

**SUBCHAPTER 01K - ECONOMIC DEVELOPMENT ACTIVITY OF THE COMMUNITY  
DEVELOPMENT BLOCK GRANT PROGRAM**

**SECTION .0100 - GENERAL PROVISIONS**

**04 NCAC 01K .0101 PROGRAM PURPOSE AND OBJECTIVE**

The purposes and objectives of the North Carolina Community Development Block Grant program are set out in full in the North Carolina Administrative Codes Title 4, Subchapter 19L, as promulgated by the Division of Community Assistance of the Department of Commerce. While the Division of Community Assistance is the lead agency for the Community Development Block Grant Program, the Commerce Finance Center is responsible for the administration of activities conducted under the Economic Development section of that program. Economic Development projects and grant activities consist of projects which directly support the creation or retention of jobs, principally for persons of low and moderate family income (LMI) status. Sixty percent of jobs created shall be filled by persons with LMI status prior to being hired by the Employer, or who are documented as having LMI status at the time of project application in the case of retained jobs. If at any time during the grant period the percentage of jobs held by persons who qualified as LMI when hired drops below 51% of the jobs retained or created, the beneficiary or beneficiaries and the grantee shall be directly liable for repayment of the grant. All CDBG expenditures which directly assist participating private businesses must be provided as loan funds, and be repaid under terms established at the time the program funds are awarded to the local government grantee. Other program income, or a portion of other program income, such as connection fees, acreage development fees, or consideration received for the sale of public utilities to private concerns or regulated utilities shall be returned to the CDBG Economic Development Program and used to finance other such Economic Development projects.

*History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 24 C.F.R. 570.494; 42 U.S.C.A. 5301; Temporary Rule Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. December 1, 1992; Amended Eff. April 1, 1999; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

**04 NCAC 01K .0102 DEFINITIONS**

The following definitions apply to the Community Development Block Grant program Rules .0102 through .0404.

- (1) "Act" means Title I of the Housing and Community Development Act of 1974, P.L. 93-383, as amended.
- (2) "Applicant" means a local government which makes application pursuant to the provisions of this Subchapter.
- (3) "CDBG" means the State administered Community Development Block Grant Program.
- (4) "Chief Elected Official" of a local government means either the elected mayor of a city or the chairman of a county board of commissioners.
- (5) "Community Development Program" means the program of projects and activities to be carried out by the applicant with funds provided annually under this Subchapter and other resources.
- (6) "HUD" means the U.S. Department of Housing and Urban Development.
- (7) "Local Government" means any unit of general municipal or county government in the State.
- (8) "Low-Income Families" means those with a family income of 50 percent or less of median-family income. For purposes of such terms, the area involved and median income shall be determined in the same manner as provided for under the Act.
- (9) "Moderate-Income Families" means those with a family income greater than 50 percent and less than or equal to 80 percent of median-family income.
- (10) "Low and Moderate Income Persons" means members of families whose incomes are within the income limits of low and moderate income families as defined in Paragraphs (h) and (i) of this Rule.
- (11) "Metropolitan Area" means a standard metropolitan statistical area, as established by the U.S. Office of Management and Budget.
- (12) "Metropolitan City" means a city as defined by Section 102(a)(4) of the Act.
- (13) "Department" means the North Carolina Department of Commerce (DOC).

- (14) "Project" means any eligible business as defined in Paragraph (o) of this Rule and which the Economic Development Grant sector of the CDBG Program may consider so long as the project business (or businesses) presents separate, identifiable opportunities to create or retain jobs, principally for low and moderate income people. Such jobs must be created within the grant period.
- (15) The following definitions determine eligible business types for projects for which CDBG assistance is requested:
- (a) All business types identified as eligible for New and Expanding Business tax incentives under the North Carolina William S. Lee Quality Jobs and Business Expansion Act (Article 3A of Chapter 105 G.S. 105, Article 3A), as amended; and
  - (b) Other project businesses that provide public benefit and can reasonably be interpreted as being eligible for CDBG assistance under Sections 105(a)(14) and 105(a)(17) of the Housing and Community Development Act of 1974, as amended. (Also see Rule .0105 of this Subchapter regarding projects not to be considered for funding in N. C.)
- (16) "Utility Project" shall mean any water, sewer, electric or natural gas utility improvement needed to provide services to the economic development project. The applicant shall delineate which projects are to be owned and operated by a unit of government, which projects are to be owned by a unit of government and leased to an operating utility company, and which projects are to be owned and operated by a private utility company. If the project is for infrastructure which shall be leased to and maintained by a privately owned and regulated natural gas distributor, the application will state the terms of the lease between the unit of government and the private entity.

*History Note:* Authority G.S. 143B-431; 24 C.F.R. 570.489;  
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 Eff. December 1, 1992;  
 Amended Eff. August 1, 2000;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

#### **04 NCAC 01K .0103 ELIGIBLE APPLICANTS**

- (a) All counties except those designated by HUD as urban counties and all cities except those designated by HUD as entitlement cities or urban county cities may be applicants under this Economic Development Program.
- (b) Eligibility to submit an application shall depend upon an applicant's satisfactory administrative performance with present or prior CDBG program projects. A letter of certification of eligibility from the Division of Community Assistance shall be evidence of eligibility.

*History Note:* Authority G.S. 143B-431; 42 U.S.C.A. 5301;  
 Temporary Adoption Effective July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
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#### **04 NCAC 01K .0104 FUNDING LIMITATIONS**

Economic Development Grant awards are limited by:

- (1) maximum dollar amounts for each unit of government determined by the amount of (HUD) money received in any one funding year; and
- (2) the State-HUD approved program statement of operation for each respective CDBG program year. Those program and project maximums are specifically set out in the Grant Agreement between the state and HUD and in the official program statement issued by the State and approved by HUD.

*History Note:* Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;  
 Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

*Eff. December 1, 1992;*  
*Amended Eff. April 1, 1999;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

#### **04 NCAC 01K .0105 PROJECTS NOT TO BE CONSIDERED FOR FUNDING**

(a) Projects that have evidence of prior major financial commitment by the local government applicant or the proposed project shall not be eligible for CDBG assistance. After an operator or beneficiary becomes economically committed to a project, it shall not be eligible for funding and the unit of government shall not be eligible to request any funding assistance to serve that project with utilities or CDBG loan assistance. "Economic commitment" is not a quantitative measure, but those types of prohibited situations shall include the following:

- (1) when construction contracts have been signed;
- (2) when equipment purchase orders for site specific installations have been issued;
- (3) when true, simple options for the purchase of an existing facility are bound with deposits that are so large that the option constitutes a sales contract; or
- (4) when conditions or contingencies in a contract of sale have all been met.

(b) Proposed projects that are specifically prohibited by current State and HUD rules due to lack of public benefit and potential failure to meet required program objectives shall not be eligible for CDBG assistance when the following occurs:

- (1) provide general, non-specific promotion of a community as a whole;
- (2) assist professional sports teams;
- (3) assist privately-owned recreational facilities that would serve a predominantly higher-income clientele, where such recreational benefit clearly outweighs employment or other benefits to LMI persons;
- (4) acquire land for which no specific purpose has yet been identified; or
- (5) assist a for-profit business while that business or any other business owned by the same person, persons or entity is the subject of unresolved findings of non-compliance relating to present or previous CDBG assistance provided by the applicant.

*History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;*  
*Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Eff. December 1, 1992;*  
*Amended Eff. July 1, 2012; April 1, 1999;*  
*Amended Eff. April 1, 1999;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

### **SECTION .0200 - APPLICATION PROCEDURE**

#### **04 NCAC 01K .0201 GENERAL**

This Section provides the application procedures which shall be followed by applicants before the Secretary will make a final decision relative to project approval. The Secretary may request additional facts, details and informed or expert opinions on facts or conditions described in the application. Narratives and statements of fact will be attested as true and accurate by elected officials or by a company official or official objectives designees.

*History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;*  
*Temporary Adoption Effective July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Eff. December 1, 1992;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

#### **04 NCAC 01K .0202 PRE-APPLICATION CONFERENCE**

*History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 24 C.F.R. 570.496;*

*Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the Permanent rule becomes effective, whichever is sooner;*  
*Eff. December 1, 1992;*  
*Amended Eff. April 1, 1999;*  
*Repealed Eff. July 1, 2012.*

#### **04 NCAC 01K .0203      APPLICATIONS**

Each Applicant that proceeds with a formal application shall take the following steps:

- (1) the applicant may employ or designate an application preparer and service provider for its application. If applicable, federal procurement guidelines shall be followed. Documentation of compliance or non-applicability shall be provided to the Commerce Finance Center.
- (2) The applicant may proceed with three critical areas of the application as follows:
  - (a) the environmental assessment, or the state clearing house review process;
  - (b) the determination of Davis-Bacon applicability and the pertinent wage decision; and
  - (c) the second project specific public hearing.
- (3) All applications for CDBG funds shall include a disclosure report. Such report, in addition to requesting identifying information and the amount of funds requested, shall disclose whether or not, and the extent, to which interested parties have a financial interest in the application. Interested parties include developers, contractors, consultants, individuals, entities including units of government with a financial interest greater than fifty thousand dollars (\$50,000) or 10 percent of the assistance requested, whichever is lower. Additionally, the report shall show any sources and uses of funds for the project which are not identified in the application's source and use of funds statement.
- (4) The unit of government shall complete its application on forms developed by the Department and made available by the Commerce Finance Center.
- (5) Any application which has incomplete factual data or lacks sufficient detail may be returned to the applicant with specific reasons for the return being stated in writing. Upon receipt of the requested information the Department's review of the application shall be completed.
- (6) In the event that an application is received at a time when current year funding is no longer available (all funds have been allocated), the Department shall so advise the applicant of the funding status. By mutual agreement between the applicant and the Department, the application may be retained by the Department for final review of the application and the proposed project when CDBG program funds are available.

*History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;*  
*Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Eff. December 1, 1992;*  
*Amended Eff. April 1, 1999;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

#### **04 NCAC 01K .0204      DISCRETIONARY PUBLIC HEARING BY THE DEPARTMENT**

*History Note: Authority G.S. 143B-431; 42 U.S.C.A. 5301;*  
*Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Eff. December 29, 1992;*  
*Amended Eff. April 1, 1999;*  
*Repealed Eff. July 1, 2012.*

#### **04 NCAC 01K .0205      FORMAL APPLICATION PROCEDURES: APPROVAL**

- (a) The Secretary shall prepare a Letter of Approval and Grant Offer setting forth all findings and grant conditions.
- (b) The chief elected official who signed the original application shall be the addressee of the Letter of Approval and Grant Offer from the Secretary.

*History Note:* Authority G.S. 143B-431; 42 U.S.C.A. 5301;  
Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
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mended Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

**04 NCAC 01K .0206 FORMAL APPLICATION PROCEDURES: DENIAL**

- (a) The Secretary shall indicate in writing the reasons for denial of an application.
- (b) The Secretary shall indicate in writing that the unit of government may prepare a presentation, either written or oral which speaks factually to the unresolved issues. The Secretary or designee shall be present at the meeting to hear and discuss the issues with the unit of government. The unit of government shall persuade the Secretary that all the necessary findings should be made.
- (c) Where the unit of government does persuade the Secretary, further procedures shall be as in Rule .0205 of this Section.
- (d) Where the unit of government does not persuade the Secretary, the Secretary shall notify the unit of government the decision in writing, again specifying the reasons for denial.

*History Note:* Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;  
Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
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**04 NCAC 01K .0207 REIMBURSEMENT OF DEPARTMENT EXPENSE**

*History Note:* Authority G.S. 143B-431; 24 C.F.R. 570-489;  
Eff. December 29, 1992;  
Repealed Eff. July 1, 2012.

**SECTION .0300 - FINDINGS REQUIRED FOR APPROVAL**

**04 NCAC 01K .0301 GENERAL**

In order to approve a project it is necessary for the Secretary to find that:

- (1) the project shall have a measurable beneficial and desirable impact on the community; and
- (2) that the funding for the project is appropriate under state rules and federal rules and guidelines for the Community Development Block Grant programs.

*History Note:* Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;  
Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

**04 NCAC 01K .0302 CRITERIA FOR MAKING NECESSARY FINDINGS**

The Department shall determine criteria for making the approval findings, as follows:

- (1) The Department shall determine that the project business is capable of completing its proposed project activities in a successful manner. Capable means that there is a business history, a financial condition, or other outstanding business qualifications which support the conclusion that the project business is capable of operating in a successful manner;

- (2) The Department shall determine that the project is identifiable and free-standing, with its own measurable and significantly beneficial impact. Identifiable and free-standing means a project which can literally be separated out and specifically identified and determined as the project being discussed, and as such shall have its own measurable and significantly beneficial result at the project location;
- (3) The Department shall determine that the project shall be completed. The provision of legally binding commitments from the grantee and the beneficiary employer or employers shall be sufficient evidence that the project is to be completed;
- (4) The Department shall determine that there is a substantial benefit to persons of low and moderate income. Substantial benefit to persons of low and moderate income may be evidenced by employer commitments to assure that 60% of jobs created or saved shall be held by persons of prior low and moderate family income status;
- (5) The Department shall determine that there is a favorable ratio or relationship between the jobs created and the number of CDBG dollars invested in the project. Favorable shall mean that a project will create or retain jobs at a rate equal to a ratio of CDBG dollars required for the type of project company involved, and the local government has committed to meet the local to CDBG match requirement as required by current program rules and for the project type proposed.
- (6) The Department shall determine that there is a favorable relationship between the total dollars invested in the project, the amount of CDBG money invested, and the anticipated taxes or other revenues to either or both the municipality and county having taxing authority and jurisdiction.
- (7) The Department shall determine for jobs to be created (or retained), the NC Enterprise Tier or Development Zone designation level of the project site shall be considered for each application, along with the latest unemployment figures and impact on the actual number of unemployed persons. To the extent feasible, priority consideration shall be given for CDBG assistance for projects in the most distressed areas of the state.
- (8) The Department shall determine that required compliance with federal and state rules and legal requirements are documented by the grantee. The extent of documentation required shall be that as considered as reasonable by the Director of the Commerce Finance Center.
- (9) The Department shall determine that if the project involves retail, service or other local market business, the application shall include surveys or other market studies as evidence that similar businesses in the 15-25 mile labor work force area support the project and that the project shall not jeopardize the jobs in their businesses; and
- (10) The Department shall determine that the application presents evidence for a finding that the local government applicant, or the project business in the case of a loan project, has a reasonable and appropriate gap or need for the CDBG assistance requested.

*History Note:* Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;  
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## **SECTION .0400 - GRANT ADMINISTRATION**

### **04 NCAC 01K .0401 GRANT AGREEMENT AND FUNDING APPROVAL**

When the Secretary approves the project, offer of the grant agreement and funding approval and all modifications shall accompany and be attached to the communication of project approval. When the grant agreement is received by the unit of government, it shall be signed and returned to the Department and shall be deemed to be effective.

*History Note:* Authority G.S. 143B-431; 24 C.F.R. 570.489;  
 Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
 Eff. December 1, 1992;  
 Amended Eff. April 1, 1999;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

#### **04 NCAC 01K .0402 METHOD OF PAYMENT**

Recipients shall receive payments based on requisitions submitted for immediate disbursing needs as approved by the Department. No funds shall be kept on deposit for more than three banking days by the local government grantee. If for any reason the grant costs for which funds were requisitioned cannot be paid as intended within three days, the local government finance officer shall return the unused funds to the Commerce Finance Center.

*History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5304(g);  
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#### **04 NCAC 01K .0403 METHOD OF ADMINISTRATION**

Units of government may contract with authorized entities certain responsibilities affecting Economic Development projects and monitoring the compliance of beneficiaries with grant conditions. Such a delegation by contract will not absolve the unit from its responsibilities for compliance with state and federal guidelines or grant agreements.

*History Note: Authority G.S. 143B-431; 24 C.F.R. 570.494;  
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#### **04 NCAC 01K .0404 MONITORING AND GRANT CLOSE OUT**

The Commerce Finance Center shall provide copies of the forms and documents needed to fulfill grant requirements in an annual performance report and in a final grant close out audit. Location visits and conferences with benefiting employers shall be conducted by the Commerce Finance Center. A minimum of one on-site visit for monitoring purposes by Commerce Finance Center staff is required before the active grant agreement between the State and the local government grantee can be closed.

*History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489;  
Eff. December 1, 1992;  
Amended Eff. April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

#### **04 NCAC 01K .0405 ADMINISTRATIVE HEARINGS**

(a) Recipients may contest departmental actions with respect to this Subchapter under the Contested Case Hearing Procedures set forth in G.S. 150B and 26 NCAC 3 - Office of Administrative Hearings, Hearings Division.

(b) The Department may also commence contested case hearing procedures against recipients pursuant to G.S. 150B and 26 NCAC 3 - Office of Administrative Hearings, Hearings Division.

*History Note: Authority G.S. 143B-431;  
Eff. December 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*