

VOLUNTARY COMPLIANCE AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AND

STATE OF NEBRASKA
DEPARTMENT OF ECONOMIC DEVELOPMENT

CASE NUMBERS: Title VI Review Number: 07-11-R002-6
Section 504 Review Number: 07-11-R002-4

VOLUNTARY COMPLIANCE AGREEMENT

I. INTRODUCTION

The State of Nebraska's Department of Economic Development (DED) (hereinafter the State or Recipient) administers over \$54,000,000 in federal financial assistance provided by the United States Department of Housing and Urban Development (hereinafter the Department or HUD).

The Department conducted a compliance review pursuant to its law enforcement responsibilities under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1 and the implementing regulations at 24 C.F.R. Part 1 (Title VI); Section 109 of Title I of the Housing and Community Development Act of 1974, 42 U.S.C. § 5309 and the implementing regulations at 24 C.F.R. Part 6 (Section 109); and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and the implementing regulations at 24 C.F.R. Part 8 (Section 504). HUD's review also included assessing whether the State is complying with its obligation to affirmatively further fair housing (AFFH) pursuant to Section 104 of Title I of the Housing and Community Development Act of 1974 (Title I), 42 U.S.C. § 5304 and the implementing regulations at 24 C.F.R. Part 570, and whether the State is complying with other civil rights requirements of HUD's Community Development Block Grant (CDBG) Program regulations at 24 C.F.R. Parts 570 and 91 and HOME Program regulations at 24 C.F.R. Part 92.

The compliance review team conducted the on-site review during the week of July 25, 2011. The specific areas of examination included: the State's compliance with AFFH obligations; limited English proficiency (LEP) services; citizen participation; benefits, services and methods of administration; Section 504 program requirements; a limited physical accessibility analysis; record-keeping; Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) data; and the State's monitoring of sub-recipients for compliance with civil rights requirements.

At the time of the review, federal funds from HUD administered by the State included at least the following federal funds through the CDBG Program: FY 2008, \$12,348,630; FY 2009, \$12,527,752; FY 2010, \$13,581,017; for a three year CDBG grant total of \$38,457,399. In addition, the State was administering HOME Program grants from HUD in the following amounts: FY 2008, \$4,912,361 (plus \$32,176 in American Dream Down Payment Initiative (ADDI) funds) Total \$4,944,537; FY 2009, \$5,582,937; FY 2010, \$5,599,258; for a three year HOME grant total of \$16,126,732. The combined total for both the CDBG and the HOME programs is \$54,584,131.

As a result of the compliance review, the Department issued a Letter of Findings (LOF) dated May 31, 2013, identifying findings of noncompliance with specific civil rights requirements of Title VI and Section 504. The review found the State has not taken reasonable steps to provide meaningful access to federally funded programs for LEP persons pursuant to the nondiscrimination requirements of Title VI at 24 C.F.R. § 1.4. The review further revealed the State has not monitored its sub-recipients to ensure sub-recipients are complying with LEP obligations pursuant to Title VI and 24 C.F.R. § 1.4. The review team found that the State and its sub-recipients have not implemented any of the actions recommended in HUD's LEP Guidance pursuant to Title VI.

Further, the Department also identified a finding of non-compliance with an accessibility requirement of Section 504 in a public area where citizens do business. The State office has a counter window for the public to speak to State personnel, but the height of the State's business counter at the DED office was not compliant with the Uniform Federal Accessibility Standards (UFAS). The counter was not at a height between 28 and 36 inches. (*See* UFAS § 7.2 Service Counters).

The Recipient agrees to enter this Voluntary Compliance Agreement (hereinafter "VCA" or "Agreement") in order to address the issues raised in the Department's LOF and to ensure compliance with its responsibilities under Title VI, Section 504 and the implementing regulations.

The parties agree that nothing contained in this VCA shall be construed to be a final finding or determination by the Department that the State or any of its agents or employees intentionally engaged in unlawful practices that may have had the effect of illegally discriminating based on race, color, national origin, gender or disability. The parties agree that nothing contained in this document shall be construed as an admission of liability by the State or any of its agents or employees with respect to the Department's findings.

The Department and the State, having agreed to settle and resolve voluntarily the Department's findings without the necessity of formal evidentiary hearings or other judicial processes, hereby agree and consent to the terms of this Agreement.

II. REGULATORY AND LEGAL AUTHORITY

A. Title VI of the Civil Rights Act of 1964 and implementing regulations:

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides that no person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity "to effectuate the provisions of [section 601] . . . by issuing rules, regulations, or orders of general applicability." 42 U.S.C. § 2000d-1.

HUD regulations promulgated pursuant to Section 602 prohibit recipients from "utiliz[ing] criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color or national origin." 24 C.F.R. § 1.4(b).

B. Executive Order 13166:

On August 11, 2000, President Clinton issued Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency. It was published in the Federal Register on August 16, 2000. 65 Fed. Reg. 50121. The order directs every federal agency that provides financial

assistance to non-federal entities to publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

On August 16, 2000, the Department of Justice (DOJ) issued a general guidance document addressed to "Executive Agency Civil Rights Officers" setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. The DOJ guidance was titled Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons with Limited English Proficiency and published in the Federal Register. 65 Fed. Reg. 50123. See also final DOJ Guidance published in the Federal Register on June 18, 2002. 67 Fed. Reg. 41455.

C. HUD's Final Guidance Regarding Title VI Prohibition Against National Origin Discrimination Affecting LEP Persons:

Based on the model guidance from DOJ, HUD published its proposed rule on December 19, 2003. With no significant changes, HUD published the final rule, Notice of Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, on January 22, 2007. 72 Fed. Reg. 2732 (HUD LEP Guidance) (attached).

D. Section 504 of the Rehabilitation Act of 1973 and implementing regulations:

Section 504 states that ". . . no otherwise qualified individual with [disabilities] in the United States shall, solely by reason of his or her [disability], be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development." 29 U.S.C. § 794; 24 C.F.R. § 8.1.

E. Section 104 of Title I of the Housing and Community Development Act of 1974 and implementing regulations:

Section 104 of Title I states that ". . . the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C. § 2000a et seq.] and the Fair Housing Act [42 U.S.C. § 3601 et seq.], and the grantee will affirmatively further fair housing." 42 U.S.C. § 5304(b)(2). In addition, HUD regulations for the CDBG program provide: "The Act requires the state to certify to the satisfaction of HUD that it will affirmatively further fair housing. The act also requires each unit of general local government to certify that it will affirmatively further fair housing. The certification that the State will affirmatively further fair housing shall specifically require the State to assume the responsibility of fair housing planning by: (1) Conducting an analysis to identify impediments to fair housing choice within the State; (2) Taking appropriate actions to overcome the effects of any

impediments identified through that analysis; (3) Maintaining records reflecting the analysis and actions in this regard; and (4) Assuring that units of local government funded by the State comply with their certifications to affirmatively further fair housing." 24 C.F.R. § 570.487(b).

F. Section 109 of Title I of the Housing and Community Development Act of 1974 and implementing regulations:

Section 109 of Title I states that ". . . no person in the United States shall, on the grounds of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance." 42 U.S.C. § 5309; 24 C.F.R. § 6.1.

III. DEFINITIONS

Beneficiary: The ultimate consumer of HUD programs who is LEP and receives benefits from a HUD Recipient. HUD LEP Guidance.

Federal Financial Assistance: This includes (1) grants, loans, and advances of federal funds, (2) the grant or donation of federal property and interests in property, (3) the detail of federal personnel, (4) the sale and lease of, and the permission to use federal property or any interest in such property without consideration or at nominal consideration, or at a consideration which is reduced for the purpose of assisting the Recipient, or in recognition of the public interest to be served by such sale or lease to the Recipient, and (5) any federal agreement, arrangement, or other contract which has one of its purposes the provision of assistance. The term "Federal financial assistance" does not include a contract of insurance or guaranty. 24 C.F.R. § 1.2(e).

Limited English Proficient (LEP) Person: Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English because of their national origin. HUD LEP Guidance.

Language Assistance Plan (LAP): A written implementation plan that addresses identified needs of the LEP persons they serve. Recipients should have a process for continuously monitoring and updating the plan. HUD LEP Guidance.

Recipient: Any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, or who otherwise participates in carrying out such program or activity, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity. 24 C.F.R. § 1.2(f).

Vital Document: Any document that is critical for ensuring meaningful access to the Recipient's major activities and programs by beneficiaries generally and LEP persons specifically. HUD LEP Guidance.

Uniform Federal Accessibility Standards (UFAS): The standards for the design, construction, and alteration of buildings so that they are readily accessible to and usable by individuals with disabilities. Effective July 11, 1988, the design, construction, or alteration of buildings in conformance with sections 3-8 of the UFAS shall be deemed to comply with the accessibility requirements of HUD's Section 504 regulations. 24 C.F.R. § 8.32(a).

IV. GENERAL PROVISIONS

- A.** The term of this Agreement shall be for a period of three years from March 1, 2014, which will serve as the effective date of this Agreement for purposes of calculating timeframes set out in this Agreement. This Agreement will only become effective on March 1, 2014, if it has been signed by the Recipient and the Office of Fair Housing and Equal Opportunity (FHEO) Director for Region VII, or her designee.
- B.** This Agreement is binding upon all of the officers, trustees, directors, agents, employees, heirs, successors and assigns of the State and HUD, when acting in their official capacities on behalf of either the State or HUD.
- C.** This Agreement does not in any way limit or restrict the Department's authority to investigate any complaints against the Recipient made pursuant to Title VI, Section 504, Section 109, the Fair Housing Act, or any other statutory or regulatory authority within the Department's jurisdiction.
- D.** The Recipient's failure to meet the terms of the Agreement will be considered a breach of the Agreement.
- E.** No amendment to, modification of, or waiver of any provision of this Agreement shall be effective unless all the following conditions are met: (a) all signatories to the Agreement are notified in advance of the proposed amendment, modification, or waiver; (b) the amendment, modification, or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by an authorized representative of the Recipient and the FHEO Director for Region VII, or her designee. Any such amendment, modification, or waiver shall be effective only in the specific instance and for the specific purpose for which given.
- F.** The Agreement does not increase or diminish the ability of any person or class of persons to exercise their rights under Title VI, Section 504, Section 109, the Fair Housing Act, or any other federal, state, or local civil rights statute or authority. This Agreement does not create any private right of action for any person or class of persons not a party to this Agreement.
- G.** This Agreement will be a public document upon its effective date. A copy of this Agreement shall be made available to any person for his/her review, in accordance with the Department's Freedom of Information Act and Privacy Act Procedures.
- H.** For the purposes of this Agreement, if the reporting day falls on a weekend or a federal holiday, the report will be due the first business day after the weekend or holiday.

- I. This Agreement does not supersede, or in any manner change the rights, obligations and responsibilities of the parties under any and all court orders, or settlements of other controversies involving compliance with federal or state civil rights statutes.
- J. This Agreement does not affect any requirements for the Recipient to comply with all requirements of Title VI and Section 504 not addressed in this Agreement.
- K. The recipient shall designate appropriate personnel to coordinate compliance with this Agreement and communicate with the Department about the Agreement.
- L. For purposes of this Agreement, the required reports and documentation of compliance must be submitted to:

Betty J. Bottiger, Director
Office of Fair Housing and Equal Opportunity, Region VII
U.S. Department of Housing and Urban Development
Gateway Tower II
400 State Avenue
Kansas City, KS 66101-2406

V. SPECIFIC PROVISIONS

A. Pursuant to the non-discrimination requirements of Title VI at 24 C.F.R. § 1.4, the State is required to take reasonable steps to provide meaningful access to federally funded programs for LEP persons. To comply with their Title VI LEP obligations, the State agrees to take the following actions. (Reference the attached HUD LEP Guidance for comprehensive guidance, examples and explanations regarding completing the four-factor analysis and LAP.)

1. Four-Factor Analysis. Within sixty (60) days of the effective date of this Agreement (March 1, 2014), the Recipient shall apply the Four-Factor Analysis in the HUD LEP Guidance and shall submit a copy to the Department. This shall include determining the following:

- a) Number or proportion of LEP persons eligible to be served or likely to be encountered by the program, supported by census data or other relevant data;
- b) Frequency with which LEP persons come into contact with the program;
- c) Nature and importance of the program, activity or service; and
- d) The resources available to execute the program and the costs of providing LEP services.

2. Language Assistance Plan (LAP). Within one hundred and twenty (120) days of the effective date of this Agreement (March 1, 2014), the Recipient shall develop a written LAP to address the needs identified in the Four-Factor Analysis conducted pursuant to Paragraph 1

above, and submit it to the Department for the Department's review and approval. The LAP shall include:

- a) Procedures the Recipient will use to identify LEP persons with whom they have contact, the size of LEP populations, and the languages of the LEP populations;
- b) Points and types of contact the Recipient may have with LEP persons;
- c) Ways in which language assistance will be provided;
- d) Plan for outreach to LEP community;
- e) Plan for training staff members on the LEP Guidance and the LAP, including specific provisions for training of staff who are responsible for monitoring sub-recipients;
- f) List of vital document(s) to be translated, the languages into which they will be translated and the timetable for translations;
- g) Plan for translating informational materials that detail services and activities provided to beneficiaries;
- h) Plan for providing appropriately translated notices to LEP persons;
- i) Plan for providing interpreters for large, medium, small, and one-on-one meetings;
- j) Plan for developing community resources, partnerships, and other relationships to help with the provision of language services; and
- k) Provisions for monitoring and updating the LAP.

3. Within thirty (30) days of the Department's approval of the LAP, the Recipient shall provide a copy of the final approved LAP to each of its employees who may be in contact with LEP persons or whose responsibilities include monitoring of sub-recipients.

B. Pursuant to 24 C.F.R. § 570.492, the State is required to monitor whether its sub-recipients have taken reasonable steps to provide meaningful access for LEP persons to the sub-recipients' federally funded programs in accordance with Title VI and 24 C.F.R. § 1.4.

1. Notice to Sub-recipients. Within one hundred and twenty (120) days of the Department's approval of the Recipient's LAP, the Recipient shall provide written notice, including guidance and technical assistance, to all of the sub-recipients in the State CDBG program regarding the obligations of sub-recipients to provide appropriate LEP services to ensure access to federally funded programs to comply with Title VI. The Recipient shall provide a copy of the written notice to HUD at least ten (10) days prior to disseminating the notice to sub-recipients. This notice shall:

- a) Inform sub-recipients they must take reasonable steps to provide meaningful access to eligible LEP persons to comply with Title VI requirements and provide a link to the HUD LEP Guidance and other technical assistance resources.
- b) Recommend that sub-recipients follow the HUD LEP Guidance and conduct a Four-Factor Analysis to determine the need for LEP services in their program;
- c) Recommend that sub-recipients complete a LAP, if necessary, based on the Four-Factor Analysis; and
- d) Require sub-recipients to maintain records regarding their efforts to comply with Title VI LEP obligations, including documents related to the Four-Factor Analysis, the LAP, and LEP services provided to eligible persons. Such records shall be available for State monitoring reviews of sub-recipients conducted pursuant to 24 C.F.R. § 570.492. See 24 C.F.R. § 570.490(b).

2. Training to Sub-recipients. Within one hundred and eighty (180) days of the Department's approval of the Recipient's LAP, the Recipient shall provide training to sub-recipients on Title VI LEP obligations, including applying the Four-Factor Analysis, completing a LAP, and providing LEP services to eligible persons. Thereafter, the Recipient shall include training on LEP obligations as part of its annual training to sub-recipients of the State CDBG program and shall provide technical assistance to sub-recipients, as necessary, to assist sub-recipients in meeting their Title VI obligations.

- a) The Recipient shall provide evidence of the completion of the training, including a list of sub-recipients in attendance, to HUD with the Bi-annual Reports set out in Section VII of this Agreement.

3. Monitoring of Sub-recipients. The Recipient shall monitor sub-recipients for compliance with Title VI LEP obligations when it conducts regular compliance monitoring of sub-recipients as required by HUD regulations. See 24 C.F.R. § 570.492. The Recipient shall maintain appropriate monitoring records to facilitate HUD reviews. See 24 C.F.R. § 570.490; 24 C.F.R. § 570.493.

- a) Within ninety (90) days of the Department's approval of the Recipient's LAP, the Recipient shall update monitoring forms or checklists to include a section addressing LEP services and shall provide a copy to HUD.

C. Pursuant to the non-discrimination requirements of Section 504, the State is required to make its business counter accessible to and usable by persons with disabilities.

- 1. The height of the State's business counter at the DED's office window was not compliant with UFAS, as it was too high.
- 2. Within one-hundred and twenty (120) days of the effective date of this Agreement, the Recipient shall modify the height of the business counter to comply with UFAS § 7.2, which requires the counter to be between 28 and 36 inches. (Service Counters).

3. Within one hundred and fifty (150) days of the effective date of this Agreement, the Recipient shall submit to the Department a certification that the service counter modification is compliant with UFAS. The Recipient shall submit documentation (e.g. photograph, repair receipts, and/or work orders) supporting that they have performed the remedial action.

VI. APPROVAL PROCESS

- A. Upon submission by the Recipient, the Department will provide its approval, or comments, within forty-five (45) days of receipt of the LAP. The Department will provide technical assistance to the Recipient in modifying the LAP, if needed.
- B. Recipient will have thirty (30) days from receipt of the Department's comments to modify the LAP in accordance with the Department's comments and resubmit for approval.
- C. The Department will notify the Recipient in writing of final approval of the Recipient's LAP. The date of this written notice will serve as the date of the Department's approval of the LAP for purposes of calculating timeframes set out in this Agreement.
- D. Recipient will implement the approved LAP within thirty (30) days of the Department's approval of the LAP.

VII. REPORTING AND RECORDKEEPING

- A. **Bi-Annual Reporting.** The Recipient will submit an Agreement Implementation Report ("Report") on a bi-annual basis that quantifies all requests for LEP services, LEP services that have been provided, and also identifies all actions taken to implement the Agreement.
 1. The first Report will be due October 1, 2014. Thereafter, Reports will be due every six months, on April 1 and October 1, for the duration of the Agreement.
 2. Each Report shall contain a certification of or a report on the status of the items that have been completed pursuant to Section V. of this Agreement.
 3. Each Report shall contain a summary and a numerical count of all requests for LEP services and all LEP services that have been provided by the Recipient.
 4. Each Report shall contain a narrative regarding the Recipient's monitoring of sub-recipients' LAPs and LEP compliance and provide an overview of the Recipient's findings.
 5. In the Reports due October 1, 2015 and October 1, 2016, the Recipient will submit an updated LAP to HUD for approval. If the Recipient has not updated the LAP, the Report shall contain an explanation of why the Recipient's current LAP is effective and sufficient and does not require updating.

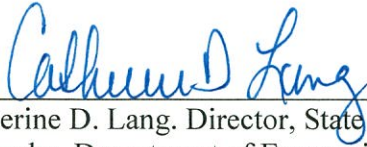
B. Recordkeeping. During the term of this Agreement, the Recipient shall maintain the following records and upon request, the Recipient shall make these records available for review by the Department. See 24 C.F.R. §§ 570.490, 570.492 and 570.493.

1. The Recipient shall maintain a monitoring file for each sub-recipient. The file will include:
1) any documentation regarding any LEP guidance or technical assistance provided by the Recipient; and 2) any documentation of Four-Factor Analyses and LAPs, or comparable documents, that were prepared by sub-recipients pursuant to Section V.B. of this Agreement.
2. The Recipient shall maintain files containing documentation of its efforts to meet the obligations of this Agreement.

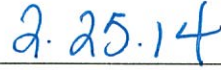
VIII. MONITORING AND COMPLIANCE WITH THIS AGREEMENT

- A. The Department will monitor compliance with this Agreement, which may include, but is not limited to: reviewing Bi-annual Reports; interviewing the Recipient's staff and beneficiaries; conducting on-site reviews; and examining documents. By this Agreement, the Recipient assures full cooperation with the monitoring review undertaken by the Department.
- B. The Department will determine if the Recipient has complied with the terms of this Agreement. The Recipient retains any due process or other rights to review or appeal the Department's determination. It is understood that no conditions in this Agreement, however, will limit or restrict the Department's legal rights to enforce Title VI, Section 504 or other applicable laws and regulations.
- C. Upon a finding of material non-compliance with this Agreement, HUD will provide the Recipient with a written statement specifying the facts of the alleged material non-compliance and a reasonable opportunity to resolve or cure the alleged material non-compliance including an opportunity to meet and provide evidence supporting compliance. If after the above process, the Recipient has not satisfactorily resolved the claims of material non-compliance, the Department may take any contractual, statutory, administrative or regulatory remedy available to the Department to resolve the outstanding findings of non-compliance.
- D. Prior to the expiration of any timeframe in this Agreement, the Recipient may submit a request for an extension supported by documentation of good cause. The Department shall review requests for extensions and grant them if they are reasonable.
- E. Failure by HUD to enforce this entire Agreement or any provision in the Agreement with regard to any deadline or any other provision herein shall not be construed as a waiver of its right to do so regarding to other deadlines and provisions of this Agreement. Furthermore, HUD's failure to enforce this entire Agreement or any provision thereof shall not be construed as a waiver of any obligation of the Recipient under this Agreement.

IX. SIGNATURES



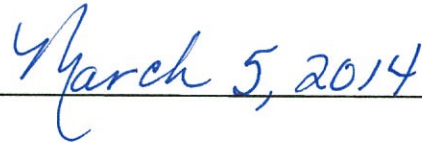
Catherine D. Lang, Director, State of
Nebraska, Department of Economic
Development



Date



Betty J. Bottiger, Director,
Office of Fair Housing and Equal
Opportunity, Region VII
U.S. Department of Housing and Urban Development



Date