resolutions of complaints. [24 CFR 8.53]
- Recipients with 15 or more employees - notify participants, beneficiaries, applicants and employees of their nondiscriminatory provisions. [24 CFR 8.54]

- Maintain records and reports of efforts to meet the requirements of Section 504, and keep these records on file so that they are available if a complaint is filed, or if HUD conducts a compliance review. [24 CFR 8.55]

Section 7: Georgia Immigration and Security Related laws

Guidance for CDBG Recipients on House Bill 87 and House Bill 2

Caveat

Consult with your local attorney regarding both House Bill 87 (HB 87) and House Bill 2 (HB 2) prior to undertaking a Community Development Block Grant (CDBG) project. Because HB 87 and HB 2 are state laws, they apply to local governments whether or not a CDBG project is being undertaken. As such, the laws have broad applicability to local government undertakings and reviewing these laws with your attorney is an appropriate first step in order to ensure compliance. Please note also that this information is current through the end of 2011 and does not include any additional requirements enacted by the Georgia General Assembly in 2012. Information on changes to the law in 2012 will be provided as it becomes available.

CDBG Recipients and House Bill 87 and House Bill 2

HB 87 and HB 2 are state laws (summarized below) that may impact local government CDBG projects. Because DCA is *not* the state agency charged with enforcement of these laws, we monitor for HB 87 and HB 2 on a limited basis and primarily to alert local governments to the implications of HB 87 and HB 2 for their CDBG projects. See the Sections below regarding monitoring. Note that the Georgia Department of Audits and Accounts (DOAA) is the primary enforcement agency for these laws and that DOAA has the responsibility for auditing compliance with HB 87 and HB 2, regardless of whether or not the project or activity is funded with CDBG dollars. In addition, because DCA has only a limited role in monitoring HB 87 and HB 2, DCA strongly encourages communities to consult primary resources for addressing these laws' requirements. Primary resources include: 1) your local government attorney; 2) the Department of Audits and Accounts; 3) the Department of Law; 4) either the Georgia Municipal Association (GMA) or the Association of County Commissioners Georgia (ACCG). Links are provided below to these sources in the Section entitled *Link to CDBG Monitoring Forms for HB 87 and HB 2*.

Summary of House Bill 87--O.C.G.A. 13-10

There are two parts of this law that impact CDBG Recipients: (1) This law requires all public employers to participate in the federal work authorization program (E-verify) to verify the employment eligibility of all newly hired employees. (2) This law also requires local governments to obtain affidavits from their contractors and subcontractors to verify participation in the E-verify system for their newly hired employees.

Note that there are other parts of this law not described here and all local governments should consult their attorney for assistance. GMA and ACCG have also posted extensive compliance assistance on their websites.

The requirement to obtain the applicable affidavits is based on O.C.G.A. §13-10-91(b)(1), which states, in part, "A public employer shall not enter into a contract... for the physical performance of services unless the contractor registers and participates in the federal work authorization program. Before a bid for any such service is considered

by a public employer, the bid shall include a signed, notarized affidavit from the contractor...." The Department of Audits and Accounts requested the assistance of the Department of Law to draft the affidavits required by this Code section and these required affidavits are listed under the Section entitled *Links to Contractor and Subcontractor Affidavits*.

Monitoring of HB 87

DCA has included the following General Condition in all CDBG Grant Awards:

General Condition: The Recipient, by signing these conditions, is certifying that it will comply with the requirements of O.C.G.A. 13-10-90 entitled "Security and Immigration Compliance." This requires, among other things, that every public employer, including, but not limited to, every municipality and county, will register and participate in the federal work authorization program to verify employment eligibility of all newly hired employees. For more information, including a link to the Homeland Security website and the I-9 Form requirements for all new employees, see the DCA CDBG Manuals and Forms Page at <http://www.dca.ga.gov/communities/CDBG/programs/CDBGforms.asp> .

DCA also monitors all CDBG public works contracts to ensure that the Prime Contractor Affidavit requirement is met. Grant recipients should obtain the affidavits from all contractors and subcontractors as required by law. ***Note that DCA's monitoring of its CDBG or other Community Finance Division grants is not intended to review compliance with all HB 87 requirements. Please contact your local attorney or GMA or ACCG for all compliance requirements. See the Section below entitled "Links to CDBG Monitoring Forms for HB 87 and HB 2" for CDBG Monitoring Forms that address HB 87 and HB 2.***

Summary of House Bill 2--O.C.G.A. 50-36-1

One part of this law affecting CDBG Recipients requires local governments to verify the lawful presence in the United States of any person making application for a state or local public benefit, such as housing rehabilitation assistance or down payment assistance. Thus HB 2 will be directly applicable to recipients of CDBG funds that result in a housing benefit. For further information regarding the definition of a "public benefit", please review the Department of Law's website found under the Section entitled *Links to State of Georgia Agency Resources*.

Note that there are other parts of this law not described here and all local governments should consult with their local attorney for assistance. GMA and ACCG have also posted extensive compliance assistance on their website.

Please note that the Systematic Alien Verification of Entitlement (SAVE) affidavit for public benefits must be obtained for each and every public benefit the city or county issues. See the following web page for the affidavit:

www.audits.ga.gov/NALGAD/Files/OCGA_50-36-1xex2x.pdf.

Public benefits include things like occupational tax certificates (business licenses), alcohol licenses, city employee health benefits, and contracts. This is all contracts, not just public works contracts. Starting on January 1, 2012, all persons including U.S. citizens applying for public benefits with the city or county will also have to provide a

secure and verifiable document (see link below under *Links to State of Georgia Agency Resources*) before they can receive the public benefit. Currently and moving forward, any person who fills out the SAVE affidavit who checks either the Legal Permanent Resident blank or the Authorized Alien blank must be run through the SAVE program. This law requires an annual report which is due by January 1 of each year to the Department of Community Affairs. See the link here that connects to DCA's report format required by HB 2:

www.dca.ga.gov/PBRegistration/LocalPBReg/Index.aspx.

Monitoring of HB 2

DCA has included the following General Condition in all CDBG Grant Awards. The General Condition is applicable to CDBG public benefit activities (such as housing assistance):

General Condition: The Recipient, by signing these Conditions, is certifying that it will comply with the requirements of O.C.G.A. 50-36-1 entitled "Verification of Lawful Presence Within United States" and verify the lawful presence in the United States of any natural person 18 years of age who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, defined in U.S.C. Section 1611, that is administered by an agency or a political subdivision of this state.

Note that DCA's monitoring of its CDBG or other grants is not intended to review compliance with all HB 2 requirements. Please contact your local attorney or GMA or ACCG for all compliance requirements. See the Section below entitled "Link to CDBG Monitoring Forms for HB 87 and HB 2" for CDBG Monitoring Forms that address HB 2. Note that it will be especially important for all CDBG Neighborhood Revitalization or Multi-Activity Recipients to include on their application intake form the affidavit for public benefits at the following link:

<http://www.audits.ga.gov/NALGAD/IllegalImmigrationReformandEnforcementAct.html>

Resources for CDBG Recipients for House Bill 87 and House Bill 2

Links to State of Georgia Agency Resources

DOAA web site:

www.audits.ga.gov/NALGAD/section_3_affidavits.html

Department of Law web site:

http://law.ga.gov/00/channel_title/0,2094,87670814_167693491,00.html

Secure and Verifiable Documents:

http://law.ga.gov/sites/law.ga.gov/files/imported/vgn/images/portal/cit_1210/0/0/187421259Secure%20and%20verifiable%20document%20list%202012.pdf

DCA Public Benefits Reporting System:

www.dca.ga.gov/PBRegistration/LocalPBReg/Index.aspx

GMA web site:

www.gmanet.com/MDR.aspx?CNID=68046

ACCG web site:
www.accg.org/content.asp?ContentId=1778

Links to Contractor and Subcontractor Affidavits and Link to Public Benefit Affidavit

Contractor Affidavit under O.C.G.A. §13-10-91(b)(1):
[www.audits.ga.gov/NALGAD/Files/Section 3 - Affidavit - OCGA 13-10-91xbx1x.pdf](http://www.audits.ga.gov/NALGAD/Files/Section%203%20-%20Affidavit%20-%20OCGA%2013-10-91xbx1x.pdf)

Subcontractor Affidavit under O.C.G.A. §13-10-91(b)(3):
[www.audits.ga.gov/NALGAD/Files/AG-x654040-v1-Second Subcontractor Affidavit under O C G A 247 13-10-91 b 3 .pdf](http://www.audits.ga.gov/NALGAD/Files/AG-x654040-v1-Second%20Subcontractor%20Affidavit%20under%20O%20C%20G%20A%20247%2013-10-91%20b%203.pdf)

Sub-subcontractor Affidavit under O.C.G.A. §13-10-91(b)(4):
[www.audits.ga.gov/NALGAD/Files/Section 3 - Affidavit - OCGA 13-10-91xbx4x.pdf](http://www.audits.ga.gov/NALGAD/Files/Section%203%20-%20Affidavit%20-%20OCGA%2013-10-91xbx4x.pdf)

Public Benefits Affidavit:
[www.audits.ga.gov/NALGAD/Files/OCGA 50-36-1xex2x.pdf.](http://www.audits.ga.gov/NALGAD/Files/OCGA%2050-36-1xex2x.pdf)

Links to Federal Agency Resources

E-Verify Website:
www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=75bce2e261405110VgnVCM1000004718190aRCRD&vgnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD

SAVE Website:
<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=1721c2ec0c7c8110VgnVCM1000004718190aRCRD&vgnextchannel=1721c2ec0c7c8110VgnVCM1000004718190aRCRD>

Link to CDBG Monitoring Forms for HB 87 and HB 2

DCA Web Site Link for CDBG Manual and Monitoring Forms:
[www.dca.ga.gov/communities/CDBG/programs/CDBGforms.asp.](http://www.dca.ga.gov/communities/CDBG/programs/CDBGforms.asp)