

APPENDIX D

CITIZEN PARTICIPATION, PUBLIC HEARINGS AND PUBLIC INFORMATION FILE REQUIREMENTS

CITIZEN PARTICIPATION

Jurisdictions must provide for and encourage citizen participation, particularly by low- and moderate-income persons and those that may be affected by the proposed CDBG-funded activities. Pursuant to *24 CFR 570.486(a)* and *the State of California's Annual Plan Update to the Consolidated plan*:

Purpose:

- *To inform citizens of the jurisdiction's opportunity to apply for federal funding.*
- *To obtain citizen input on which activities should be included in funding proposals and applications to the Department.*
- *To provide a public review of program performance.*

Actions:

- *Public Notices*
- *Public Hearings*
- *Submittal of documentation of Notices and Hearings*

Per the State's 2012-13 Annual Plan Update all local governments are required to:

Citizen Participation Requirements for Local Governments receiving CDBG

(Section 91.115(e)): The State encourages participation of citizens in all aspects of the State's CDBG program, including the planning and development of the State's program, the local application and implementation process, and by program beneficiaries. To promote participation of citizens as program beneficiaries, especially targeted income group (Low/Mod) persons, the State encourages applications by local governments where high rates of poverty exist, and encourages eligible local governments to use CDBG funds to principally benefit targeted income group households. The State requires local governments that receive CDBG funds from the State to comply with at least the following citizen participation requirements:

- (1) Local governments that apply for and administer CDBG funds must have active citizen participation processes that encourage participation by targeted income (Low/Mod) persons and by residents of neighborhoods with high concentrations of housing and community development needs and targeted income group individuals and households.
- (2) In accordance with federal regulations (24 CFR, §570, 570.486), the State requires local governments to meet federal citizen participation and noticing requirements. The required citizen participation activities include holding

accessible public hearings after proper notice. Proper recordkeeping is required. The State monitors for compliance with these federal requirements during its review of each grantee's performance.

- (3) Local governments must meet the needs of limited-English speaking persons where significant numbers exist.
- (4) In accordance with CPD Notice CPD-05-03, issued by the U.S. Department of Housing and Urban Development (HUD), Community Planning and Development, on June 6, 2005, regarding the New Freedom Initiative, local governments participating in the CDBG Program are encouraged to expand their outreach efforts to persons with disabilities. This expansion is intended to ensure that persons with disabilities are aware of the support that may be available to them through CDBG-assisted programs in the jurisdictions in which they reside. The State recommends that local government applicants and grantees of the State CDBG Program notify and partner with local disability advocacy groups, Independent Living Centers (ILCs), and persons with disabilities to identify the needs of persons with disabilities and to determine how best to address the identified needs. The New Freedom Initiative is intended to remove the barriers to community living that are present in the lives of persons with disabilities.

LIMITED ENGLISH PROFICIENCY (LEP)–

HUD Final Guidance on LEP Requirements:

http://www.justice.gov/crt/lep/guidance/HUD_guidance_Jan07.pdf

Discriminatory Effect

The Fair Housing and Employment Office (FHEO) has already been making Title VI findings of non-compliance for many years if:

1. Program shows under-representation of protected class/es likely to include LEP persons; and
2. Recipient cannot show effective outreach and marketing to LEP persons, and/or,
3. Recipient cannot demonstrate policies to accommodate LEP persons.

Programs to which LEP Guidelines Apply

Any program to which federal financial assistance to HUD is applied, including:

- Public and Indian Housing (PIH): Low-Income Public Housing, voucher, project-based, homeownership, moving to work, etc.
- CPD: CDBG, HOME, ESG, McKinney, etc.
- Housing: project-based Section 8, mod, rehab, etc.

What the LEP Guidelines Require of Recipients

- Are there LEP persons in the service area?
- Devise a plan for oral interpretation & written translations based upon four-factor analysis, in:
 - ✓ Outreach
 - ✓ Conduct of day-to-day activities
- Take necessary and reasonable step.

Four-Factor Analysis of Needs

- **Factor 1: Identify the number / proportion of LEP persons in the service area:**
 - The more LEP persons, the greater the need.
 - NOT who speaks other languages, but who speaks English less than well or not at all.
 - Data Source: US Census / American Factfinder2 Table QT-P17 or SF 3/DP2 or B16001.
- **Factor 2: Analyze frequency of contact**
 - The more frequent the contact, the greater the apparent need.
 - Anticipate that increased outreach may result in increased frequency of contact and higher overall participation by LEP persons.
- **Factor 3: Analyze importance of contact**
 - The more important the contact, the greater the need.
 - Compulsory participation = high importance.
 - Identification of vital documents (documents that if not translated could result in denial of benefits / exclusion from program even if unintended).
- **Factor 4: Weighing of cost vs. resources vs. benefits**
 - Consider sharing resources with other recipients.
 - Industry best practices.
 - HUD documents already translated.

Oral Interpretation

- Oral interpretation is always a requirement.
- Recipient must have a plan for communicating with applicant / participant if he/she is unable to communicate effectively in English.
- Language cards to allow identification of language spoken.
- Resources such as language line, use of staff.

- Never: “If you need a translator, bring your own.”

Written Translations

- Guidelines establish “safe harbor of presumptive compliance” if four-factor analysis of needs establishes:
 - > 1,000 persons LEP in one language within service area – translation required.
 - > 5% of population LEP in one language (at least 50) = translation required.
 - Disclaimer on translated documents: “provided for information only.”

Language Assistance Plan

- Identifies groups who need language assistance.
- States how agency will provide language services (translation plan).
- Train staff on plan.
- Public notice of plan.
- Self-assessment & monitoring of plan’s effectiveness.

More Information about LEP Guidelines

- <http://www.hud.gov/offices/fheo/promotingfh/FederalRegistepublishedguidance.pdf>
- Q&A’s from FHEO Headquarters:
<http://www.hud.gov/offices/fheo/promotingfh/lep-mfh-faq.cfm>

PUBLIC HEARINGS

A public hearing is a public meeting that has been publicly noticed in a local newspaper of general circulation, or noticed in a fashion that otherwise follows local procedures for formal noticing of public hearings. Public hearings must include the formal processes of (1) wide and accessible public noticing, (2) hearing opening, (3) comments taken from the public and recorded into the hearing minutes, (4) hearing closing and (5) formal minutes from the hearing published and/or posted for public reference on the applicant’s website or in a public place with easy public access.

All hearings should be noticed as widely as possible and held at a time and place convenient to the public, with accommodations made for persons with disabilities. Where a significant number of limited-English speaking persons can reasonably be expected to participate, the notice must be in the appropriate language(s) and provision must be made for interpreters at the hearing.

All hearings should be noticed at least 10 days prior to being conducted (unless local policies are more restrictive). However, at a minimum, all public hearings must follow the requirements of the Brown Act of 2003 (applicable language at the end of this document).

Public Notices should always contain the following information:

1. The time and place of the hearing; and,
2. The availability of a Public Information File about the CDBG program.
3. The reason for the public hearing; topic(s) for which comments are being sought.
4. All CDBG topics to be discussed including both grant funded and program income funded activities.
5. An invitation to submit written comments and guidance on where to send such comments.

In addition, specific public hearings require specific information in the Public Notice, as noted in the following sections.

APPLICATION HEARINGS

It is important to fully disclose the following information to the public at the public hearings held prior to submitting the application to the Department. Sample Notices are provided in this appendix, and proof of publication of the actual Notices must be included with the grant application.

A. 24 CFR 486(a)(5) states that a local jurisdiction's citizen participation plan must:

1. Provide for a minimum of two public hearings, each at a different stage of the program, for the purpose of obtaining citizens' views and responding to proposals and questions.
 2. Together the hearings must cover:
 - community development and housing needs,
 - development of proposed activities and
 - a review of program performance.
 3. The public hearings to cover community development and housing needs must:
 - **be held before submission of an application to the state.**
 - be reasonable notice of the hearings and
 - be held at times and locations convenient to potential or actual beneficiaries, and include accommodations for the handicapped.
 4. Public hearings shall be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate;
- **While one public hearing covering all local housing and community development needs is required, two (2) public hearings are strongly recommended. One should be held at each of the following stages of the application process. However, if only one hearing is held, it must cover all topics and requirements below, as well as being before the governing body so that a resolution can be obtained. A detailed resolution must be included in the application.**

- **Best Practice Citizen Participation Plan for Application Development and Submittal:**

A. At Application Design Phase: At least one public hearing must be held during the time when the applicant is determining what the community development and housing needs are which includes deciding which local project(s) or activity(s) to apply for funding. All residents, especially in the areas where funds will be used, should be encouraged to participate. The Public Notice for this hearing must include the following information:

- The amount of CDBG funds available; and,
- The kinds of activities that are available for funding.

Furthermore, at this hearing, the following information must be offered:

- An explanation of the CDBG program;
- An opportunity for attendees to ask questions and suggest possible uses of funds;
- Discussion of the National Objectives of the CDBG Program;
- Information about the amount of funding available, the range of possible activities that may be undertaken with CDBG funds, and the opportunities for citizen involvement as the program progresses; and,
- An invitation for written comments and how to submit such comments.

B. Prior to Submitting an Application for Funding: After the application has been prepared, and before it is submitted to the Department, the jurisdiction should hold a second hearing before the local governing body and must result in a Resolution to submit the application. The Public Notice for this hearing must include the following information:

- The application's dollar amount;
- The activities being proposed; and,
- A relocation plan, if residents will be relocated as a result of the proposed activity.

Furthermore, in this Application Submittal Hearing, the same items as in the Design Phase Hearing, listed above, should be covered. In addition, the jurisdiction should:

- Fully describe the proposed activity(s) in the application;
- Provide information about the amount of funding that is being requested for the entire application and the breakdown for each activity to be applied for;
- Describe where each activity will be carried out and how it will meet the National Objectives;

- If a proposed activity is likely to result in displacement, include the jurisdictions anti-displacement and relocation plans;
- Provide information on the estimated time schedule to accomplish the activity;
- For Planning and Technical Assistance (PTA) activities, state the amount of cash match required and the source of the cash match; and,
- Provide opportunity for attendees to comment on the program.

RECORDKEEPING

The applicant/Grantee should keep a record of all public hearings. The record should contain copies of the Public Notices, minutes of the hearings documenting that the contents of the Notice were discussed at the hearing, and a list of attendees and a summary of comments. If no comments were received, that should be noted in the record. We recommend reading the contents of the Notice into the minutes to ensure that all items are discussed. Attendees are not required to sign a sign-in sheet, but the file should show that a list was made available for sign-in at the start of the hearing. If attendees were present but did not sign or if no one attended, the file should so indicate.

DECISIONS REGARDING APPLICATION CONTENT/GRIEVANCES AND COMPLAINTS

The local governing body has the sole discretion of deciding the contents of an application for funding. Any allegations made by any resident of the community that the procedural or legal requirements of the program are being violated should be thoroughly investigated. Any written complaints and grievances must receive a written response within 15 days where practicable.

SAMPLE NOTICES

Sample Public Notices for use at the application design stage and the application submittal stage are given below. Copies of the affidavits of publication (or if posted, copies must be certified by city/county clerk) must be included in the application.

Use the following link and refer to Chapter 18 of the current State CDBG Grant Management Manual (GMM) for additional information on citizen participation requirements: [CDBG Grant Management Manual](#).

PUBLIC INFORMATION FILE REQUIREMENTS

CDBG applications and grant agreements are public information and are available for review by the public. Applicants are advised that information submitted to the Department may have to be made available to the public under the State Public Records Act unless an exemption under this Act applies to the information submitted and the applicant establishes a valid claim of confidentiality under such exemption.

SOME APPLICABLE PROVISIONS OF THE BROWN ACT

The Act, in its entirety, may be found here:

http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf

Some key provisions are below, but the Department strongly encourages all jurisdictions to ensure that they are, at a minimum, familiar and compliant with this Act.

CHAPTER IV. NOTICE AND AGENDA REQUIREMENTS

The Brown Act provides for three different types of meetings. Regular meetings occur at a time and location generally set by ordinance, resolution, or by-laws. At least 72 hours prior to a regular meeting, an agenda must be posted which contains a brief general description of each item to be transacted or discussed at the meeting. ...

...unless specifically exempted, all meetings must be conducted within the geographical boundaries of the body's jurisdiction. (§ 54954(b).)

1. Regular Meetings

Each legislative body, except for advisory bodies and standing committees, shall provide for the time and place for regular meetings by ordinance, resolution, or by-laws. (§ 54954(a).) If a body calls a meeting at a time or place other than the time or place specified for regular meetings, it is either a special or emergency meeting. Accordingly, the body must satisfy the appropriate notice requirement, and should indicate the type of meeting on the notice. Even where it is not required, the body may wish to provide additional notice in the form of the type of notice and agenda provided for a regular meeting.

Meetings of advisory bodies and standing committees for which 72-hour notice is provided, pursuant to section 54954.2, are considered regular meetings. (§54954(a).)

A. Agenda Requirement

At least 72 hours prior to a regular meeting, the body must post an agenda containing a brief general description of each item to be discussed or transacted at the meeting, including items to be discussed in closed session. (§ 54954.2(a).) The Act makes it clear that discussion items must be placed on the agenda, as well as items which may be the subject of action by the body.

The purpose of the brief general description is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body.

SAMPLE - NOTICE OF PUBLIC HEARING FOR DESIGN PHASE

Notice of Public Hearing for Discussion of Possible State CDBG Application

NOTICE IS HEREBY GIVEN that the *(jurisdiction)* will conduct a public hearing on *(date)* at *(time)*, at *(place)* in order to discuss possible applications for funding under the next fiscal year's (July 1 to June 30) State Community Development Block Grant (CDBG) Program and to solicit citizen input on possible activities to be included in the application.

The Community Development and Economic Development Allocations of the State CDBG program will publish a combined "Notice of Funding Availability" (NOFA) each program year. Eligible cities and counties may submit applications for CDBG funds under the NOFA. It is estimated that up to \$2,000,000 will be available in total. The Economic Development "Over-the-Counter" (OTC) Allocation requires a separate application with a maximum limit of \$5,000,000 per year. The NOFA also includes the Native American and Colonia's Allocations. The Native American Allocation is only for areas with high concentrations of low-income Native American residents, who are not part of a federally recognized Native American Indian tribe or Rancheria. The Colonia's funding is only for designated communities within 150 miles of the Mexican-American border.

ELIGIBLE ACTIVITIES UNDER THE ABOVE ALLOCATIONS IN THE NOFA CONSIST OF: HOMEOWNERSHIP ASSISTANCE AND HOUSING REHABILITATION PROGRAMS; PUBLIC FACILITY AND PUBLIC IMPROVEMENTS PROJECTS (INCLUDING PUBLIC IMPROVEMENTS IN SUPPORT OF NEW HOUSING CONSTRUCTION); PUBLIC SERVICE PROGRAMS, PLANNING STUDIES, ECONOMIC DEVELOPMENT BUSINESS ASSISTANCE AND MICROENTERPRISE ACTIVITIES. ELIGIBLE ACTIVITIES PAID FOR WITH STATE CDBG FUNDS MUST MEET ONE OR MORE OF THE THREE NATIONAL OBJECTIVES LISTED IN CDBG FEDERAL STATUTES AS FOLLOWS: BENEFIT TO LOW INCOME HOUSEHOLDS OR PERSONS; ELIMINATION OF SLUMS AND BLIGHT; OR MEETING URGENT COMMUNITY DEVELOPMENT NEED.

The *(jurisdiction)* anticipates submitting an application under the NOFA published during the next program year.

The purpose of this public hearing is to give citizens an opportunity to make their comments known regarding what types of eligible activities the *(jurisdiction)* should apply for under the State CDBG program. A separate public hearing will be held to discuss and approve the application prior to submittal to the State.

If you require special accommodations to participate in the public hearing, please contact *(contact name and phone number)*.

If you are unable to attend the public hearing, you may direct written comments to the *(jurisdiction)*, at *(mailing address)*, or you may telephone *(contact name and phone number)*. In addition, information is available for review at the above address between the hours of *(hours of availability)* on *(days of availability, e.g. Monday -Friday)*.

The *(jurisdiction)* promotes fair housing and makes all its programs available to low and moderate income families regardless of age, race, color, religion, sex, national origin, sexual preference, marital status or handicap.

SAMPLE SECOND NOTICE - NOTICE OF PUBLIC HEARING FOR APPLICATION SUBMITTAL

Notice of Public Hearing for Submittal of State CDBG Application

NOTICE IS HEREBY GIVEN that the *(jurisdiction)* will conduct a public hearing on *(date)* at *(time)*, at *(place)* in order to discuss the submittal of an application in response to the 2015 State Community Development Block Grant (CDBG) Notice of Funding Availability (NOFA), and to solicit citizen input.

The *(department/agency)* on behalf of the *(jurisdiction)* is applying for *(amount)* under the NOFA for the following eligible activities: *(list specific activities and dollar amounts applied for)*

NOTE: 1) *If activities are not listed, they will not be eligible for funding;*
2) *If any of the activities are likely to result in displacement, include the jurisdiction's anti-displacement and relocation plans in the Notice, stating that these plans will be discussed as part of the hearing.*

The purpose of the public hearing is to give citizens an opportunity to make their comments known on the proposed activities/application.

If you require special accommodations to participate in the public hearing, please contact *(contact name and phone number)*.

If you are unable to attend the public hearing, you may direct written comments to the *(jurisdiction)*, at *(mailing address)*, or you may telephone *(contact name and phone number)*. In addition, information is available for review at the above address between the hours of *(hours of availability)* on *(days of availability, e.g. Monday -Friday)*.

The *(jurisdiction)* promotes fair housing and makes all its programs available to low and moderate income families regardless of age, race, color, religion, sex, national origin, sexual preference, marital status or handicap.

As a final note to the jurisdiction regarding the Second Notice, please see Note #1 above: If an activity the jurisdiction wishes to apply for is not named in the Public Notice, it will not be eligible for funding!
