

XX/XX/2018

# COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR)

## Certification Requirements



# Action Plan Certifications

- Comply with applicable laws
- Action Plan authorized under state and local law
- Activities are consistent with approved Action Plan
- States have consulted with local governments and entities
- Grantees and subrecipients have capacity for timely recovery

# Action Plan Certifications

- Grantees and subrecipients will comply with title VI of the Civil Rights Act of 1964 and the Fair Housing Act
- Affirmatively further fair housing and ensure agreements with subrecipients meet all civil rights related requirements pursuant to 24 CFR 570.503(b)(5).
- Comply with the acquisition and relocation requirements of the Uniform Relocation Act
- Implement residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.

# Action Plan Certifications

- Section 3 of the Housing and Urban Development Act of 1968
- Lead-based paint requirements
- Requirements on lobbying and disclosure forms
- Citizen participation plan – See Federal Register Notices

# Action Plan Certifications

- Activities in flood plains are designed or modified to minimize harm per Executive Order 11988 and 24 CFR part 55
- Funds will be used solely for necessary expenses related to disaster relief and long-term recovery, especially maximize benefit to low and moderate income families
- 70 percent of the grant amount is expended for activities that benefit LMI persons
- Cannot recover any capital costs of public improvements assisted with CDBG-DR grant funds, by assessing any amount against properties owned and occupied by LMI

# Action Plan Certifications

- States require local governments to have:
  - A policy prohibiting the use of excessive force against nonviolent civil rights demonstrations; and
  - A policy prohibiting physically barring entrance to or exit from a facility or location nonviolent civil rights demonstrations

# Certification of Procedures P.L. 113-2

- Adequate financial controls and procurement processes
- Prevent duplication of benefits
- Ensure timely expenditure of funds
- Maintain comprehensive website
- Adequate procedures to detect and prevent waste, fraud, and abuse of funds



# Certification of Procedures P.L. 113-2

- Grantees are required to provide updates to HUD on changes to its processes or procedures that would impact its certifications.
- Subject to ongoing monitoring by HUD and the Office of Inspector General



# Resources

- HUD Representative
- Federal Register Notices
- Certification Checklists

# Thank you!



XX/XX/2018

# PROCUREMENT REQUIREMENTS FOR STATE AND ENTITLEMENTS CDBG-DR GRANTEES



# Overview of Procurement Regulations

## CDBG Procurement Reminders

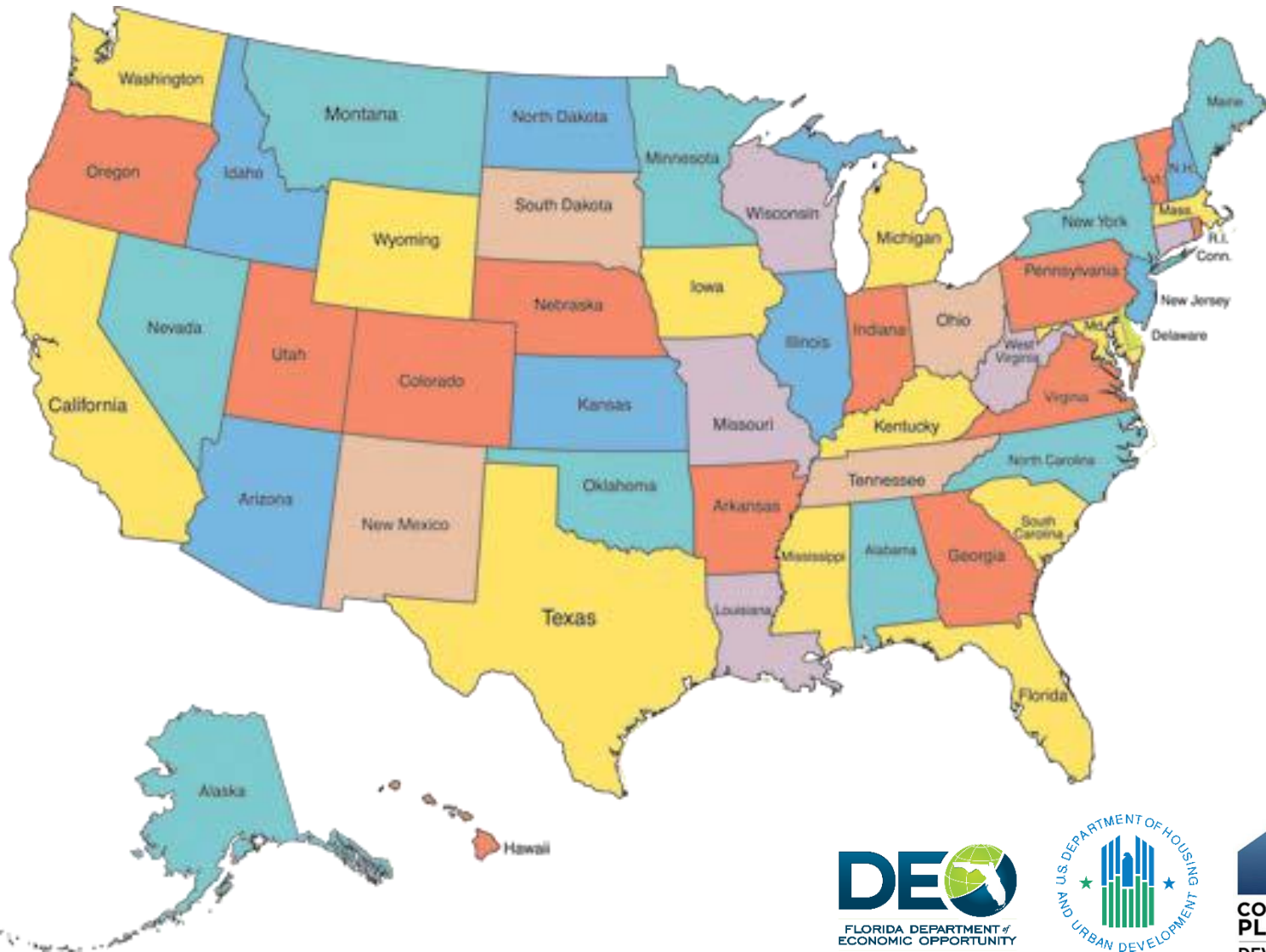
- 24 CFR 570.489, Program Administrative Requirements for States
- 24 CFR 570.502, Uniform Administrative Requirements for Entitlements and 24 CFR 85.36

## P.L. 113-2 Specific Requirements

- Federal Register Notice dated March 5, 2013 (78 FR 14329)



# CDBG Procurement Requirements for States



# CDBG Procurement Requirements for States

State CDBG programs use the **State's** procurement laws and policies (24 CFR 570.489(g)):

- CDBG program rules require that the State establish policies and procedures for fair and open competition
- “Cost plus” contracts are forbidden

# CDBG Procurement Requirements for States

- State must ensure that all purchase orders and contracts include clauses required by Federal statutes, executive orders and implementing regulations (24 CFR 570.489(g))
- State must obtain certification from any transaction participant that neither it nor its principals are currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation (24 CFR 570.489(l))



# State CDBG: Debarment and Procurement

Must check the Federal list of debarred contractors

(24 CFR 570.489(I)):

- All contractors
- All sub-recipients
- All local units of government

List of debarred contractors: <https://www.sam.gov>

# State CDBG: Mandatory Procurement Provisions

- Provision for remedies
- Termination for cause and convenience
- Non-discrimination (Executive Order 11246)
- Reporting Requirements
- Patent Rights

# 24 CFR 85.36

**(a) States.** “When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations...”

**(b) through (i)** – applicable to all other grantees and subgrantees that are government entities\*

\* P.L. 113-2 grantees have a different requirement for state subrecipients

# Common Issues

## Cost plus a percentage of cost prohibition

- The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used. [85.36(f)(4)]

## Cost Analysis

- Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation... [85.36(f)(1)]

# Common Issues

## Contract Provisions

- A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section [85.36(i)(1-13)]

## Debarment Check

- Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs [85.35]

# March 5, 2013 Federal Register Notice

## Certification of proficient controls, processes and procedures (pg. 14336)

“(2) Procurement. A grantee has in place a proficient procurement process if the:

- (a) Grantee has **ADOPTED** the specific procurement standards identified in 24 CFR 85.36. The grantee must provide a copy of its procurement standards and indicate the sections of its procurement standards that **INCORPORATE** 24 CFR 85.36. The procedures should also indicate which personnel or unit are responsible for each item;

**OR**

- (a) Grantee’s procurement process/ standards are **EQUIVALENT** to the procurement standards at 24 CFR 85.36 (applicable to State grantees only). Grantee must provide its procurement standards and indicate the sections of its procurement standards that **ALIGN** with each procurement provision of 24 CFR 85.36. The procedures should also indicate which personnel or unit are responsible for the task.”

# March 5, 2013 Federal Register Notice

## Procurement by subrecipients of a state

- Furthermore, per § 570.489(g), a State shall establish requirements for procurement policies and procedures for UGLGs based on full and open competition. All subgrantees of a State (UGLGs) are subject to the procurement policies and procedures required by the State. [pg. 14344]



# Certifications

NEW JERSEY PROCUREMENT POLICIES  
 CERTIFICATION AND  
 TABLE OF LEGAL AUTHORITIES

The State of New Jersey (the "State") hereby certifies that, it will follow the same policies and procedures it uses for procurements from its non-Federal funds and that these policies and procedures are equivalent to the policies and procedures contained in 24 CFR part 85.36. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. The State further certifies that the following statutes, administrative code provisions and circulars issued pursuant to executive authority conform to applicable Federal law and the standards identified in 24 CFR Part 85.36. Pursuant N.J.S.A. 1:1-1 and the legal authority of State, Dept. of Human Services, Division of Public Welfare v. Hudson County, Dept. of Health and Social Services, 161 N.J. Super. 28, 390 A.2d 720 (Ch. 1978), affirmed 171 N.J. Super. 453, 409 A.2d 1164, New Jersey state statutes and regulations shall be construed consistently with federal law regarding federal funding programs. Additionally, the State of New Jersey has elected to use the General Services Administration's Disaster Recovery Purchasing Program ("GSA-DRPP") as a component part of its disaster recovery procurement program. In the State, the unit with primary responsibility for procurement policies is the Department of the Treasury, Division of Purchase and Property ("DPP"). Attached hereto is a copy of the statutes and administrative code provisions which comprise the State's procurement standards.

24 CFR, PART 85 PROVISIONS	NEW JERSEY LEGAL AUTHORITY	RESPONSIBLE OR PERSONNEL
Part 85.36	<u>N.J.A.C. 5:4-1.1 through N.J.A.C. 5:4-1.8 Clause 2.10 of New Jersey's Standard Terms and Conditions</u>	DPP
Part 85.36(b)(1)	<u>N.J.S.A. 52:34-8</u> GSA's DRPP (as authorized by <u>40 U.S.C. 602d</u> )	DPP
Part 85.36(b)(2)	<u>N.J.S.A. 52:34-1, et seq. N.J.S.A. 52:34-10.3 N.J.S.A. 52:34-10.4</u>	DPP
Part 85.36(b)(3)	<u>N.J.S.A. 52:18D-12, et seq. Certification and Disclosure of Political Contributions N.J.A.C. 18:81-1.1</u>	DPP
Part 85.36(b)(4)	GSA-DRPP <u>N.J.S.A. 52-34.1 N.J.A.C. 17:12, et seq.</u>	DPP
Part 85.36(b)(5)	<u>N.J.A.C. 17:12-1A.3</u>	DPP
Part 85.36(b)(8)	<u>N.J.S.A. 52:27B-68.1</u>	DPP

- All P.L. 113-2 Grantees have submitted their procurement standards.
- Most states elected to follow their procurement policy and submitted documentation to HUD showing how it aligned with each section of 24 CFR 85.36 (b) through (i).



# Certifications

- Grantees are required to identify any material changes in its processes or procedures that could potentially impact the Secretary's or the grantee's prior certification.
- Tell your CPD Rep if there is a change in your procurement processes to see if an update to the certifications is necessary.

# Additional Requirements

- Secretary shall provide grantees with technical assistance on contracting and procurement processes and shall require grantees, in contracting or procuring these funds, to:
  - incorporate **performance requirements** and **penalties** into any such contracts or agreements
- Congress and HUD may request periodic updates from grantees that employ contractors.

# Public Website and Reporting

The Appropriations Act requires grantees to maintain a public Web site which provides information accounting for how all grant funds are used, and managed/administered, including details of all contracts and ongoing procurement policies.

# July 11, 2014 Federal Register Notice (79 FR 17173)

July 11, 2014 Federal Register Notice clarified reporting requirements in the March 5, 2013 Notice. Each grantee must make the following items available on its Web site:

- Procurement policies and procedures
- Status of services or goods currently being procured by the grantee—e.g., phase of the procurement, requirements for proposals, etc.

# July 11, 2014 Federal Register Notice (79 FR 17173)

- A copy of contracts the grantee has procured directly. (Grantees should post only those contracts subject to 24 CFR 85.36 or in accordance with the State's procurement policies.)
- A summary of all procured contracts, including those procured by the grantee, recipients, or subrecipients.

# Contract Reporting Template

To assist grantees prepare this summary, HUD has developed a template. The template can be accessed at: [www.onecpd.info/cdbg-dr/](http://www.onecpd.info/cdbg-dr/)

Grantees are required to use this template, and attach an updated version to DRGR each quarter as part of their QPR submissions. Updated summaries must also be posted quarterly on each grantee's Web site.






# Website Reporting Example

GOVERNOR CHRIS CHRISTIE • LT. GOVERNOR KIM GUADAGNO  
 NJ Home | Services A to Z | Departments/Agencies | FAQs  
 Search

STATE OF NEW JERSEY  
 OFFICE OF THE STATE COMPTROLLER



## NJ SANDY TRANSPARENCY

ACCOUNTABILITY • INTEGRITY • OVERSIGHT

[Home](#) | [Contract Center](#) | [Program Information](#) | [Funds Tracker](#) | [Helpful Links and Guidance](#)

[State Sandy Contracts](#) | [Sandy-Related Amendments & Change Orders to Existing Contracts](#) | [Treasury Sandy State & Local Procurement Resources](#)

Home > Contract Center > [State Sandy Contracts](#)

## State Sandy Contracts

Vendor ▲	Subject ◆	Solicitation	Proposal	Other Final Contract Documents	Date ◆
A2Z Global Inc.	Translation Services (CDBG)	<a href="#">Solicitation pdf</a>	<a href="#">Proposal pdf</a>	<a href="#">Other pdf</a>	2014/08/26
Abhzeen Design Inc.	Demolition - Sayreville	<a href="#">Solicitation pdf</a>	<a href="#">Proposal pdf</a>	<a href="#">Other pdf</a>	2014/10/06
Accutest Laboratories	Soil Testing	N/A	<a href="#">Proposal pdf</a>	<a href="#">Other pdf</a>	2013/12/05



# Website Reporting Example

The screenshot shows the website for the Governor's Office of Storm Recovery. The page features a navigation menu with categories like Services, News, Government, and Local. Below this is a sub-menu with options like Home, Overview, Housing, Small Business, etc. The main header includes the "MY RISING" logo and the text "GOVERNOR'S OFFICE OF STORM RECOVERY" with a quote from Governor Cuomo. A "Contracts" section is highlighted, leading to a table of contract data.

Vendor	Contract Type	Contract Start Date	Contract End Date	Description	Action Plan - Activity	Appendices
22nd Century Technologies	Vendor Contract	2/9/2015	2/8/2016	Temporary Staffing Services	HR	
A Russo Wrecking Inc	Vendor Contract	9/15/2014	3/15/2015	Demolition	Housing	
Agate Software Inc Amendment 1 Amendment 2	Vendor Contract	3/15/2011	4/4/2014	Web Based Grant Administration Software Program	Housing/Business	
AKRF Inc	Vendor	11/4/2014	11/4/2015	Environmental	Shared Program	

# DUPLICATION OF BENEFITS

Pro Tips – Case Studies, Process, and Documentation



FLORIDA DEPARTMENT of  
ECONOMIC OPPORTUNITY

# Welcome & Speakers

## Session Objectives

- Review DOB for frame of reference
- Learn tips from real world scenarios
- Invite peer-to-peer learning

# Agenda

- Define Duplication of Benefits (DOB)
- Review how DOB is calculated
- Discuss how HUD monitors DOB
- Discuss how insurance may impact DOB
- Review Case Studies



# What is a DOB?

- Recovery assistance may be provided by many sources
- A duplication of benefits (DOB) occurs when:
  - Assistance from multiple sources and
  - Total Assistance > Need for that Type Assistance
- Responsible use of taxpayer \$\$



# What is a DOB?

- Governments are also subject to DOB requirements
- The amount of the duplication is the amount of assistance provided in excess of need
  - Ex. Mr. Brown's home was damaged by a tornado
    - Estimated cost to repair is 100k
    - Mr. Brown receives 150k (\$25K from insurance, \$25K from FEMA, and \$100K from CDBG-DR)
    - DOB amount is the last \$50K of CDBG-DR funds

# Sources of DOB Requirements

- Section 312 (42 U.S.C. 5155) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act
- Necessary and reasonable requirements (24 CFR part 570 and Uniform Requirements at 2 CFR part 200)
- CDBG-DR Appropriations Acts and HUD Federal Register Notices

# Primary Framework for CDBG-DR DOB analysis–2011 DOB Federal Register Notice



# Federal Register Notice

- Published November 16, 2011
- 76 Fed. Reg. 71060
- Applies to any new program included in a new or amended action plan after publication date
- <http://www.gpo.gov/fdsys/pkg/FR-2011-11-16/pdf/2011-29634.pdf>

# Structure of Notice

- Designed to outline the DOB process:
  - A. Determine need & duplicative benefits
  - B. Calculate award
  - C. Address remaining unmet need (if applicable)
  - D. Use of CDBG funds
  - E. Recapture (if applicable)

# A. Determine Need & Duplicative Benefits

## 1. Assess need

- Starting point for needs assessment:  
Basic recovery need
  - Ex. How much will it cost to replace/repair a home damaged by a Hurricane?
- Additional needs may be considered, depending on the program design
  - The CDBG-DR need may differ from an amount identified by another agency



# A. Determine Need & Duplicative Benefits

## 2. Identify all available assistance:

- Calculate total assistance available to the homeowner – e.g., insurance proceeds, FEMA award, private loan, line of credit, etc.



### 3. Exclude non-duplicative funds

- Exclude the private loan and the line of credit—these will not reduce the CDBG-DR award available to the homeowner





# B. Calculate Award

- Subtract all assistance found to be duplicative from identified need; reduce award if program cap in place
- Basic framework:

1. Identify Applicant's Total Need	\$ 100,000
2. Identify All Assistance Received	\$ 35,000
3. Deduct Assistance Determined to be Duplicative	\$ 30,000
4. Maximum Eligible Award (Item 1 less Item 3)	\$ 70,000
5. Program Cap (if applicable)	\$ 50,000
6. Final Award (lesser of Items 4 and 5)	\$ 50,000

# C. Unmet Needs

- Disaster recovery needs are calculated at a point in time; a subsequent change may affect need
  - e.g., vandalism, contractor fraud, an increase in the cost of materials and/or labor, subsequent damage, etc.
- May provide additional assistance if initial need not fully met
  - Unmet need is typically identified after CDBG-DR funds have been provided...but in some cases, may be provided before
- Discretion to determine ways to identify and verify unmet need; physical inspection/professional appraisals are highly recommended

1  
3

# D. Use of CDBG-DR Funds

- Funds must be used for eligible purposes of the program or activity for which they have been provided
  - e.g., funds provided to repair a home should be used strictly for the repair of that home; funds provided to a business for equipment replacement, or structural repair, should be used only for those purposes

# E. Recapture

- Federal Agency that provides the funds responsible for recapture. For HUD, means CDBG-DR grantees
- DOB policies and procedures should address recapture
- To ensure recapture, a subrogation agreement or similar agreement must be signed by every applicant prior to the receipt of assistance
- Risk of DOB may inform policy regarding monitoring for DOB after CDBG-DR award
  - Ex: If future assistance is nearly certain but amount is uncertain, higher risk of DOB

# Assistance must be Necessary and Reasonable

# OMB Cost Principles – Necessary and Reasonable

- OMB Cost Principles
  - Necessary – not defined in 2 CFR part 200. Is it eligible? For a permissible recovery purpose?
  - Reasonable – a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.
    - Other factors related to the reasonableness of the cost are described in 2 CFR part 200
- SBA Loans: presumption that use of CDBG funds to pay down SBA loans is not necessary or reasonable

# Treatment of Declined SBA Loans

- July 25, 2013 Memorandum, “HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG Disaster Recovery (DR) Assistance” – made a grant requirement by HUD Federal Register Notices
- Grantees will incorporate policies and procedures that:
  - Identify the circumstances under which the applicant declined the SBA assistance;
  - Establish why CDBG DR assistance is appropriate for the applicant; and
  - Determine, most commonly through underwriting, the amount of CDBG DR assistance that is necessary and reasonable to assist the applicant in achieving recovery

# What does HUD look for when monitoring for DOB?



# Monitoring for DOB

- HUD may ask a grantee to walk through a typical DOB analysis
- Data sharing with SBA, NFIP, and FEMA?
- Policies and procedures, including recapture policies and procedures?
- Reasonable assumptions regarding necessary documentation and due diligence
- Analysis at the applicant level, not program level

# Critical information

- When reviewing activities, HUD expects to see:
  - Description of DOB (likely in application)
  - Identification of applicant's CDBG-DR need
  - Signed privacy waiver
  - Identification of sources of assistance provided to applicant
  - Verification of FEMA and insurance proceeds (e.g., FEMA award letter, SBA data feed, insurance letter)
  - Verification of SBA or other proceeds,
  - Treatment of declined SBA awards in accordance with 2013 guidance
  - CDBG-DR award calculation
  - Subrogation agreement (or similar agreement to recapture funds if necessary)

# Monitoring for DOB

- Grantee monitoring post-award
- The DOB file should also include:
  - Policy to address recapture;
  - A process to enforce recapture; and
  - A subrogation agreement signed by beneficiary prior to receipt of assistance
- Discussion:
  - CPD monitoring handbook Exhibit 6-5

# Insurance



# Insurance and DOB

- Not all insurance may be a duplication
- Common types of homeowner coverage:
  - Coverage for the structure of your home – may include detached structures such as a garage, tool shed or gazebo
  - Coverage for your personal belongings
  - Liability protection
  - Additional living expenses if you are temporarily unable to live in your home because of an insured disaster

# Insurance and DOB

- Insurance disputes and late payouts
- Forced mortgage payoffs
- Are CDBG-DR beneficiaries required to submit insurance claims?
  - What do the courts have to say?
  - Assignments and Subrogation agreements

# Questions?





August 2015

# THE UNIFORM ACT

CDBG Disaster Recovery Regional Training  
Acquisition · Rehabilitation · Demolition · Displacement





# Uniform Act - 49 CFR 24

Establishes minimum standards for federally funded programs/projects requiring the acquisition of real property or displace persons from their homes, businesses, or farms.

- Acquisition
- Rehabilitation
- Demolition

# Uniform Act Requirements

- Applicable to all Federally funded projects (in whole or in part) with acquisition, rehabilitation or demolition in any phase - interdependence.
- Uniform standards for administering acquisition and relocation projects.
- Notice requirements to all owners/occupants at specified milestones in the activity/project lifecycle.

# URA Triggers

**Notice to Owner** – prior to making a written offer (voluntary acq)

**General Info Notice** - “As soon as feasible” to a person scheduled to be displaced for a project with assistance anticipated in any phase of the undertaking.

- When intent of federal funds & site identification is documented.
- Project pre-application/applications, Action Plan, City Council resolutions, etc.

**Notice of Relocation Eligibility** – maximum \$, 3 comps, etc.

- When the “Initiation of Negotiations” (ION) for the project type has occurred (several possible dates per regulations), or

# Statutory Changes - Residential

Effective 10/1/14

- Length of occupancy requirement to receive Replacement Housing Payment for homeowner-occupants is reduced from 180 to 90 days;
- Maximum Replacement Housing Payment for displaced 90 day homeowner-occupant increased from \$22,500 to \$31,000; and
- Maximum Replacement Housing Payment for displaced 90 day residential tenant increased from \$5,250 to \$7,200.

- Note: **Housing of Last Resort** – exceeding

# Statutory Changes – Non-residential

Effective 10/1/14

- Maximum Re-establishment Expense Payment increased from \$10,000 to \$25,000.
- Maximum Fixed Moving Expense Payment increased from \$20,000 to \$40,000.

# URA Rulemaking Underway

- **Changes are not currently reflected @ 49 CFR part 24.**
- Updates via a rulemaking initiative underway by DOT-FHWA.
- HUD resources require revision (Handbook 1378, forms, brochures, and all other materials).
- **Grantees/subgrantees must use caution and ensure activities are in compliance with applicable statutory changes.**

# Flood Buyout Programs

## *Costs/requirements/outcome impacted by use of optional or mandatory buyouts.*

### Mandatory buyouts – Involuntary Acquisition process

- Eliminate future claims, no requirement to move to any specific new location.
- Most costly & time-consuming (full acquisition requirements of Subpart B).
- Owner-occupants are entitled to relocation payments.

### Voluntary buyouts – Voluntary Acquisition process

- Inefficiencies in providing public services, impacts to neighborhood for remaining residents (gap-toothed communities, lack of demand for services/retail).
- Owner-occupants are not entitled to relocation payments under the URA.

# Drainage Easements/Retention Basins

**Typically are site specific (involuntary)** due to design requirements – consider all potential locations that could accomplish an activity to minimize acquisition & relocation costs.

- Notice to owners & occupants required as soon as feasible once a site is identified for a federally-assisted project.
- May require one-for-one replacement if units in habitable condition are acq/demo (in addition to relocation payments).



# Mobile Homes

- Commonly contain a mix of owner & tenant-occupied units generally valued & acquired separate from the underlying real estate.
- Acquisition of land as income-producing property, according to highest and best use.
- Are mobile homes realty or personal property in the State? Can it be physically moved? Agencies take title & possession of realty **OR** pay to move personality.
- Potential acquisition payments to owner occupants in addition to rental assistance payments for pad rent

# Rehabilitation of Damaged Dwellings

## Owner-Occupants

- DO NOT meet the URA definition of “Displaced Person” when they apply for assistance under CDBG-DR.
- “Optional Relocation Policy” provisions under CDBG regs allow a grantee to customize policies to provide payments at non-URA levels (lower or higher), i.e. short-term storage, housing costs during repairs, etc.
- Expenditures to owner-occupants for relocation are **INELIGIBLE** unless covered under an acceptable Optional Relocation Policy.
- Not covered by any time-lengths of displacement, i.e. 12- months for temporary relocation.

# Rehabilitation of Damaged Dwellings

## Tenant-Occupants

- Always eligible for temp or permanent relocation payments.
- For occupied multi-family properties, temporary relocation compliance is substantial:
  - General Information Notices at time of submission of an application (as soon as feasible).
  - Notices of Eligibility/Ineligibility at ION (execution of the CDBG-DR agreement).
- 12 month maximum duration of temporary move, payment of moving expenses and increased monthly housing costs.
- Demolition almost always results in permanent displacement.
- Not much difference in these activities than under regular program.

# Economic Development

- Acquisition of retail, hospitals, etc. can require specialized appraisers experienced in valuing disaster-impacted properties for justification of CDBG-DR expenditures – even where appraisals are not required by the URA (voluntary acquisitions).
- Infrastructure improvements for access/utilities can trigger acquisition compliance when land is acquired in connection with the project, regardless if the site purchase was privately funded.
- Interconnectedness - one would not occur but

# Joint Federally-Assisted Projects

Where a project may be carried out with multiple federal sources, (FEMA + HUD, VA + HUD, etc.) contact HUD.

- Cognizant agency agreement – Allow time to identify & resolve differences in URA policies or programmatic conflicts.
- FEMA's Hazard Grant Mitigation Program may have different compensation rules for owner-occupants than the URA.
- Consultants may be more familiar with other regs, different federal program regulations may have inconsistent milestones for action (ION, notices, etc.).

# What is Acquisition & Which Approach Must We Use?



# What is an Acquisition?

***Conveyance of fee simple or partial interests in real estate from one legal entity to another.***

- Donations occur when the seller forgoes all or part of just compensation – this is still an acquisition.
- Permanent easements & other less-than-full fee interests (temporary easements/servitudes).
- Long-term leases of 15 years or greater are considered acquisitions for URA purposes under CDBG-DR.
- May occur between two affiliated entities (mixed finance).

## 2 Paths to Acquisition

***Acquiring agency must determine which approach applies to the project BEFORE starting any acquisition activity.***

- Once an agency starts down the “voluntary” acquisition path the use of eminent domain is off the table as a potential tool.
- If an agency conducts its acquisition using the “involuntary” approach it is NOT committed to using eminent domain but may retain that option as last resort.
- Acquisitions by one govt. agency from another probably exempt if acquiring agency cannot condemn from the other.
- Who is taking title to the property matters.



# “Voluntary” Acquisitions

## Agencies with eminent domain authority, ***ALL of the following:***

- No specific site is needed and any of several properties could be acquired for project purposes; and
- The property is not part of an intended, planned or designated project area where other properties will be acquired within specific time limits; and
- The agency informs the owner in writing of the property's market value prior to making an offer; and
- The agency also informs the owner in writing that the property will not be acquired, through condemnation, if negotiations do not reach an amicable agreement.
  - Agency requirements not based on if the seller is/is not agreeable to the sale.

# “Voluntary” Acquisitions

*For agencies without eminent domain authority:*

- The agency notifies the owner in writing of the property's market value; and
- The agency notifies the owner prior to making an offer, that it will not acquire property if an amicable settlement cannot be reached.
  - If tenants will be displaced, the tenants are **ALWAYS** provided relocation assistance (unless eviction is documented).
  - Under “voluntary” acquisitions, an owner is **NOT** eligible for relocation payments whereas they **ARE REQUIRED** for “involuntary” acquisitions.

# Valuation

Appraisals may be based on pre-flood or post-flood values.

- Grantee must uniformly apply whichever valuation method it chooses (per program rules).
- Written appraiser minimum qualifications & procedures are required for involuntary acquisition projects.
- Determine the applicable valuation/acquisition process

- PRIOR to commencing site-specific acquisition tasks (written procedures & policies)

# Voluntary Acquisition Disclosures

***The requirements at 49 CFR 24.101(b)(2)(i)–(ii) may be waived to the extent that:***

- An arm's length voluntary purchase carried out by a person who does not have the power of eminent domain.
- In connection with the purchase & occupancy of a principal residence by that person.
  - May be granted when failure to suspend this provision would impede recovery by delaying or preventing homebuyer acquisitions by persons who receive federal disaster recovery assistance.
  - Limited to individuals & families who use federal assistance to purchase rather than to rehabilitate or reconstruct their damaged dwellings.

# 30% of Household Income

URA provisions requiring financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30% of household income may be waived, provided tenants have been paying rents in excess of 30% of household income without hardship.

- Rental assistance payments to reduce tenant costs to 30% would not be required.
- Before using this waiver, the state must establish a definition of "demonstrable hardship."

# 30% of Household Income

HUD would consider the state's definition of "demonstrable hardship" & application for this waiver on a consistent basis across programs or projects.

Potential cost savings in utilizing this alternative should be weighed against the ability to complete project's in a timely manner & potential perception of disparity resulting in relocation appeals.

# “Comparable” Dwelling

“Comparability” requirements can be waived to allow all or a portion of a replacement housing payments to a displaced tenant by offering a tenant-based rental assistance (TBRA) housing subsidy (e.g., Section 8 voucher) provided the tenant is also given referrals to suitable, available rentals where the owner will participate in the TBRA program & the period of authorized assistance is at least 42 months.

- Consider for use where TBRA program subsidies may be available but funds for cash relocation assistance is limited.

# Residential Moving Payments

Suspension of the requirement to offer a person the option to receive a “moving expense & dislocation allowance” based on the FHWA fixed schedule **provided** that the grantee establishes & offers moving expenses under a schedule that is reasonable & takes into account the number of rooms in the dwelling (if the person owns & must move the furniture) & expenses described in 49 CFR 24.301.



# One-For-One Replacement

One-for-one replacement requirements may be waived for low- and moderate-income dwelling units:

- (1) damaged by the disaster,
- (2) for which CDBG funds are used for demolition, and

**(3) not suitable for rehabilitation.**

- Occupied properties are never exempt, if otherwise subject to one- for-one replacement.

– CHECK THE LANGUAGE FOR HOW THIS WAIVER IS WRITTEN AND APPLICABLE TO EACH GRANTEE.

# 104(d) Relocation

Section 104(d) relocation requirements may be waived to the extent they differ from the URA & its regulations related to disaster recovery housing activities assisted by the funds covered in an approved Action Plan.

- Eliminates disparity between persons displaced by projects funded by other federal agencies not subject to 104(d).
- Simplifies project administration since only one replacement housing calculation is required.

# Section 414 Waiver

Section 414 of the Stafford Act provides:

“Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [Uniform Act] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such [Uniform Act].”

Households may be forced to move as a result of a presidentially declared disaster before a HUD-assisted program or project reaches “Initiation of Negotiations” to otherwise displace the person.

# Section 414 Waiver

There is no statute of limitations or other timeframe applicable to Section 414 of the Stafford Act.

HUD may allow a re-housing plan for a covered program or project, as determined on a program or project-wide basis, if the Alternative One (payment of assistance at URA required levels) substantially conflicts with recovery purposes.

**Check the language for the applicable Federal Register(s) to determine what flexibility, if any, has been granted to a State in**

# Disaster CDBG & Other Federal Funds

All other federal sources of funding used in projects where acquisition, rehabilitation or demolition will occur are subject to standard URA regulations.

Use of regular CDBG & HOME funds in a mixed finance project will mitigate any waivers or alternative requirements attributed to supplemental CDBG-DR.

# URA & 104(d) Resources

[www.hud.gov/relocation](http://www.hud.gov/relocation)

- HUD Handbook 1378 – policies, notices & claim guideforms
- Acquisition & Relocation brochures
- URA vs. 104(d) overviews & comparison chart
- Planning & Budgeting Guide for HUD-Funded Projects
- Your HUD Regional Relocation Specialist

[www.fhwa.dot.gov/realestate/index.htm](http://www.fhwa.dot.gov/realestate/index.htm)

- Free online 6-hour URA training course & interactive tutorial
- Uniform Act Frequently Asked Questions & Answers
- Fixed Move Schedule & Mortgage Interest Differential Calculator

# Closing Q & A

# THANK YOU FOR LISTENING





# UNDERSTANDING SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT





# Statute and Regulation

- Section 3 of the Housing and Urban Development Act of 1968
  - 12 U.S.C. 1701u
- Economic Opportunity Regulation
  - 24 CFR Part 135

# Regulatory Description

To ensure that economic opportunities generated from HUD funded projects, to the greatest extent feasible, will be directed to low and very low-income persons — particularly those receiving assistance for housing, and the businesses that provide economic opportunities to these persons

# Simply Stated...

- HUD funds are one of the largest sources of federal investment in distressed communities
- These funds typically result in new employment, training and contracting opportunities
- Section 3 is designed to direct those opportunities to local residents and businesses

# Intent

- HUD funding creates opportunities “beyond bricks and mortar”
- Promote Self-Sufficiency amongst low-income persons
- Level the playing field for Section 3 residents and businesses
- Strengthen local economy

# To the Greatest Extent Feasible...

- More than normal efforts are implemented
- Recipients must make every effort to recruit, target, and direct economic opportunities to Section 3 residents and businesses

# Who is Required to Comply?

- Any entity which receives Section 3 covered assistance, directly from HUD or from another recipient including:
  - Any State unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association.

# Housing and Community Development Covered Activities

HUD Housing and/or Community Development Assistance that is used for:

- Housing Construction
- Housing Rehabilitation
- Other Public Construction

# Section 3 Covered HUD Funding

Some types of Section 3 Covered HUD funding are:

- Public Housing Capital Fund Program Funding
- Public Housing Operating Assistance
- Community Development Block Grant (CDBG)
- Community Development Block Grant—Disaster Recovery
- HOME Investment Partnership
- Neighborhood Stabilization Program Grants (NSP 1, 2 & 3)
- Economic Development Initiative (EDI)/Brownfield Economic Development Initiative Grants
- Housing Opportunities for Persons with AIDS (HOPWA)
- Homeless Assistance Grants (ESG)
- University Partnership Grants
- 202/811 Grants
- Lead Hazard Control Grants



# Funding Thresholds

- The requirements apply to recipients of Housing and Community Development Assistance exceeding \$200,000
- The requirements also apply to Contractors/Subcontractors that receive awards exceeding \$100,000

# Funding Thresholds

- The requirements apply to all construction and rehabilitation activities that are funded from covered assistance
- Does not apply on a per-project basis
- Covered contractors have the same responsibilities as direct recipients

# Section 3 Certification(s)

- Annual Certifications
- Signed by Highest-Elected Officials
- Failing to comply with Section 3 Certifications could have severe consequences

# Failure to Comply with Section 3

HUD holds direct recipients of covered funding accountable for their own compliance, and the compliance of their contractors.

Sanctions for noncompliance include:

- Debarment
- Suspension
- Limited Denial of Participation

# Section 3 Resident

- Public Housing Resident,  
**or**
- A resident of metropolitan area or non- metropolitan county in which the Section 3 covered assistance is expended, and who qualifies as a low- or very low-income person.

# Low- and Very Low-Income

HUD sets the low-income limit at **80%** and very low income limits at **50%** of the *median family income* for the county or metropolitan area in which you choose to live

<http://www.huduser.org/portal/datasets/il.html>

# Section 3 Preference

- Section 3 of the HUD act is race and gender neutral.
- Not MBE/WBE
- The preference provided by this federal act is based on income and location.

# Section 3 Business Concern

- **51%** or more owned by Section 3 Residents, or
- **30%** of employed staff are currently Section 3 Residents or were Section 3 residents within three years of the date of first employment; or
- **25%** of subcontracts committed to Section 3 Businesses.



# Triggering Responsibilities

- Section 3 regulations do not require hiring or subcontracting unless it is necessary to complete the project.
- Section 3 is not an entitlement, it is an opportunity
- Section 3 is triggered when covered projects require “new” hires or sub-contracting.

# Eligibility for employment and contracting

- A Section 3 resident must meet the qualifications of the position to be filled.
- A Section 3 business concern must have the ability and capacity to perform.

# Recipient Responsibilities & Practical Tips [24 CFR Part 135.32]



# States and Counties

States and counties that distribute funds to other units of local government must attempt to achieve compliance regardless of the number of sub-recipients receiving covered funding

# States and Counties

- Inform sub-recipients of covered funding about their obligations;
- Assist with their compliance; and
- Monitor their performance and the performance of their covered contractors

# Responsibility #1

Design and implement procedures  
to comply with the  
requirements of Section 3

# Practical Tips

- Develop and Publish official policies— Section 3 Plan
- Strategic Planning
- Internal/External Meetings

# Practical Tips

- Identify long and short term projects/activities
- Consider applicable State, Federal and local laws



# Section 3 Plans

- Strategies to target Section 3 residents and businesses
- Certification/Selection criteria
- Process for informing contractors about responsibilities and assessing hiring/subcontracting needs

# Section 3 Plans

- Penalties for noncompliance
- Incentives for good performers
- Reporting Requirements
- Recordkeeping
- Section 3 Coordinator

# Responsibility #2

Notify Section 3 residents  
about training and employment  
opportunities and Section 3  
businesses about  
contracting opportunities

# Practical Tips

- Establish certification procedures
- Maintain lists of certified Section 3 residents and businesses
- Personally notify certified residents and businesses
- Post Notices Door-to-Door

# Practical Tips

- Community Job Fairs
- Online Job Search Vehicles
- Community Partnerships
- Section 3 Coordinator

# Responsibility #3

Notify covered contractors  
about the requirements  
of Section 3

# Practical Tips

- Pre-Bid Hearings/ Meetings
- Section 3 Workshops
- Provide copies of your agency's Section 3 Plan and have contractors certify receipt

# Practical Tips

- Include compliance with Section 3 as a rating factor when selecting “responsible bidders”
- Assess bidders on their strategy for meeting the requirements of Section 3



# Responsibility #4

Incorporate the Section 3 clause into covered solicitations and contracts

[24 CFR Part 135.38]

# Practical Tips

- Refer to Section 3 in bid packages, RFPs, etc.
- Review clause with developer and have them certify compliance

# Practical Tips:

- Monitor Developers/Contractors Regularly
- Develop appropriate penalties for noncompliance and/or incentives for those that exceed minimum goals

# Responsibility #5

Facilitate training and employment of Section 3 residents and the award contracts to Section 3 businesses, as appropriate to reach the minimum numerical goals

# Practical Tips

- Assess needs of developers at time of contract award
- Match potential employees or subcontractors with developers
- Ensure that developers advertise vacancies in accordance with the agency's policies

# Practical Tips

- Conduct local career/business development trainings
- Sponsor Job-Fairs
- Develop Partnerships with local One- Stop Career Centers
- Youth build/Apprenticeship Programs

# Practical Tips

- Provide guidance for determining Section 3 eligibility
- Have certified residents and businesses provide evidence to contractors

# Responsibility #6

## Minimum Numerical Goals:

- 30% of new hires annually
- 10% of the total dollar amount of covered construction contracts
- 3% of the total dollar amount of covered non-construction contracts



# Minimum Numerical Goals

- 24 CFR Part 135.30
- Numerical Targets (may be exceeded)
- Safe Harbor Compliance
- Other Efforts Taken to Achieve Compliance—  
To the Greatest Extent Feasible

# Who Can be Counted As a New Hire?

- New Workers
- Returning Laid-off Workers
- Temporary/Seasonal Workers
- Full-time Workers

# Practical Tips

- Identify short- and long-term capital improvement projects, job vacancies, training opportunities, contracts, etc.
- Implement strategies to target Section 3 residents and businesses
- Review Appendix to Regulation

# Practical Tips

- Consider all hiring and subcontracting needs of developers and contractors
- Maintain evidence of efforts taken to achieve compliance
- Describe efforts taken on Section 3 annual report

# Responsibility #7

Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors

# Practical Tips

- Cooperate with HUD's Section 3 Enforcement Actions
- Hold developers/contractors accountable

# Practical Tips

- Develop appropriate penalties and apply them consistently
- Withhold Final Payments for “Section 3 Training Fund”

# Responsibility #8

Refrain from entering  
into contracts with contractors  
that fail to comply



# Practical Tips

- Determine appropriate timeframe for suspensions (i.e., 90 days, 1 year, 3 years)
- Be Consistent!!!
- Publicize actions taken

# Responsibility #9

Document actions taken to comply with the requirements of Section 3, results of actions taken, and impediments, if any

# Practical Tips

- Records of notification/ recruiting efforts
- Copies of vacancy announcements
- Participation in local events
- Signed contracts
- Penalties imposed
- Outcomes produced
- Annual 60002 forms

# Section 3 Reporting

- Measures efforts to meet numerical goals
- Narrative explanations
- Must be submitted even if no covered actions were completed

# Section 3 Reporting

- Online Reporting System Currently Disabled
- No Penalties will be Assessed during the System Outage
- Maintain Records
- Sign up for our Listserv

# Section 3 Proposed Rule

- Public Comment Period Closed May 26, 2015
- Over 300 Comments Received
- Archived Webinars

# Section 3 Business Registry

- Expanded Nationally
- More than 1,000 businesses
- Encourage local businesses to sign-up

# THE **BusinessUSA** MOBILE APP

*The Government Business Info You Need ... Available to You on the Go!*

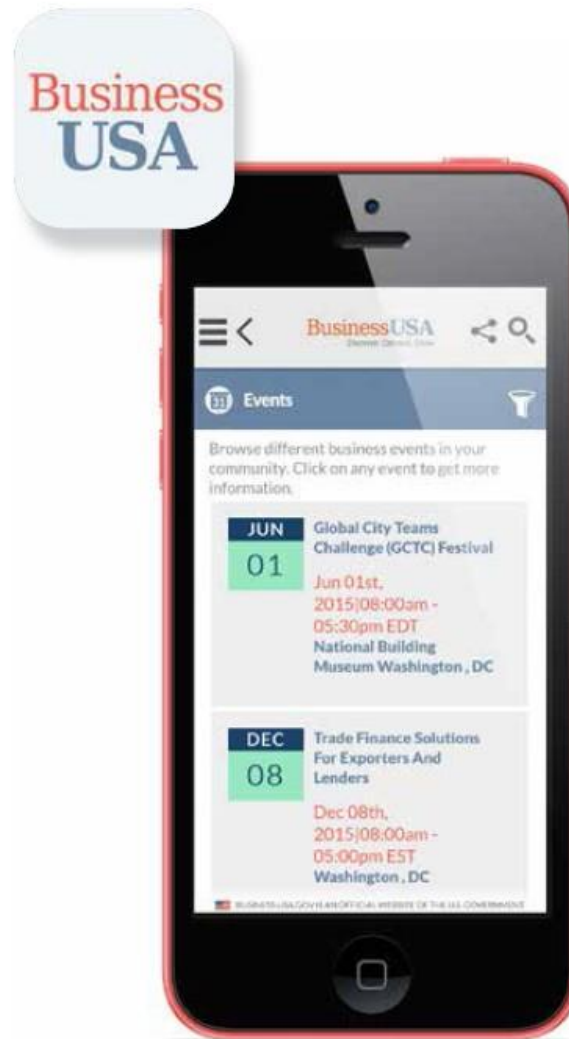
## BUSINESSUSA'S MOBILE APPLICATION

pulls together the best business information, events, services, tools and advisors from U.S. federal, state and local governments. Whether you're a potential entrepreneur interested in launching a startup, or you're the CEO of an existing business needing help growing that enterprise, BusinessUSA has resources that can help with advice on financing expansion, finding taxes and credits, learning to export, or discovering new business leads.

## WHAT CAN THE BUSINESSUSA MOBILE APP DO FOR YOU?

Use the BusinessUSA mobile app to find business events near you, then register right on your mobile device and tap to get directions. Find local business advisors and request an appointment. Get notified about contract opportunities to bid on, both domestically and internationally. Or just use BusinessUSA to discover helpful information, services, and tools to:

- **Start and grow** your business
- **Access financing**
- **Find new markets**, with trade leads, research grants and contracting opportunities
- **Protect your Intellectual property**, including inventions and trademarks
- **Learn** about benefits and services for **veteran entrepreneurs**
- **Comply** with regulations, taxes and healthcare changes





# Additional Resources

[www.hud.gov/section3](http://www.hud.gov/section3)

[section3@hud.gov](mailto:section3@hud.gov)

Section 3 Business Registry:

<http://www.hud.gov/sec3biz>

Section 3 Reporting Questions:

[60002questions@hud.gov](mailto:60002questions@hud.gov)

# Questions & Answers

