

CHAPTER 5. INTERGOVERNMENTAL REVIEW OF WATER/SEWER PROJECTS  
EXECUTIVE ORDER 12372

- 5-1 PURPOSE. Grantees are required by Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, to complete the E.O. 12372 review process and obtain a written release from HUD before obligating or expending CDBG funds for the planning or construction (reconstruction, rehabilitation, or installation) of water or sewer facilities. Such facilities include storm sewers as well as all sanitary sewers, but do not include water or sewer lines connecting a structure to the lines in a public right-of-way or easement. HUD has issued implementing regulations at 24 CFR Part 52.
- 5-2 TIMING
- A. List of Grantees. Field Offices should provide a list of the grantees which are expected to receive entitlement funds to each State contact between October 1 and October 31 of each fiscal year. The information should include the program year start date for each grantee. A guideform letter is included as Exhibit 5-1.
- B. Written Notice. In addition, Field Offices are to provide written notice of release of funds for activities subject to E.O. 12372 review immediately following the end of the 65 day review period or when all required actions have been completed in accordance with paragraph 5-4, below.
- 5-3 GENERAL REQUIREMENTS. E.O. 12372 allows each State to determine whether or not it will review CDBG entitlement activities and to establish its own process for review and comment. Headquarters has separately provided Field Offices with a list of States that have included the CDBG Entitlement program in their review process and with the name of each State's contact for E.O. 12372 reviews. It is the responsibility of the grantee to initiate the E.O. 12372 review process if it proposes to use its CDBG funds for activities subject to review. If the E.O. is applicable, the grantee will indicate the date it initiated the review in item 16a of the SF-424.

- 5-4 PROCESSING PROCEDURES. The following implementation procedures apply in cases where the State has included review of the CDBG Entitlement program in its E.O. 12372 review process. In any State that does not include the CDBG Entitlement program in its review process, the same

procedures apply except that grantees should request only the metropolitan planning agency to complete the reviews in lieu of the State single point of contact. Adopt the form letters and guides which are included as exhibits to this Chapter as necessary.

- A. If no State review is received within 65 days of the date the grantee initiated the review process:
  - 1. Notify the grantee that HUD received no State review and release the funds for any activity covered by the E.O. 12372 condition, using the appropriate paragraphs from the guideform letter in Exhibit 5-2. Send the release of funds on the same day the grant is made or when the 65 day period ends, whichever is later.
  - 2. Notify the State that HUD has released the funds by sending the State a copy of the letter to the grantee releasing the funds from the E.O. 12372 conditions.
- B. If State review is received within 65 days of the date the grantee initiated the review process:
  - 1. Send a copy of the State's review to the grantee and request the grantee to respond, indicating if it will or will not accommodate the State's recommendations. If the grantee will not accommodate, its response must include an explanation of why it will not. Use the guideform letter (Exhibit 5-3) to transmit the review and include the suggested format (Exhibit 5-4) for the grantee's response.

- 2. If the grantee indicates that it will accommodate the State's recommendations, notify the grantee of the release of funds. Send the release of funds on the same day the grant is made or upon receipt of the grantee's response, whichever is later. Use the paragraph on accommodation of recommendations from the form letter (Exhibit 5-2). Notify the State that HUD has released the funds by sending the State a copy of the letter to the grantee.
- 3. If the grantee response indicates that it will not accommodate one or more of the State's recommendations, the grantee must explain why. In such cases:
  - a. Send the State a copy of the grantee's

response and explanation that it will not accommodate the State's recommendations. Send the letter to the State upon receipt of the grantee's response. Use the designated form letter (Exhibit 5-5) to the State for this purpose.

- b. On the same date the grantee's response and explanation is sent to the State, notify the grantee that the release of funds is effective 15 days from the date of the letter or the date of the grant transmittal letter, whichever is later. Use the paragraph on non-accommodation of recommendations in the form letter (Exhibit 5-2) for the release of funds from E.O. 12372 conditions.

5-3

9/92

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Exhibit 5-1

GUIDEFORM LETTER  
EARLY NOTIFICATION LETTER TO STATE  
E.O. 12372

This is to provide you with advance notice of expected Federal funding of Community Development Block Grants (CDBG) under the Entitlement program which may be subject to State review under Executive Order 12372, Intergovernmental Review of Federal Programs.

The following is a list of Entitlement grantees and the expected start date of the Fiscal Year 19\_ program.

GRANTEE	PROGRAM START DATE
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Grantees have been advised that if they plan to use CDBG funds for the planning or construction of water or sewer facilities they are responsible for initiating the State review process by forwarding to you a copy of their CDBG statement of objectives and projected use of funds (or other description of applicable activities). Under the CDBG Entitlement program, HUD generally has no advance information concerning a grantee's plans to use funds for activities subject to review under the Executive Order.

You may assume that any CDBG Entitlement grantee that does not submit its statement for review does not propose to use funds for activities subject to review. However, it should be noted that grantees may at a later date add activities subject to review. Such grantees may initiate the review process at that time.

Enclosed is a copy of the current applicable CDBG

regulations for your reference. Should you have any questions or concerns please contact the HUD Field Office at \_\_\_\_\_.

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9/92

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Exhibit 5-2

E.O. 12372 - RELEASE OF FUNDS  
LETTER TO GRANTEE

The Community Development Block Grant (CDBG) funds provided to (name of grantee) under Funding Approval and Grant Agreement number B-\_\_\_\_\_ included a special condition concerning compliance with Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 CFR Part 52. The condition requires completion of the E.O. 12372 review process and written notification from HUD before you can obligate or expend funds for activities subject to E.O. 12372 review. This letter constitutes such written notification of the release of funds under that condition for the following activities: (list activities here)

{Use the following paragraph if no State review is received within 65 days of the date the grantee initiated the review process.}

Standard Form-424 submitted with (name of grantee)'s Final Statement indicated that the review process under the E.O. 12372 was initiated on (date - see SF-424, item 16.a.). The time allowed for the State to submit its review ended on (date) and HUD has not received any response. This satisfies the review requirements under E.O. 12372 and HUD regulations at 24 CFR Part 52. Therefore, as of the date of this letter, the (name of grantee) is hereby authorized to obligate and expend CDBG funds for the activities listed above (subject, of course, to meeting other CDBG program requirements, such as environmental review). Any activity subject to review under E.O. 12372 other than those listed above (which may be added through an amendment or other revision to your final statement) remains subject to the E.O. 12372 special condition. Before obligating or expending funds for such other activities, you will have to complete the E.O. 12372 review process and obtain a separate release of funds from HUD.

{Use the following paragraph if the grantee notified your office that it will accommodate the State's recommendations.}

On (date) HUD received your response to the E.O. 12372 review submitted by the State of \_\_\_\_\_ pertaining to the activities listed above. In that response, you indicated that you will accommodate all of the State's recommendations. This

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9/92

satisfies the review requirements under E.O. 12372 and HUD regulations at 24 CFR Part 52. Therefore, as of the date of this letter, the (name of grantee) is hereby authorized to obligate and expend CDBG funds for the activities listed above (subject, of course, to meeting other CDBG program requirements, such as environmental review). Any activity subject to review under E.O. 12372 other than those listed above (which may be added through an amendment or other revision to your final statement) remains subject to the E.O. 12372 special condition. Before obligating or expending funds for such other activities, you will have to complete the E.O. 12372 review process and obtain a separate release of funds from HUD.

{Use the following paragraphs if the grantee has notified your office that it will not accommodate the State's recommendations.}

On (date) HUD received your response to the E.O. 12372 review submitted by the State of \_\_\_\_\_ pertaining to the activities listed above. In that response, you indicated that you will not accommodate one or more of the State's recommendations and you explained why you will not accommodate those recommendations. In order to fulfill HUD's responsibilities regarding non-accommodation under HUD's regulations at 24 CFR 52.10(a)(3), we have forwarded your response and explanation to the State single point of contact. Based on the provisions in 24 CFR 52.10(b)(1) and (c), the authority to obligate and expend CDBG funds for the activities listed above does not become effective until 15 days from the date of this letter or the date of the grant transmittal letter, whichever is later (subject, of course, to meeting other CDBG program requirements, such as environmental review). During this time, State officials may contact you to discuss this matter further.

Also note any activity subject to review under E.O. 12372 other than those listed above (which may be added through an amendment or other revision to your final statement) remains subject to E.O. 12372 special conditions. Before obligating or expending funds for such activities, you will have to complete the E.O. 12372 review process and obtain a separate release of funds from HUD.

{NOTE: If the grantee will accommodate the State's

recommendations for some activities but not for others, use the applicable portions of the paragraph above, limiting the 15 day deferral to those activities affected by the non-accommodation.}

If you have any questions, contact \_\_\_\_\_.

Sincerely,

cc: State Single Point of Contact.

3

9/92

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Exhibit 5-3

GUIDEFORM LETTER  
TRANSMITTAL OF STATE REVIEW  
E.O. 12372

On (date grantee initiated review) you submitted your Community Development Block Grant (CDBG) statement of community development objectives and projected use of funds (or other description of applicable activities) to the State of \_\_\_\_\_ for review under the procedures established by Executive Order 12372, Intergovernmental Review of Federal Programs, and HUD implementing regulations at 24 CFR Part 52. We received the review from the State on (date comments received). Enclosed is a copy of the review.

Under the CDBG Entitlement program, (name of grantee) selects activities to be assisted with program funds. Therefore, we are providing the State review for your consideration. Please respond to this office and for each of the recommendations in the review, indicate whether you will accommodate the recommendation. If you will not accommodate one or more of the State's recommendations, you must also provide an explanation of your decision. Enclosed is a suggested format for your response.

Please provide your response as soon as possible since HUD will not initiate the release of funds for activities subject to the E.O. 12372 grant condition until we receive your complete response. A response is not complete if it does not include an explanation of any non-accommodation.

If you have any questions, please contact \_\_\_\_\_.

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9/92

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Exhibit 5-4

GRANTEE RESPONSE TO STATE REVIEW

HUD Field Office

This responds to the review provided by the State of \_\_\_\_\_ under Executive Order 12372, Intergovernmental Review of Federal Programs regarding the use of Community Development Block Grant (CDBG) funds by the (name of grantee) for the planning or construction of water or sewer facilities under Grant No \_\_\_\_\_.

SUMMARY OF RECOMMENDATION:

AFFECTED ACTIVITY (IES):

ACCOMMODATE: \_\_\_\_\_  
Signature of Authorized Official

NON-ACCOMMODATE: \_\_\_\_\_  
Signature of Authorized Official

EXPLANATION OF NON-ACCOMMODATION:

{Repeat as necessary to respond to each of the State's recommendations.}

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Exhibit 5-5

LETTER TO STATE  
TRANSMITTAL OF GRANTEE NON-ACCOMMODATION  
E.O. 12372

Under the procedures established by Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 CFR Part 52, the (name of grantee) submitted its Community Development Block Grant (CDBG) final statement (or other description of activities) for your review of activities for the planning or construction of water or sewer facilities. We received your review and forwarded it to (name of grantee) for its response since under the CDBG Entitlement program, grantees select activities to be assisted with program funds. Enclosed is a copy of (name of grantee's) response.

In the response, the (name of grantee) has indicated that it will not accommodate one or more of your recommendations and has provided an explanation of such non-accommodation. By transmitting the explanation provided by (name of grantee), HUD has fulfilled its responsibilities regarding non-accommodation under the regulations at 24 CFR 52.10(a)(3). Therefore, based on the provisions at 24 CFR 52.10(b)(1) and (c), the (name of grantee)'s authority to obligate or expend CDBG funds for (activities affected by the non-accommodation) does not become effective until 15 days from the date of this letter or the date

of the grant transmittal letter, whichever is later. You may wish to discuss this matter further with appropriate local officials prior to the end of this period.

If you have any questions, please contact (\_\_\_\_\_).