

CHAPTER 4 – HOUSING

The Department funds eligible housing activities on a competitive basis through the Nebraska Affordable Housing Program (NAHP). Funds in the program include CDBG. On the federal level CDBG housing activities are governed by:

- Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35.
- Title I of the Housing and Community Development Act of 1974, as amended ("Act")
- 24 C.F.R. Part 570

The Department places further restrictions, such as eligible activities, incomes, rents, the Department's Minimum Standards for Rehabilitation (found on the Department's website <http://www.neded.org/community/community-info/documentslibrary-a-forms/cdbg-forms> under Other Documents & Resources), on housing funded through the NAHP via:

- The Housing and Community Development Annual Action Plan
- NAHP Application Guidelines
- CDBG Contracts
- CDBG Administration Manual

Eligible housing activities under the State CDBG Program are described in 24 C.F.R. Subpart I, 570.483 Criteria for National Objectives. The Department further restricts the activities that are eligible for funding in the NAHP.

24 C.F.R. Part 570.483 as pertaining to housing:

Housing activities. An eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the unit of general local government, a subrecipient, an entity eligible to receive assistance under section 105(a)(15) of the Act, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction.

If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. If two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. If housing activities being assisted meet the requirements of paragraphs (e)(4)(ii) or (e)(5)(ii) of this section, all such housing may also be considered for this purpose as a single structure.

For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:

- i. When less than 51 percent of the units in a structure will be occupied by low and moderate income households, CDBG assistance may be provided in the following limited circumstances:
 - A. The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project; and
 - B. Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and
 - C. The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.
- ii. Where CDBG funds are used to assist rehabilitation delivery services or in direct support of the unit of general local government's Rental Rehabilitation Program authorized under 24 CFR part 511, the funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted, by the Rental Rehabilitation Program overall are for low and moderate income persons.
- iii. When CDBG funds are used for housing services eligible under section 105(a)(21) of the Act, such funds shall be considered to benefit low and moderate income persons if the housing units for which the services are provided are HOME- assisted and the requirements of 92.252 or 92.254 of this title are met

The Department may specify, among other things, more restrictive income, rent and affordability requirements. Rehabilitation projects must meet the Department's Minimum Standards for Rehabilitation. These Minimum Standards for Rehabilitation can be found on the Department's website (<http://www.neded.org/community/community-info/documentslibrary-a-forms/cdbg-forms>) under Other Documents & Resources.

HUD provides some further guidance on eligible housing activities via interpretation of the Act. This chapter excerpts information from HUD's State Guide to National Objectives and Eligible Activities.

The Department describes housing activities under the following three areas:

- Owner-Occupied Rehabilitation

- Tenant-Occupied Rehabilitation Programs for Multiple Properties
- Tenant-Occupied Rehabilitation for a Targeted Property
- Homeownership Programs

Owner-Occupied Rehabilitation

Task #1	Review laws, regulations and administrative requirements
Task #2	Design program and procedural requirements
Task #3	Hire staff and/or contract for professional services
Task #4	Solicit applicants and perform preliminary screening
Task #5	Establish files
Task #6	Prepare work write-ups, cost estimates, select recipients
Task #7	Contract jobs, monitor work, complete rehab

Task #1 Review Laws, Regulations and Administrative Requirements

Caution: following are some applicable laws, regulations and administrative requirements. As related to specific areas the most restrictive applies. *For example, HUD's State Guide to National Objectives and Eligible Activities indicates that costs for materials is an eligible type of assistance, but the NAHP application guidelines may indicate this as an ineligible expense. In this case the NAHP application guidelines would apply.*

- Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35.
- Title I of the Housing and Community Development Act of 1974, as amended ("Act")
- 24 C.F.R. Part 570
- HUD's State Guide to National Objectives and Eligible Activities

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Rehabilitation Activities

Eligible types of property:

Residential – Residential property, whether privately or publicly owned. This includes manufactured housing when such housing constitutes part of the community's housing stock and is classified as real property.

Eligible types of assistance:

Costs – Costs of labor, materials, supplies and other expenses required for the rehabilitation of property, including repair or replacement of principal fixtures and components or existing structures (for example, the heating system).

Financing – Grants, loans, loan guarantees, interest supplements and other forms of financial assistance may be provided under this category.

Refinancing – Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds, if such refinancing is determined by the grant recipient to be necessary or appropriate to achieve its community development objectives.

Property acquisition – Assistance to private individuals and entities (whether profit or not-for-profit) to acquire for the purpose of rehabilitation and to rehabilitate properties for use or resale for residential purposes.

Insurance – The costs of initial homeowner warranty premiums and, where needed to protect the grant recipient's interest in properties securing a rehabilitation loan, hazard insurance premiums, as well as flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, as amended, pursuant to 24 CFR 570.605

Conservation – Costs required to increase the efficient use of water (for example, water saving faucets and shower heads) and improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, insulation, and modification or replacement of heating and cooling equipment.

Barrier removal – Costs to remove material and architectural barriers that restrict the mobility and accessibility of elderly and severely disabled persons to buildings and improvements that are eligible for rehabilitation under this category.

Renovation of closed buildings – The conversion of a closed building from one use to another (for example, the renovation of a closed school building to residential use).

Historic preservation – This category also authorizes the costs of preserving or restoring properties of historic significance, whether privately or publicly owned, except that buildings for the general conduct of government may not be restored or preserved with CDBG assistance (see the section on Public Facilities and Improvements concerning this limitation). Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a state or local inventory of historic places, or designated as a state or local landmark or historic district by appropriate law or ordinance.

Lead-based paint hazard evaluation and reduction – The costs of evaluating and treating lead-based paint may be undertaken in the State CDBG program in conjunction with other rehabilitation activities under Section 105(a)(4) of the HCDA or as a separate activity under Section 105(a)(25). In addition to lead hazard abatement work itself, CDBG funds may be used for: testing the blood of children to determine the lead levels, inspecting and testing homes for lead hazards, temporarily relocating families during lead control work, community education and

outreach, job training for lead hazard control workers, and collection and analysis of data on lead hazards.

Rehabilitation services – Staff costs and related expenses required for outreach efforts for marketing the program, rehabilitation counseling, screening potential applicant households and structures, energy auditing, preparing work specifications, loan underwriting and processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities who are participating or seeking to participate in rehabilitation activities eligible under this category.

*Rehabilitation does **not** include:*

- Creation of a secondary housing unit attached to a primary unit;
- Installation of luxury items, such as a swimming pool;
- Costs of equipment, furnishings, or other personal property not an integral structural fixture, such as:
 1. a window air conditioner, or
 2. a washer or dryer (but a stove or refrigerator is allowed); or
- The value of the homeowner's sweat equity to rehabilitate their own property.

Conversion: It should be noted that the cost of converting an existing non-residential structure to residential is not generally considered to constitute new construction under the CDBG program and is thus covered under the basic eligibility category of Rehabilitation. However, in some cases, the conversion may involve construction that goes beyond the envelope of the non-residential structure. Where this is the case, the grant recipient should consult with the local HUD field office to ensure that the extent of such construction would not constitute new construction of housing and thus be ineligible for CDBG assistance.

The Department uses the following to regulate the use of CDBG funds for owner-occupied rehabilitation:

- The Housing and Community Development Annual Action Plan
- NAHP Application Guidelines
- CDBG Contracts
- CDBG Administration Manual

Definition

Become familiar with commonly accepted rehab practices and procedures and the applicable laws, regulations and administrative requirements governing CDBG assisted housing rehabilitation.

Procedures

It is generally agreed that housing rehabilitation (rehab) is one of the most complex activities eligible for CDBG funding. In order to successfully design and implement a rehab program, it is essential to have a thorough understanding of sound rehab practices and the applicable laws and regulations that govern them.

It is of critical importance to understand the HUD regulation on controlling lead-based paint hazards in housing receiving federal-assistance (24 CFR Part 35). Subpart J of the regulation provides guidance on meeting lead-based paint requirements for rehabilitation assistance programs.

Common Deficiencies

- Unfamiliarity with accepted rehab practices and procedures
- Unfamiliarity with applicable laws and regulations
- Unfamiliarity with lead-based paint requirements

Task #2 Design Program and Procedural Requirements

Definition

Formulate program guidelines regarding the type of financial assistance, program recipients, rehabilitation standards, advisory committees (if any), and operational procedures.

Procedures

Detailed written eligibility criteria and property rehabilitation standards must be developed to guide program operation. The governing body for the grantee must adopt standards and guidelines for rehabilitation before the Department will issue a release of funds for this activity. The program guidelines must address:

- specification of types of financial assistance available;
- applicant eligibility;
- property eligibility
- eligible improvements/rehab standards;
- contracting requirements;
- applicant selection process;
- utilization of an advisory committee; and
- operating procedures, including a grievance procedure.

Remember that there is no model that is perfect for all grantees. How the grantee resolves each of the above issues should reflect local conditions and needs. The grantee should contact the Department and communities in the area to get an idea of the kinds of programs that have worked well. Many of the developed procedures or processes may be transferable. These guidelines would be available at no cost since they were originally developed through the CDBG program.

Maximum Amounts

In addition to deciding whether to go with either a grant or loan program, or a mix, the grantee must specify the maximum amount of assistance to be made available to any applicant. There are several factors to take into consideration:

- what is the general condition of the housing to be rehabilitated?
- what standards of rehabilitation will be adopted?
- how much money is needed to bring the target housing up to the proposed rehab standards?

If the housing to be rehabbed is badly deteriorated, a small maximum grant amount (say \$5,000) will probably not be sufficient to bring the property up the Department's Minimum Standards for Rehabilitation. These Minimum Standards for Rehabilitation can be found on the Department's website (<http://www.neded.org/community/community-info/documentslibrary-a-forms/cdbg-forms>) under Other Documents & Resources. Most communities with badly deteriorated target housing have found a \$10,000 - \$12,000 maximum insufficient to meet these Minimum Standards for Rehabilitation. On the other hand, if the housing is only mildly deteriorated a modest grant/loan maximum may be appropriate. Have a contractor or building inspector actually estimate needed repairs on a couple of typical units. Use these estimates as the basis for setting grant/loan limits. Also, be sure to specify a procedure which will allow the limits to be changed over time, as needed.

Eligible Applicants

The written program guidelines must also delineate applicant eligibility. In accordance with 24 CFR 85.36, (Procurement), the guidelines should include provisions barring conflict of interest to the extent feasible. This is extremely important. A rehab program provides direct benefits to individuals. A rehab program is therefore subject to political pressures, cronyism, and nepotism.

In addition, the guidelines must specify income limits that are in compliance with HUD's definition of low and moderate income households. The Department specifies that applicants' gross income be computed as defined in 24 CFR Part 5.

Eligible Property

The guidelines should also identify the geographic eligibility criteria pertaining to the target area(s). If rehab is only eligible within the designated target area(s), the guidelines should say so and describe the area(s). The grantee may want to consider funding public improvements, using other funds, in the target area to maximize program impact and generate an improvement momentum.

The Department may permit spot rehab outside the target area(s) for the benefit of low to moderate income families or to eliminate specific conditions detrimental to public health and safety. Spot rehab can, however, open a program to substantial pressure to spread the benefits around and this undermines the potential for private activity stimulated by concentration of resources. On the other hand a program can find itself unable to assist households in acute need

who live outside target areas. It is recommended that provisions be made for spot rehab and that the guidelines explicitly describe the conditions under which it will be made available.

If a property is located within a HUD designated area of flood hazard and the grantee proposes a substantial repair, then it is required that flood insurance be purchased by the time of completion of the rehab. The cost of the insurance is an eligible CDBG activity.

Length of ownership is also a factor some grantees may want to consider. If a high vacancy rate is a problem, the program may only require that the unit become occupied at the completion of the rehab. This way new owners may be enticed into the community to buy vacant, but fixable units. As long as they are otherwise qualified, there is no reason that a new owner cannot participate.

Eligible Improvements and Rehab Standards

The guidelines must also specify the standards that properties must meet after rehab. The grantee must adopt the Department's Minimum Standards for Rehabilitation at a minimum. These Minimum Standards for Rehabilitation can be found on the Department's website (<http://www.neded.org/community/community-info/documentslibrary-a-forms/cdbg-forms>) under Other Documents & Resources. Another option is to use local housing or occupancy codes if they exist. The amount of money needed to bring a significantly dilapidated unit up to code is usually greater than the amount needed to bring it up to the Department's Minimum Standards for Rehabilitation. If the maximum grant or loan is modest (under \$10,000), adoption of local codes as the minimum property standard means that some of the worst housing in the community will not be eligible for assistance because they cannot be brought to code within the grant amount. The standard the grantee adopts is a local decision. The standards chosen should depend on the condition of target housing, the income of the clients, and the maximum grant/loan amount. The standard must also include the elimination of lead-based paint hazards.

Any improvement needed to bring a unit up to the adopted standards should be specified as an eligible improvement. It is recommended that the grantee consider making energy conservation improvements a priority. Energy conservation standards must be included in standards that are adopted for housing rehab. Many cities include exterior painting or siding as eligible improvements since the work is immediately noticeable and can have a significant "bandwagon" effect on rehab in the neighborhood. It is not recommended that general property improvement—carports, patios, decks, recreation room additions, etc.—be eligible for grant funding. For a loan, the grantee may want to allow such improvements but limit their cost to a low percentage of the total loan.

Contracting Requirements

The homeowner is to authorize the contract for rehab services. Because the grantee remains responsible for monitoring contractor compliance with federal standards, financial management, and other program requirements you probably will want a three-party contract to afford the grantee greater visibility in the process.

The guidelines should specify contracting procedures and any other procedures which govern the conduct of work, such as those relating to change orders, dispute resolution, and acceptance of

work. Regarding the latter, the grantee should assume final authority for sign-off on completion of work, if the homeowner has not borrowed the CDBG funds.

Applicant Selection

Since demand for rehab assistance typically outstrips the resources available, a grantee must establish procedures for selecting recipients and include them in the program guidelines.

A priority rating system combined with staggered review and award periods will allow the grantee to meet such demand in an equitable fashion. A priority rating system means that each application is assigned points and ranked on the basis of such household characteristics as income and housing condition. In addition elderly and/or disabled applicants may receive priority points. A rating system must be carefully thought out to assure that the criterion used does not have the effect of discriminating against racial minorities or women. For example, a credit worthiness criterion could easily discriminate against female-headed households. The grantee may want to differentiate rating guides for grant versus loan assistance, as shown in the sample.

Development of the priority rating system is something for which citizen board or resident representative input can be appropriately requested. The actual selection, however, should be a staff responsibility. It should not be done by a citizen board. Information on applicants is confidential and should remain so.

Operating Procedures

The guidelines should specify such other issues as complaint procedures, responsibilities of the recipient, infeasible rehabs, relocation policies in the event of the need for temporary relocation, and so forth. Complaints are a given with rehab programs. It is important to distinguish between the rational and the irrational. The best prevention is to conduct frequent on-site inspections of the work, and stop the work when there are problems. Also make sure that the recipients are well-informed about the contract work, have signed-off on the work write-up, and have a copy of the program guidelines. The complaint procedure itself should include written responses from city representatives and an appeal procedure.

The guidelines should be developed by staff, with input from citizens and elected officials. They should always include a clause describing the process by which they can be changed. They should be adopted by resolution. They should be written in plain language and be available to all potential applicants. And changes to the guidelines must also be approved by the Department. They should also be followed as written.

Common Deficiencies

- Guidelines are not written
- Guidelines lack conflict of interest provisions
- Guidelines lack housing alternatives for infeasible rehab
- Priority Rating Guides included but not used
- Lack of prompt response to homeowner/contractor complaints

Supporting Materials

- Minimum Standards for Rehabilitation (found on the Department's website under Other Documents & Resources at: <http://www.neded.org/community/community-info/documentslibrary-a-forms/cdbg-forms>)

Task #3 Hire Staff and/or Contract for Professional Services

Definition

Identify staffing needs and obtain qualified personnel.

Procedures

In staffing a rehab program, it is helpful to understand the specific skills that will be needed.

First, there is a need for a person who can deal with applicants, process paper, and manage the program. Someone must talk to applicants, visit their homes to complete family surveys, and keep track of the rehab program and process.

Second, there is a need for a person with experience and knowledge in the areas of home construction, local codes, inspection (building, electrical and plumbing), and cost estimating. These skills are found in experienced contractors, building inspectors, and architects familiar with rehab.

For small rehab programs, it may not be feasible to hire full-time staff. The grantee may be able to locate people to assist on a contract basis. The grantee might also consider a cooperative arrangement with nearby communities or a regional agency to pool resources and share staff. Special arrangements utilizing the staff of larger city programs may also be worked out.

The quality and success of a rehab program depends on the abilities and experiences of the people implementing the program. Every effort should be made to hire qualified staff.

Lead-based paint requirements necessitate using people with the proper qualifications to do specific functions of the rehab project.

Common Deficiencies

- Inadequate number of staff
- Unqualified staff
- Lack of adequate administrative budget for rehab
- Lack of budget for staff training and development

Task #4 Solicit Applicants and Perform Preliminary Screening

Definition

Inform target area residents about the program, conduct family surveys, distribute information on lead-based paint and make preliminary determination of eligibility.

Procedures

The grantee must inform property owners of the availability of rehab assistance. Generally, communities have found that very little information solicits a large number of persons interested in rehab grants while a greater “sales” effort is necessary to obtain eligible loan applicants. Since the grantee has designated one or more target areas in the application, they should direct their efforts to reaching that population. The program should be well-publicized, and thoroughly explained to all interested individuals to allow for equal opportunity to all potential eligible beneficiaries.

All interested applicants should be screened first for eligibility under income and other criteria as specified in the guidelines. Although the cost of improvements is also a critical factor, a preliminary eligibility review can spare substantial costs of inspections and work write-ups for ineligible applicants. The information needed to determine basic eligibility can be obtained through a household survey guide that solicits information on income, family composition, place of employment, tenure and so forth. Usually, the rehab officer will conduct the interview. The grantee must verify ownership, income, and employment. Verification should be done carefully and sensitively since many people do not wish others to know they have applied for assistance. The information solicited is confidential and should be treated as such.

All applicants are to be informed of the hazards of lead based paint. This information should be distributed to everyone even if they don't qualify.

Common Deficiencies

- Solicitation of recipients is left to chance
- Preliminary assessments of eligibility are not conducted
- Income, employment, and ownership are not verified

Task #5 Establish Files

Definition

Maintain documentation that rehab is being carried out in conformance with applicable laws, regulations and sound rehab practices.

Procedures

A separate file must be maintained for each rehab applicant with all of the documentation. Unsuccessful as well as successful applications must be kept.

Files must be retained for a period of four years following program closeout.

Common Deficiencies

- Inadequate documentation, forms not signed by all parties
- No documentation from the State Historical Preservation Office (an environmental review requirement)
- Files not retained for four years

Task #6 Prepare Work Write-ups, Cost Estimates, Select Recipients

Definition

Screening applicants for those whose homes can be brought up to established standards within the grant amount, and select which applicants shall receive the grants/loans.

Procedures

An inspection of the property should be conducted to determine the type and cost of work necessary to bring the property into compliance with the established property rehab standard. This is termed a work write-up or deficiency list. The work write-up should be designed so that it can form the basis of bid specifications if a loan or grant is made. The work write-up should specify all the work that must be done to bring the building to the standards adopted, including the elimination of lead-based paint hazards. A deficiency list identifies all items to be repaired, but leaves the repair method up to the contractor. In both cases a technical specification manual or code book should be referenced for specific and acceptable construction method. Some grantees with experienced staff have blank forms the inspector fills in as she/he goes along. Grantees with inexperienced staff have sometimes adopted very detailed check-off forms. The inspector checks for each one and specifies action needed to remedy the problem. It is better to err on the side of caution. If local codes are the standard, the city inspector should certify by signature to the work write-up that the specified repairs will be adequate to bring the unit up to code.

Computerized write-ups are also used by some rehab specialists. The software is easy to use but would require access to a personal computer and printer.

Once the work write-up has been prepared, the cost of the work has to be estimated. The cost estimate is necessary to know whether or not the work can be done within the grant/loan limits and, if a loan is within the owners ability to repay. The person doing cost estimates should be familiar with the going rates for materials and labor in the area and be able to estimate accurately the time required to complete each task. Although there is no substitute for experience, if staff is inexperienced, they should talk with building supply people, contractors, and other communities in order to increase their knowledge of local costs. Cost estimation is important because if your estimates are low, contractors will not bid the job within grant/loan limits, or they will and will then attempt to get change orders. Good, reliable cost estimates are critical.

Some grantees allow property owners to perform some of the required improvements themselves. Self-help can increase the resources available to bring the house up to rehab standards. If self-help is to be allowed, the grantee must assume responsibility for judging that the property owner possesses sufficient skill to perform agreed-upon improvements and must inspect the work for quality of workmanship and timely completion.

With the work write-up and cost estimate in hand, eligible applicants are rated according to the adopted priority rating guides. A rating sheet should be prepared for each applicant and placed in the file, permitting the grantee to explain to each applicant, if requested, the basis upon which they were selected or denied.

The grantee should write a letter to each applicant as to the results of the review process, indicating next steps for successful applicants and informing unsuccessful applicants that their application will be automatically reconsidered during the next review period.

Caution: Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35 provides specific circumstances in which additional procedures and trained professionals are required in order to ensure there are no lead-based paint hazards remaining after or created by the rehab activity.

Common Deficiencies

- Work write-ups are insufficiently detailed or do not reference a technical specification
- Cost estimates are not based on current costs
- Selection procedure is informal and undocumented
- Selecting applicants whose homes cannot be brought up to rehab standard within the maximum loan/grant amount

Task #7 Contract Jobs, Monitor Work, Complete Rehab

Definition

Contract for rehab services; monitor progress and performance.

Procedures

The lack of availability of interested and/or qualified contractors has been a major impediment for some grantees to implement a rehab program. Depending on the level of construction activity in the area, home building and remodeling contractors may not be interested in relatively small jobs for repairing homes in poor condition. The grantee staff should try to identify possible contractors and attempt to interest them in program participation. The yellow pages of the telephone book, the Chamber of Commerce, conversations with construction materials suppliers, and word of mouth are all information resources to aid in developing a bidders list.

In order to promote the participation of small contractors, try to eliminate procedural barriers. Bonding requirements for small contractors can be prohibitive. Grantees should demand the minimum bonding and insurance required by local law. Technical assistance approaches some Grantees have adopted are: financial management assistance to small contractors; talking to local suppliers to assure them of payment for any credit extended to rehab contractors for CDBG funded jobs, guaranteed through two party checks, if necessary; talking to local financial institutions to encourage them to extend lines of credit. In order to expedite payment to small contractors, who often have cash flow problems, discuss with them the drawdown process and set specific procedures for providing ample notice for payment.

The pool of qualified contractors has been further limited by the additional requirements of the lead-based paint regulations associated with construction worker qualifications for rehab in pre-1978 housing.

Rehab Contract

The contract for rehab must include the language and requirements specified in applicable federal, state, and local laws binding the program. Davis-Bacon and other Labor Standards provisions do not apply unless the rehab to be undertaken in the contract is for eight or more units. However, the payment of overtime is a law by which rehab contractors must abide.

Grantees should also consider including provisions in rehab contracts which require the contractor to obtain and pay for all necessary permits and licenses; perform all work in conformance with local codes and requirements whether or not covered by the specification and drawings; keep the premises clean and orderly during repairs and remove all debris at the completion of work; obtain written consent for changes to the specifications; not assign the contract without written consent; and warrant the work for one year from final acceptance. In order to be a complete contract document, the applicable CDBG and local terms and conditions must be included.

Contractor Selection

Requirements of the grantee concerning bidding are dictated by 24 CFR Part 85.36 and State Law. If the grantee is not directly contracting for the rehab, i.e. they approve the contract on a third party basis, competitive bidding is not required. Homeowners should be given maximum preference with selecting their contractor.

Following award of the contract, the contract package should be executed by all parties. It is a good idea to have the homeowner sign the work write-up to reduce possible misunderstandings about the scope of work to be performed. Following any Right of Recission period, a Notice to Proceed must be issued to the contractor that must specify the time period within which the work should begin and when the work should be completed. Many small contractors will want progress payments. However, these payments must be tied to inspection of the work. Progress payments should generally not total more than 80% of the work satisfactorily completed and cannot include the value of uninstalled material or equipment. Project milestones triggering progress payments should be specified in the contract.

Inspections

Systematic, thorough and frequent inspections are critical to successful housing rehab. Inspection should identify and remedy problems as early as practical. Payments are the primary leverage over contractors and should be withheld until faulty work is corrected. If serious deficiencies are identified through inspection, the grantee can terminate the contract, compute the cost of unsatisfactory work and escrow this money, and solicit another contractor to complete the job paying the original contractor from the escrow account only if sufficient funds remain for the new contractor to complete the work. The grantee should also recognize that its staff may have to intercede on behalf of the contractor with the property owner who may have unfounded complaints about the repairs.

When repairs are completed and a final invoice is received from the contractor certifying completion in accordance with the contract and warranty, the grantee must make a final inspection. If the work is satisfactory and complete, the job should be accepted. After the receipt of a release of liens and applicable warranties from the contractor, all subcontractors and suppliers, and the elapse of the requisite lien period, final payment can be made. The grantee should perform a follow-up visit to the property owner in roughly 60 days to determine the existence of any problems with the job. If problems have occurred, the grantee should assist the property owner to obtain corrective action according to the warranty. A second follow-up visit should be held prior to the expiration of the contractor's warranty period.

Common Deficiencies

- Failure to include required language in contract documents
- Failure to control the use of change orders
- Failure to perform thorough inspections
- Failure to set specific procedures for pay requests
- Failure to condition progress payments on inspection of "in-place" rehab work
- Failure to assure release of liens
- Failure to anticipate or promptly respond to complaints
- Failure to require prompt corrective action by the contractor and to withhold payment in complaint cases
- Failure to assist the property owner in receiving satisfaction under the warranty

Tenant-Occupied Rehabilitation Programs for Multiple Properties

Task #1	Review Laws and Regulations
Task #2	Determine Type of Rehab Program to be Implemented
Task #3	Determine Eligible Applicants
Task #4	Determine Eligible Property
Task #5	Determine Eligible Improvements and Rental Rehab Standards
Task #6	Owner's Responsibilities
Task #7	Comply with Contracting Requirements
Task #8	Determine Applicant Selection Process
Task #9	Develop Complaint Procedures
Task #10	Fair Housing Activities
Task #11	Develop Procedures for Rental Rehab Self-Help Projects
Task #12	Utilization of Funds

Task #1 Review Laws, Regulations and Administrative Requirements

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Eligible types of assistance:

Costs – Costs of labor, materials, supplies and other expenses required for the rehabilitation of property, including repair or replacement of principal fixtures and components or existing structures (for example, the heating system).

Financing – Grants, loans, loan guarantees, interest supplements and other forms of financial assistance may be provided under this category.

Refinancing – Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds, if such refinancing is determined by the grant recipient to be necessary or appropriate to achieve its community development objectives.

Property acquisition – Assistance to private individuals and entities (whether profit or not-for-profit) to acquire for the purpose of rehabilitation and to rehabilitate properties for use or resale for residential purposes.

Conservation – Costs required to increase the efficient use of water (for example, water saving faucets and shower heads) and improvements to increase the efficient use of energy in structures

through such means as installation of storm windows and doors, insulation, and modification or replacement of heating and cooling equipment.

Barrier removal – Costs to remove material and architectural barriers that restrict the mobility and accessibility of elderly and severely disabled persons to buildings and improvements that are eligible for rehabilitation under this category.

Renovation of closed buildings – The conversion of a closed building from one use to another (for example, the renovation of a closed school building to residential use).

Historic preservation – This category also authorizes the costs of preserving or restoring properties of historic significance, whether privately or publicly owned, except that buildings for the general conduct of government may not be restored or preserved with CDBG assistance (see the section on Public Facilities and Improvements concerning this limitation). Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a state or local inventory of historic places, or designated as a state or local landmark or historic district by appropriate law or ordinance.

Lead-based paint hazard evaluation and reduction – The costs of evaluating and treating lead-based paint may be undertaken in the State CDBG program in conjunction with other rehabilitation activities under Section 105(a)(4) of the HCDA or as a separate activity under Section 105(a)(25). In addition to lead hazard abatement work itself, CDBG funds may be used for: testing the blood of children to determine the lead levels, inspecting and testing homes for lead hazards, temporarily relocating families during lead control work, community education and outreach, job training for lead hazard control workers, and collection and analysis of data on lead hazards.

Rehabilitation services – Staff costs and related expenses required for outreach efforts for marketing the program, rehabilitation counseling, screening potential applicant households and structures, energy auditing, preparing work specifications, loan underwriting and processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities who are participating or seeking to participate in rehabilitation activities eligible under this category.

*Rehabilitation does **not** include:*

- Creation of a secondary housing unit attached to a primary unit;
- Installation of luxury items, such as a swimming pool;
- Costs of equipment, furnishings, or other personal property not an integral structural fixture, such as:
 1. a window air conditioner, or
 2. a washer or dryer (but a stove or refrigerator is allowed); or

Conversion: It should be noted that the cost of converting an existing non-residential structure to residential is not generally considered to constitute new construction under the CDBG program and is thus covered under the basic eligibility category of Rehabilitation. However, in some cases, the conversion may involve construction that goes beyond the envelope of the non-residential structure. Where this is the case, the grant recipient should consult with the local HUD field office to ensure that the extent of such construction would not constitute new construction of housing and thus be ineligible for CDBG assistance.

The Department provides guidance on tenant-occupied housing activities via:

- The Housing and Community Development Annual Action Plan
- NAHP Application Guidelines
- CDBG Contracts
- CDBG Administration Manual

Task #2 Determine Type of Rehab Program to be Implemented

Definition

When setting up a Rental Rehabilitation Program, the grantees in consultation with rental property owners must determine the type of program to operate.

Procedures

Specifically, two types of loans can be used: deferred/forgiven and deferred/repaid. A deferred/forgiven loan operates similar to a grant in that the rental property owner does not pay monthly or annual loan payments. However, a change in ownership or violation of the loan conditions within the time period of the loan can require repayment of the loan. A deferred/repaid loan requires the rental property owner to pay a fixed percentage of the principal of the loan until the debt is forgiven.

In addition to CDBG resources, grantees should provide information to rental property owner (borrowers) concerning lenders. Also, one should note that lenders can benefit from investing in low-income housing because the lenders' Community Reinvestment Act (CRA) file will be enhanced.

Task #3 Determine Eligible Applicant

Definition

An applicant is eligible for Rental Rehabilitation Programs if the rental properties are occupied by low to-moderate income persons, avoid conflicts of interests with other applicants and creates affordable rents for the tenants. The rental property owner's (owner invested) amount of income is irrelevant in determining his or her eligibility.

However, the tenant's income must be low to moderate. Low-and moderate-income persons are defined as multi- or single-person families having incomes equal to or less than the income limits for their resident county. The income limits are determined for each Nebraska county on the higher of either: 80 % of the median income of the county, or 80 % of the median income of the entire non-metropolitan area of the state. Consequently, the rental property owner needs to provide verification of the tenant's income or a certification signed by the tenant.

Procedures

The applicant can be an individual, partnership, for-profit or nonprofit corporation. However, the applicant must have at least one-third interest in one of the following types of ownership in the property to be approved: 1) fee simple title, 2) fee simple subject to a mortgage, deed or trust, or other lien securing a debt, or 3) a mutually binding contract for the purchase of the property when the applicant is rightfully in possession of the property, the purchase price of this property is payable in installments and written permission from the fee title holder has been received prior to financial assistance being granted.

Task #4 Determine Eligible Property

Definition

Properties must be residential in character and in a neighborhood that generally will allow the units to remain affordable. Properties containing 8 or more units will require compliance with the Davis-Bacon Wage Act and other laws and regulations pertaining to labor standards (Chapter 10 – Construction & Labor Standards).

Procedures

If a grantee has created geographic eligibility guidelines (e.g. target areas), then property under the Rental Rehabilitation Program must be eligible within these guidelines.

Grantees should be aware of the Section 106 of the 1966 Historic Preservation Act. This law provides:

- * CDBG projects that are involved with expansion of existing buildings or excavation of sites shall be reviewed by the Nebraska Historical Society. This is in accordance with Section 106 of the Historic Preservation Act of 1966. The Nebraska Historical Society requires black and white photographs of the existing building that is to be remodeled, as well as photos of property and buildings to be acquired to accommodate the expansion, and general views of the area in which the project is planned. It is also necessary to provide a map that indicates the project site and location of photos, and the legal description of all affected property.
- * As part of environmental review, the Department requires grant recipients involved in demolition, housing, commercial, and industrial rehab projects to consult with the Nebraska State Historic Preservation Officer (SHPO).

OTHER PROPERTY-RELATED ISSUES:

- * Rental property owners should purchase insurance for rental rehab property.
- * Rental property owners should pay taxes and file tax returns on rental rehab property.
- * Rental property owners should adequately maintain the rental rehab property.

Task #5 Determine Eligible Improvement and Rental Rehab Standards

Procedures

Grantees should provide guidelines that specify the standards that properties must meet after rehab. A grantee must use at a minimum the Department's Minimum Standards for Rehabilitation (<http://neded.org>), local housing codes or local occupancy codes (if these local codes exist). One should note that local codes usually consist of higher standards than the Department's Minimum Standards for Rehabilitation. As a result, more money is needed to make improvements on units under local codes. The adoption of these standards is based on a local decision. Nevertheless, these standards must include the elimination of lead-based paint hazards. An example of eligible improvements standards includes limitations of eligible rehab activities. Eligible rehab activities are limited to correcting substandard conditions, making essential improvements, repairing major systems in danger of failure, undertaking energy related repairs and making improvements necessary to provide access to the physically disabled. The final determination of all rehab activities and the use of program funds can be made by the local lender and administrative inspector. Also, these standards reveal that program funds cannot be used for improvements covered by an existing warranty/guarantee from a contractor, supplier and/or manufacturer. Proposed improvements to correct or replace warranted work, materials or equipment will only be eligible if the applicant can demonstrate and document that no reasonable recourse to remedy defects in the workmanship, materials or equipment is available. All improvements funded by a local Rental Rehab Program must be physically attached to the property and permanent in nature (e.g. funding for improvements to mobile homes and trailers is not taxed as real property).

Task #6 Owner's Responsibilities

Procedures

The owner-investor must be informed on certain rental rehabilitation programs issues. These issues are insurance, taxes, maintenance and various loan conditions. If a property is located within a flood hazard area, the purchase of flood insurance within the loan period is required. If the property is not located in a flood hazard area at the time of the loan closing, the rental property owner (borrower) should provide satisfactory evidence thereof. Also, adequate hazard insurance covering fire and other hazards can be purchased in at least the amount of the loan provided by the grantee with acceptable loss payee clauses in favor of the grantee.

Grantees should develop procedures to determine if owners-investors are paying taxes. Specifically, the rental property owners should pay all taxes, assessments and governmental charges upon the property at the time of application and keep all taxes current during the life of the loan.

Grantees should develop guidelines that specify upkeep and maintenance of the property. The property should be adequately maintained during the life of the loan. At a minimum, Section 8 HUD Housing Quality Standards should be used as guidelines for such maintenance.

Task #7 Comply with Contracting Requirements

Before engaging in a contract, it must be verified that the contractor is not on the federal debarred list. Contact the Department for guidance.

Definition

Contract for rehab services; monitor progress and performance.

Procedures

The lack of availability of interested and/or qualified contractors has been a major impediment for some grantees to implement a rehab program. Depending on the level of construction activity in the area, home building and remodeling contractors may not be interested in relatively small jobs for repairing homes in poor condition. The grantee staff should try to identify possible contractors and attempt to interest them in program participation. The yellow pages of the telephone book, the Chamber of Commerce, conversations with construction materials suppliers, and word of mouth are all information resources to aid in developing a bidders list.

In order to promote the participation of small contractors, try to eliminate procedural barriers. Bonding requirements for small contractors can be prohibitive. Grantees should demand the minimum bonding and insurance required by local law. Technical assistance approaches some grantees have adopted are: financial management assistance to small contractors; talking to local suppliers to assure them of payment for any credit extended to rehab contractors for CDBG funded jobs, guaranteed through two party checks, if necessary; talking to local financial institutions to encourage them to extend lines of credit. In order to expedite payment to small contractors, who often have cash flow problems, discuss with them the draw down process and set specific procedures for providing ample notice for payment.

Rehab Contract

The contract for rehab must include the language and requirements specified in applicable federal, state, and local laws binding the program. Davis-Bacon and other Labor Standards provisions do not apply unless the rehab is to be undertaken in a structure with eight or more units or unless the structure is of mixed residential/commercial use. However, the payment of overtime is a law by which rehab contractors must abide.

Grantees should also consider including provisions in rehab contracts which require the contractor to obtain and pay for all necessary permits and licenses; perform all work in conformance with local codes and requirements whether or not covered by the specification and drawings; keep the premises clean and orderly during repairs and remove all debris at the completion of work; obtain written consent for changes to the specifications; not assign the contract without written consent; and warrant the work for one year from final acceptance. In order to be a complete contract document, the applicable CDBG and local terms and conditions mentioned on the preceding page must be included; a work write-up is also required.

Contractor Selection

Requirements of the grantee concerning bidding are dictated by 24 CFR Part 85.36 and State Law. If the grantee is not directly contracting for the rehab, i.e. they approve the contract on a third party basis, competitive bidding is not required. Rental property owners should be given maximum preference with selecting their contractor.

Following award of the contract, the contract package should be executed by all parties. It is a good idea to have the rental property owner sign the work write-up to reduce possible misunderstandings about the scope of work to be performed. Following any Right of Rescission period, a Notice to Proceed must be issued to the contractor that must specify the time period within which the work should begin and when the work should be completed. Many small contractors will want progress payments. However, these payments must be tied to inspection of the work. Progress payments should generally not total more than 80% of the work satisfactorily completed and cannot include the value of uninstalled material or equipment. Project milestones triggering progress payments should be specified in the contract.

Inspections

Systematic, thorough and frequent inspections are critical to successful housing rehab. Inspection should identify and remedy problems as early as practical. Payments are the primary leverage over contractors and should be withheld until faulty work is corrected. If serious deficiencies are identified through inspection, the grantee can terminate the contract, compute the cost of unsatisfactory work and escrow this money, and solicit another contractor to complete the job paying the original contractor from the escrow account only if sufficient funds remain for the new contractor to complete the work. The grantee should also recognize that its staff may have to intercede on behalf of the contractor with the property owner who may have unfounded complaints about the repairs.

When repairs are completed and a final invoice is received from the contractor certifying completion in accordance with the contract and warranty, the grantee must make a final inspection. If the work is satisfactory and complete, the job should be accepted. After the receipt of a release of liens and applicable warranties from the contractor, all subcontractors and suppliers, and the elapse of the requisite lien period, final payment can be made. The grantee should perform a follow-up visit to the property owner in roughly 60 days to determine the existence of any problems with the job. If problems have occurred, the grantee should assist the property owner to obtain corrective action according to the warranty. A second follow-up visit should be held prior to the expiration of the contractor's warranty period.

Common Deficiencies

- Failure to include required language in contract documents
- Failure to control the use of change orders
- Failure to perform thorough inspections
- Failure to set specific procedures for pay requests
- Failure to condition progress payments on inspection of “in-place” rehab work
- Failure to assure release of liens
- Failure to anticipate or promptly respond to complaints
- Failure to require prompt corrective action by the contractor and to withhold payment in complaint cases
- Failure to assist the property owner in receiving satisfaction under the warranty

Caution: Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35 provides specific circumstances in which additional procedures and trained professionals are required in order to ensure there are no lead-based paint hazards remaining after or created by the rehab activity.

Task #8 Develop Procedures for Rental Rehab Self-Help Projects

Procedures

The following procedures are minimum requirements that must be followed if the owner investor of a Rental Rehab project is accomplishing the rehab as the general contractor, a subcontractor and/or is contributing to the rehab through personal “sweat equity” or “self- help” efforts, or is using donated labor, materials or supplies. First, the grantee must include in the project file copies of an acceptable work write-up specifications and a rehab cost estimate.

Second, among any other appropriate elements of the “commitment to a specific local project” (often called the project agreement) between the owner and the grantee the Department strongly recommend that the following written provisions be specifically included for all self-help projects: (a) a specific enumeration of the work items that will be accomplished through donated labor and/or by the owner investor, and what materials and supplies will be used, (b) the schedule for completing each work item the owner investor and/or other volunteers will perform, and (c) an alternative means of accomplishing the work if the owner investor or the volunteers fail to perform adequately or at all.

Third, eligible project costs for self-help cases are to be limited to the out-of-pocket expenditures of the owner-investor for project costs and include such things as payments to the general contractor and/or subcontractors and for materials and supplies purchased and used in the project. However, materials and supplies need not have been purchased specifically for, or at the same time as, the project to be included in project cost, provided that the cost to the owner of the materials and supplies, and the fact that they were used in the project, can be documented.

The value of the owner investor's own labor, labor donated to the project, materials and supplies donated to the project by third parties and the owner investor's overhead and profit may not be charged to the project by, or paid to the self-help project owner investor, with one exception. The single exception is when the owner investor is a practicing contractor and the grantee determines that there is an advantage to the grantee in having that owner investor perform the role of the general contractor or a subcontractor.

Then, and only then, may the eligible cost include a reasonable allowance for the owner investor's overhead and/or profit, in the percentage that owner investors might reasonably be expected to make on a similar project the total project cost in this instance must, of course, be within the cost estimate. Of course, an owner- contractor or subcontractor can pay his or her employees their usual wages or salaries (or Davis-Bacon wages when applicable) and may include such payments in the total cost of the project.

The effect of these policies is that where the owner is contributing sweat equity or donated labor or materials, the value of those only reduces the actual dollar cost of accomplishing the rehab. For example, a cost estimate determines that the actual dollar cost for a contractor to rehab a project would be \$10,000. The owner investor of the project is willing and capable of contributing sweat equity to the project, which will reduce the actual dollar amount to be paid to a contractor to \$8,000.

Fourth, the grantee must establish and implement adequate procedures to ensure that: (a) owners submit proper documentation for the rehabilitation costs, (b) in those cases where invoices are used to support the owner investors cost, the invoices are from the actual materials, suppliers and/or contractors/subcontractors and not merely an invoice from the pre-rehab cost estimate, (c) invoices submitted are for work items actually performed and included in the work write-up, and are within the limits established by the pre-rehab cost estimate and (d) where unpaid invoices serve as the basis for payment to the owner investor, the owner investor subsequently submits, within a reasonable time from project completion, copies of the paid invoices or release of liens from the suppliers to the grantee. These paid invoices will serve to document that the CDBG funds paid to the owner investor were, in turn, paid out by the owner to suppliers and/or contractors.

Task #9 Determine Applicant Selection Process

Procedures

Structures containing units with substandard conditions that are occupied by very-low income families before rehab and units that can be made readily accessible to the handicapped should be given priority. Also, priority should be given to selecting properties in which after-rehab street rents, including utilities are affordable to households at or below 80% of the median household income.

Task #10 Develop Complaint Procedures

Procedures

Grantees should develop appeal or grievances procedures for those applicants that have been rejected. An example of an appeal procedure is an applicant's request, in writing for reconsideration and the reason for the request. A committee (created for this purpose) could then respond to this request. If this committee still determines the applicant to be ineligible, then the local government can hear the appeal and make the final decision.

Task #11 Fair Housing Activities

Procedures

In response to Fair Housing laws, grantees should require rental property owners to implement an Affirmative Marketing Plan until such time the public assistance has been retired.

An Affirmative Marketing Plan should include (1) an adoption of a fair housing policy which states that the owner investor will adhere to all laws which prohibit discrimination in housing and, in an affirmative manner, will market and rent to all individuals regardless of race, color, religion, sex, age, handicap or national origin, (2) the use of the Equal Housing Opportunity logo, slogan or statement when advertising the availability of vacant units in all classified advertising of six column inches or larger and in all other advertising where its inclusion does not significantly increase the cost of advertising. Alternatively, inclusion of the logo in any classified advertisement where the "Publisher's Notice" appears in the lead of the Classified Advertising Section will not be necessary, (3) notice of availability of vacant units to such agencies that serve minorities and women, (4) maintenance of a nondiscriminatory hiring policy, (5) the displaying of a Fair Housing posting in the city and (6) the displaying of the Equal Opportunity logo where a project sign exists.

Task #12 Utilization of Funds

Procedures

Distribution of Funds

Grantees should implement a loan closing procedure with the applicant. This procedure can consist of reviewing all documents involved in the loan (e.g. mortgage and note), receive applicants proof of insurance and explaining the repayment of the loan. Progress payments to contractors for substantial performance may be used.

Reuse of Funds

Grantees should be aware that the reuse of funds is covered in Chapter 8 – Program Income. Program income includes but is not limited to: a) payments of principal and interest on loans made using CDBG funds; b) proceeds from the lease or disposition of real property acquired with CDBG; c) interest earned on CDBG funds held in a revolving loan fund account; and d) interest earned on any program income pending disposition of such income.

All program income earned during the grant period must be expended on the project activities prior to drawing down additional CDBG funds under the grant program. CDBG Housing program income must be administered by a CDBG Certified Administrator.

In keeping with federal regulations and state’s program income objective, a grantee must provide the Department with written notification of its intent to propose a use of program income to continue the same activity from which the program income is generated. The same activity, for program income earned under the Housing Development category is any housing activity eligible under Title I of the Community Development Act of 1974 (as amended) that will meet a national CDBG objective. This notice must be made within three months from the date of the Grantee’s Notice of Award letter. If the grantee’s notice is not submitted to the Department within the three month period, the Department may require the grantee to return all program income to the state.

If the grantee submits its notice within the specified period and elects to use program income to continue the same activity, the grantee will be instructed as to further requirements contained in the state’s Housing and Community Development Consolidated Plan which must be met by the grantee in order to retain and use the program income.

Tenant-Occupied Rehabilitation Programs for a Targeted Property

- Task #1 Review Laws and Regulations
- Task #2 Owner’s Responsibilities
- Task #3 Determine Eligible Improvements
- Task #4 Contracting Requirements
- Task #5 Fair Housing Activities
- Task #6 Utilization of Funds

Task #1 Review Laws, Regulations and Administrative Requirements

Caution: following are some applicable laws, regulations and administrative requirements. As related to specific areas the most restrictive applies. *For example, HUD’s State Guide to National Objectives and Eligible Activities indicates that costs for materials is an eligible type of assistance, but the NAHP application guidelines may indicate this as an ineligible expense. In this case the NAHP application guidelines would apply.*

- Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35.
- Title I of the Housing and Community Development Act of 1974, as amended ("Act")
- 24 C.F.R. Part 570
- HUD's State Guide to National Objectives and Eligible Activities

HUD provides some further guidance on eligible housing activities via interpretation of the Act. The following is from HUD's State Guide to National Objectives and Eligible Activities.

Rehabilitation Activities

Eligible types of property:

Residential – Residential property, whether privately or publicly owned. This includes manufactured housing when such housing constitutes part of the community's housing stock and is classified as real property.

Eligible types of assistance:

Costs – Costs of labor, materials, supplies and other expenses required for the rehabilitation of property, including repair or replacement of principal fixtures and components or existing structures (for example, the heating system).

Financing – Grants, loans, loan guarantees, interest supplements and other forms of financial assistance may be provided under this category.

Refinancing – Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds, if such refinancing is determined by the grant recipient to be necessary or appropriate to achieve its community development objectives.

Property acquisition – Assistance to private individuals and entities (whether profit or not-for-profit) to acquire for the purpose of rehabilitation and to rehabilitate properties for use or resale for residential purposes.

Conservation – Costs required to increase the efficient use of water (for example, water saving faucets and shower heads) and improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, insulation, and modification or replacement of heating and cooling equipment.

Barrier removal – Costs to remove material and architectural barriers that restrict the mobility and accessibility of elderly and severely disabled persons to buildings and improvements that are eligible for rehabilitation under this category.

Renovation of closed buildings – The conversion of a closed building from one use to another (for example, the renovation of a closed school building to residential use).

Historic preservation – This category also authorizes the costs of preserving or restoring properties of historic significance, whether privately or publicly owned, except that buildings for the general conduct of government may not be restored or preserved with CDBG assistance (see the section on Public Facilities and Improvements concerning this limitation). Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a state or local inventory of historic places, or designated as a state or local landmark or historic district by appropriate law or ordinance.

Lead-based paint hazard evaluation and reduction – The costs of evaluating and treating lead-based paint may be undertaken in the State CDBG program in conjunction with other rehabilitation activities under Section 105(a)(4) of the HCDA or as a separate activity under Section 105(a)(25). In addition to lead hazard abatement work itself, CDBG funds may be used for: testing the blood of children to determine the lead levels, inspecting and testing homes for lead hazards, temporarily relocating families during lead control work, community education and outreach, job training for lead hazard control workers, and collection and analysis of data on lead hazards.

*Rehabilitation does **not** include:*

- Creation of a secondary housing unit attached to a primary unit;
- Installation of luxury items, such as a swimming pool;
- Costs of equipment, furnishings, or other personal property not an integral structural fixture, such as:
 1. a window air conditioner, or
 2. a washer or dryer (but a stove or refrigerator is allowed); or

Conversion: It should be noted that the cost of converting an existing non-residential structure to residential is not generally considered to constitute new construction under the CDBG program and is thus covered under the basic eligibility category of Rehabilitation. However, in some cases, the conversion may involve construction that goes beyond the envelope of the non-residential structure. Where this is the case, the grant recipient should consult with the local HUD field office to ensure that the extent of such construction would not constitute new construction of housing and thus be ineligible for CDBG assistance.

The Department establishes policies on tenant-occupied housing activities via:

- The Housing and Community Development Annual Action Plan
- NAHP Application Guidelines
- CDBG Contracts
- CDBG Administration Manual

Task #2 Owner's Responsibilities

Procedures

Owners must be informed on certain issues. These issues are insurance, taxes, maintenance, historic preservation and various loan conditions. If a property is located within a flood hazard area, the purchase of flood insurance within the loan period is required. If the property is not located in a flood hazard area at the time of the loan closing, the owner should provide satisfactory evidence thereof. Also, adequate hazard insurance covering fire and other hazards must be purchased in at least the amount of the loan provided with acceptable loss payee clauses in favor of the grantee. Owners should provide information of the purchasing of insurance to the grantee. Further, procedures to verify that the owner is paying taxes and insurance should be developed.

Grantees should develop processes that specify upkeep and maintenance of the property. The property should be adequately maintained during the life of the loan. At a minimum, the Department's Minimum Standards for Rehabilitation should be used as guidelines for such maintenance. These Minimum Standards for Rehabilitation can be found on the Department's website (<http://www.neded.org/community/community-info/documentslibrary-a-forms/cdbg-forms>) under Other Documents & Resources.

Grantees should be aware of the Section 106 of the 1966 Historic Preservation Act. This law provides that CDBG projects that are involved with expansion, excavation, demolition or housing rehab of existing buildings or excavation of sites shall be reviewed by the Nebraska Historical Society. This is in accordance with Section 106 of the Historic Preservation Act of 1966. The Nebraska Historical Society requires black and white photographs of the existing building which is to be remodeled, as well as photos of property and buildings to be acquired to accommodate the expansion, and general views of the area in which the project is planned. It is also necessary to provide a map that indicates the project site and location of photos, and the legal description of all affected property. If a Grantee will be developing a multi-unit project, it should contact the Nebraska State Historic Preservation Officer (SHPO).

Task #3 Determine Eligible Improvements

Procedures

Grantees should provide guidelines that specify the rehabilitation standards that the project needs to meet. Grantees must use at a minimum the Department's Minimum Standards for Rehabilitation. These Minimum Standards for Rehabilitation can be found on the Department's website (<http://www.neded.org/community/community-info/documentslibrary-a-forms/cdbg-forms>) under Other Documents & Resources. Local housing codes or local occupancy codes (if these local codes exist). One should note that local codes usually consist of higher standards than the Department's Minimum Standards for Rehabilitation. As a result, more money is needed to make improvements on units under local codes. The adoption of these standards is based on local

decisions. Nevertheless, these standards must include limitations the elimination of lead-based paint hazards.

An example of eligible improvements standards includes limitations of eligible rehab activities. Eligible rehabilitation activities are limited to correcting substandard conditions, making essential improvements necessary to provide access to the physically disabled. The final determination of all rehab activities and the use of program funds can be made by the local lender and administrative inspector. Also, these standards reveal that program funds cannot be used for improvements covered by an existing warranty/guarantee from a contractor, supplier and/or manufacturer. Proposed improvements to correct or replace work under warranty, materials or equipment will only be eligible if the applicant can demonstrate and document that no reasonable recourse to remedy defects in the workmanship, materials or equipment is available.

All improvements funded by a local multi-unit project must be physically attached to the property and permanent in nature (e.g. funding for improvements to mobile homes and trailers is not taxed as real property). In addition, grantee should be aware that multi-unit projects may be subject to zoning laws.

Task #4 Contracting Requirements

Procedures

Grantees should make owners aware of the Davis-Bacon Act. CDBG multi-unit projects with eight or more units will be subject to the Davis-Bacon Act. This act provides that contracts in excess of \$2000 to which the United States is party for the construction, alteration, and/or repair, including painting and decorating, of public buildings or public works, which involve the employment of laborers and/or mechanics, shall contain provisions with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with the wage provisions, and termination of the contract or debarment for failure to adhere to the required provisions.

Grantees must provide guidelines specifying contract procedures involved with the construction of multi-unit projects. Specifically, these construction contracting requirements should include information about compliance procedures, wage rates, bid documents, verifying of contractors, pre-construction conferences, notice to proceed, compliance/progress monitoring and progress payments.

Compliance Procedures

Grantees should provide guidelines to developers for the development of procedures for securing contractors and monitoring compliance with various federal Equal Opportunity requirements. Grantees should include all applicable Equal Opportunity language in bid specification and contract documents as well as obtain required documentation and monitor compliance. These Equal Opportunity provisions include Title VII of the Civil Rights Act of 1984, Section 109 of Title I of the HCDA of 1974, Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and Executive Order 11246. Common deficiencies in developing compliance

procedures are contracts that do not contain all applicable Equal Opportunity provisions and incomplete Equal Opportunity Compliance Files.

Bid Documents

Grantees should provide guidelines to developers specifying the preparation of Labor Standards provisions for inclusion in bid documents. See Chapter 9 – Construction & Labor Standards for further guidance.

Verifying Contractor

Prior to award of the contract Grantees should contact the Department to insure the proposed prime contractor is not listed on federal lists of debarred, suspended or ineligible contractors. This contact should be done by telephone or letter. If it is done by telephone, the developer should note the date of the telephone call, the person contacted, and the outcome of the call. Letter or telephone documentation should be placed in the project file.

Task #5 Fair Housing Activities

Procedures

In response to Fair Housing laws, grantees should require developers to implement an Affirmative Marketing Plan until such time the public assistance has been retired. An Affirmative Marketing Plan should include (1) an adoption of a fair housing policy which states that the owner investor will adhere to all laws which prohibit discrimination in housing and, in an affirmative manner, will market and rent to all individuals regardless of race, color, religion, sex, age, handicap or national origin, (2) the use of the Equal Housing Opportunity logo, slogan or statement when advertising the availability of vacant units in all classified advertising of six column inches or larger and in all other advertising where its inclusion does not significantly increase the cost of advertising. Alternatively, inclusion of the logo in any classified advertisement where the “Publisher’s Notice” appears in the lead of the Classified Advertising Section will not be necessary, (3) notice of availability of vacant units to such agencies that serve minorities and women, (4) maintenance of a non- discriminatory hiring policy, (5) the displaying of a Fair Housing posting in the city and (6) the displaying of the Equal Opportunity logo where a project sign exists.

Task #6 Utilization of Funds

Procedures

Distribution Of Funds

Grantees should implement a loan closing procedure with the applicant. This procedure can consist of reviewing all documents involved in the loan (e.g. mortgage and note), receive applicant’s proof of insurance and explaining the repayment of the loan. Progress payments to contractors for substantial performance may be used.

Reuse Of Funds

Grantees should be aware that the reuse of funds is subject to Chapter 8 – Program Income. Program income includes but is not limited to : a) payments of principal and interest on loans made using CDBG funds; b) proceeds from the lease or disposition of real property acquired with CDBG; c) interest earned on CDBG funds held in a revolving loan fund account; and d) interest earned on any program income pending disposition of such income.

All program income earned during the grant period must be expended on the project activities prior to drawing down additional CDBG funds under the grant. In addition, all CDBG housing program income must be administered by a CDBG Certified Administrator. Program income earned after the completion of the grant activities is subject to the following requirement.

In keeping with federal regulations and state’s program income objective, a grantee must provide the Department with written notification of its intent to propose a use of program income to continue the same activity from which the program income is generated. The same activity, for program income earned under the Housing Development category is any housing activity eligible under Title I of the Community Development Act of 1974 (as amended) that will meet a national CDBG objective. This notice must be made within three months from the date of the Grantee’s Notice of Award letter, If the grantee’s notice is not submitted to the Department within the three month period, the Department may require the grantee to return all program income to the state.

If the grantee submits its notice within the specified period and elects to use program income to continue the same activity, the grantee will be instructed as to further requirements contained in the state’s Housing and Community Development Consolidated Plan which must be met by the grantee in order to retain and use the program income.

Homeownership Programs

- | | |
|---------|-------------------------------|
| Task #1 | Review Laws and Regulations |
| Task #2 | Determine Eligible Applicants |
| Task #3 | Determine Eligible Property |
| Task #4 | Homebuyer’s Responsibilities |

Task #1 Review Laws, Regulations and Administrative Requirements

Caution: following are some applicable laws, regulations and administrative requirements. As related to specific areas the most restrictive applies. *For example, HUD’s State Guide to National Objectives and Eligible Activities indicates that closing costs associated with home purchase is an eligible type of assistance, but the NAHP application guidelines may indicate this as an ineligible expense. In this case the NAHP application guidelines would apply.*

- Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35.
- Title I of the Housing and Community Development Act of 1974, as amended ("Act")
- 24 C.F.R. Part 570
- HUD's State Guide to National Objectives and Eligible Activities

HUD provides some further guidance on eligible housing activities via interpretation of the Act. The following is from HUD's State Guide to National Objectives and Eligible Activities.

Homeownership Assistance

Section 105 (a)(24) of the Act

Activities assisted under this title may include only -

Provision of direct assistance to facilitate and expand homeownership among persons of low- and moderate-income by using such assistance to –

(A) subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;

(B) finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;

(D) provide downpayment required from low- and moderate-income homebuyer; or

(E) pay reasonable closing costs (normally associated with the purchase of a home) incurred by low- and moderate-income homebuyers;

Eligible Activities

The specific purposes for which financial assistance using CDBG funds may be provided under this category are to:

- Subsidize interest rates and mortgage principle amounts, including making a grant to reduce the effective interest rate on the amount needed by the purchaser to an affordable level. (The funds granted would have to be applied towards the purchase price.) Alternatively, the grant recipient/sub-recipient could make a subordinate loan for an amount of funds the payments on which, together with that required under the first mortgage, would be affordable to the purchaser.
- Finance the cost of acquiring property already occupied by the household at terms needed to make the purchase affordable.

- Pay all or part of the premium (on behalf of the purchaser) for mortgage insurance required up-front by a private mortgagee. (This would include the cost for private mortgage insurance.)
- Pay any or all of the reasonable closing costs associated with the home purchase on behalf of the purchaser.
- Pay the down payment required by the mortgagee for the purchase on behalf of the purchaser.

Note especially that the use of funds under this category is specifically limited to assisting low- and moderate-income households.

Complying with National Objectives – Homeownership Assistance

Because the use of CDBG funds authorized under this category is limited to assisting low- and moderate-income households, any such use of funds must qualify under the national objective of benefit to low- and moderate-income persons-housing activities; no further consideration needs to be given here.

The Department’s policies concerning homeownership assistance activities are described via:

- The Housing and Community Development Annual Action Plan
- NAHP Application Guidelines
- CDBG Contracts
- CDBG Administration Manual

<h2>Task #2 Determine Eligible Applicants</h2>

Definition

In order to be eligible, an applicant must be income-qualified, credit-worthy and a homebuyer.

Procedures

Grantees and nonprofit organizations must develop guidelines regarding conflict of interest. For example, no member of the local government or nonprofit organization who exercises decision-making functions in the implementation of a homeownership program shall benefit from this program. Also, a statement of disclosure may be required by an applicant.

Applicants receiving assistance under the homeownership program should primarily consist of low-income persons. Low-income persons are defined as multi- or single-person families having incomes equal to or less than the income limits for their resident county. The income limits as published by HUD are determined for each Nebraska county on the higher of either: 80% of the median income of the county, or 80% of the median income of the entire non-metropolitan area of the state. This income is anticipated annual income.

Task #3 Determine Eligible Property

Definition

The property can either be a newly constructed unit or an existing “for sale” property. Existing sales property must meet the Department’s Minimum Standards for Rehabilitation. No property or portion thereof assisted through the local program may be retained for rental purposes. In some cases, CDBG money may be used for repairs of existing property within the homeownership program. However, grantees and nonprofit organizations should insure that this CDBG money is also used in some way to reduce the buyer’s mortgage.

Task #4 Homebuyer’s Responsibilities

Definition

A homebuyer must understand such issues as insurance, taxes, maintenance and homeowner counseling. If a property is located within a flood hazard area, the purchase of flood insurance within the loan period is required. If the property is not located in a flood hazard area at the time of the loan closing, the owner-occupant should provide satisfactory evidence thereof. Also, adequate hazard insurance covering fire and other hazards will be required for the full replacement value of the house. Local governments and nonprofit organizations should develop procedures to verify that the homeowner is paying taxes and insurance annually. Homeowner counseling for first-time homebuyers is often essential in homeownership programs.

Procedures

Guidelines should specify upkeep and maintenance standards of the property expected of the homeowner. The property should be adequately maintained during the life of the loan. At a minimum, the Department’s Property Standards should be used as guidelines for such maintenance.

Applicant Selection

Applicants can be chosen on a first-come, first-serve basis or a priority system may be developed. Grantees and nonprofit organizations should use their discretion in developing a priority system.

Complaint Procedures

The development of appeal or grievances procedures for those applicants that have been rejected is important in the implementation of homeownership programs. An example of an appeal procedure is an applicant’s request, in writing for reconsideration and ‘the reason for the request. A committee (created for this purpose) could then respond to this request and obtain more information from the lender or insurance underwriter if the denial is from them.

Fair Housing

The lenders, grantees and other participants in the homeownership program must adhere to laws which prohibit discrimination in housing. An application selection system must not discriminate

against individuals or families based on race, color, religion, sex, age, handicap or national origin. A special outreach effort should be implemented to attract minorities and other protected classes in the homebuyer pool to join the homeownership program.

Distribution Of Funds

Generally, the grantee and the first mortgage lender conduct a loan closing with the homebuyer. This procedure consists of reviewing all documents involved in the loan (e.g. mortgages or notes). Normally, a local lender will be responsible for scheduling both the permanent and homeownership program loan closings with the borrower, participating agency and appointed attorney. The lender shall facilitate and coordinate the closing process with all participants. The Right of Rescission to the borrower will be forwarded by the lender within a designated time period (e.g. 4 days). Once the borrower receives the Notice of Right of Rescission regarding the homeownership program loan, the attorney will prepare and have the homeownership program borrower execute the promissory note and deed of trust. The attorney will then file the deed of trust and promissory note at the Registrar of Deeds Office. During the homeownership program loan close-out, the local lender shall transmit a copy of the borrower's entire application and closing documents, including income to the nonprofit corporation. The nonprofit organization shall maintain and keep all applications, as well as all other required documents, records and other evidence in conformance with CDBG regulations.

Reuse Of Funds

Grantees should be aware that the reuse of funds is subject to requirements stated in Chapter 8 – Program Income. Program income includes but is not limited to a) payments of principal and interest on loans made using CDBG funds; b) proceeds from the lease or disposition of real property acquired with CDBG; c) interest earned on CDBG funds held in a revolving loan fund account; and d) interest earned on any program income pending disposition of such income.

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In keeping with federal regulations and state's program income objective, a grantee must provide the Department with written notification of its intent to use program income to continue the same activity from which the program income is generated. The same activity, for program income earned under the Housing Development category is any housing activity eligible under Title I of the Community Development Act of 1974 (as amended) that will meet a national CDBG objective. This notice must be made within three months from the date of the grantee's Notice of Award letter. If the grantee's notice is not submitted to the Department within the three month period, the Department may require the grantee to return all program income to the state.

If the grantee submits its notice within the specified period and elects to use program income to continue the same activity, the grantee will be instructed as to further requirements contained in the state's Consolidated Plan for Housing and Community Development which must be met by the grantee in order to retain and use the program income.