

**Introduction**

Depending on the program, funding year and state priorities, housing can be a core component of neighborhood revitalization. CDBG projects support the development of decent, safe and affordable housing and contribute to the development of sustainable communities by preserving existing housing stock or promoting affordable rental or homeownership opportunities for low- and moderate-income families. Housing activities typically occur in well-defined neighborhoods where a significant impact can be achieved, thus serving as an additional catalyst for investment.

There are a variety of ways that funding recipients may use CDBG funds to support housing activities. This chapter provides a summary of possible eligible housing activities, the requirements that apply, depending on the program and funding year, and helpful steps to implementing a successful housing program locally.

**Section 1 - Eligible Activities**

CDBG projects may include a variety of housing activities which are outlined in Section 105(a) of Title I and 24 CFR 570.482 of the CDBG regulations. Depending on the funding year, the eligible activities listed below may or may not have priority for funding.

- ◆ Demolition and reconstruction
- ◆ Demolition and clearance
- ◆ Service laterals and limited housing rehabilitation
- ◆ Direct assistance to LMI homebuyers to make homeownership more affordable
- ◆ New housing construction
- ◆ Activities supporting affordable housing, including acquisition, site improvements, infrastructure improvements and public facilities
- ◆ Single family owner and rental rehabilitation

Each of the above is discussed in greater detail in the following sections.

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Multifamily rehabilitation and conversion of existing non-residential structures to residential use by eligible households or for eligible households are also allowed as rehabilitation activities. All affordable housing program and rehabilitation policies outlined in this chapter must be followed.

## **Ineligible Activities**

The general rule is that any activity not specifically authorized under the CDBG regulations is ineligible to be assisted with CDBG funds. The regulations stipulate that the following activities may not be assisted with CDBG funds:

- ◆ New housing construction except under certain conditions.
- ◆ Income payments, which are grants to an individual or family and are used to provide basic levels of food, shelter (including payment for rent, mortgage and/or utilities) or clothing.

## **Section 2 - Demolition and Reconstruction**

Under certain circumstances, CDBG funds may be used for demolition of dilapidated housing structures and reconstruction or replacement. See replacement housing requirements in this chapter. The funding recipient must take into consideration the requirements of Section 104(d) of the Housing and Community Development Act of 1974 when undertaking this activity. If through code enforcement, it is determined that a residential unit can be brought up to code through rehabilitation, that unit should not be demolished. If the unit is demolished either by the locality or the property owner using CDBG funds, the replacement housing requirements of Section 104(d) are "triggered." (See Chapter 11 for more information.) It then becomes the responsibility of the unit of general local government to replace the demolished housing unit. In addition, the replacement unit must be designed to remain affordable for low- and moderate-income persons for a period of at least ten years from the date of initial occupancy.

Note that the Section 104(d) one for one unit replacement requirements are not triggered for owner occupied housing where the owner is voluntarily participating in a reconstruction program where their existing home will be demolished and a new, suitable home will be built in its place. However, if the unit is tenant occupied or if the owner is not participating voluntarily (such as a unit that was condemned and the owner is being forced to rebuild his or her home), Section 104(d) one for one unit replacement requirements may indeed be triggered and the grantee **MUST** consult with Grants Administration prior to undertaking these activities. Owner occupied units that also contain a tenant, such as tenant living in an upstairs unit, may also trigger one for one replacement requirements and Grants Administration must be consulted.

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## Section 3 - Demolition and Clearance

CDBG funds may be used for clearance of debris and/or demolition of vacant, dilapidated structures. This may be done through spot slum/blight, area slum/blight, or LMI area benefit if the use of the property will serve an LMI area. Structures to be demolished require that the grantee document through an inspection report that the structure is vacant and substandard or dilapidated according to local building codes. Localities proposing demolition must have a written anti-displacement and relocation plan and must follow it in the implementation of these activities.

Generally, multiple clearance or demolitions should be undertaken as part of an overall revitalization program in a targeted area or be part of a comprehensive effort to address all blighted properties. Most localities will use code enforcement tools to clear private properties that are dilapidated and causing a blight. Such local governments have adopted ordinances that specify code enforcement procedures. The International Building Code has an optional International Property Maintenance Code that can be locally adopted to address vacant and blighted properties.

State law at Title 31, Chapter 15 also provides procedures for local governments to deal with dwellings that are unfit for human habitation. A link to this law can be found at:

<http://www.scstatehouse.gov/code/t31c015.php>

Essentially, state law says that whenever a locality finds dwellings which are unfit for human habitation due to dilapidation, the locality may exercise its police powers to repair, close or demolish the dwelling. It provides guidance for localities to adopt an ordinance that:

- (1) Designates a public officer to carry out these powers;
- (2) Allows the locality to serve the owner with a complaint and hearing notice;
- (3) If it is determined the dwelling is unfit for human habitation the owner can be required to:
  - a. repair the unit to make it habitable, if it can be made at a reasonable cost in relation to the value of the dwelling, or to vacate and close the dwelling as a human habitation; or
  - b. if the unit cannot be repaired and made habitable for a reasonable cost the owner must remove or demolish such dwelling;

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- (4) If the owner fails to comply the locality may post on the main entrance of the dwelling, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful";
- (5) If the owner fails to comply with an order to remove or demolish the dwelling, the locality may remove or demolish the dwelling and the cost of removal and/or demolition shall be a lien against the property.

State law and local ordinances should be followed in serving of orders, posting notices, and filing with clerk of court. The law also provides details on required timeframes.

If the property owner does not bring the property into code compliance, the locality typically uses its own funds to demolish the unit and then places a lien on the property to recoup the expenses of the demolition and clearance from the owner of the property. A lien also ensures that there is no windfall profit to the owner for improvement of the property.

If the structure is privately owned and the local government does not follow the state and local codes enforcement procedures, a *voluntary* demolition assistance agreement is required prior to demolition which specifies the conditions of the assistance. The agreement grants written permission from the property owner prior to carrying out any demolition/clearance and documents that no persons or businesses will be displaced by the demolition and that the property was vacant for at least 3 months prior to the grantee's application for CDBG assistance.

If it is determined that a vacant, dilapidated housing unit is to be demolished and cleared, written documentation (using the H-1 form) has to establish whether or not Section 104(d) applies (regardless of use of code enforcement procedures). Further guidance on the demolition of vacant, substandard housing determined to be unsuitable for rehabilitation and the H-1 form can be found in *Chapter 11: Relocation and One-For-One Replacement of Housing*.

Structures to be demolished require that the grantee document through an inspection report that the structure is substandard or dilapidated according to local building codes. The grantee must also verify the vacancy status through inspection reports, utility disconnections, etc. It is recommended that before and after photos are taken and maintained in the file.

Demolition activities may include: determination of environmental hazards on the property (lead and asbestos) and proper removal; testing and disposal of hazardous materials; utility disconnections; and demolition permits. Once demolition is complete, the site should be leveled and seeded as appropriate, and any damages to sidewalks, curbs, drives, etc. repaired.

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Prior to beginning demolition, a determination of whether the unit contains lead or asbestos must be made. DHEC has specific requirements for the removal of hazardous materials including permitting, testing, air monitoring and removal of such materials. Qualified contractors must be used to perform these services and in some cases, different contractors may be required to perform the testing and air monitoring and demolition. Contact DHEC for more information.

Where demolition and clearance activities are integral to the construction of a building or improvement on the cleared property, and where such construction is also to be assisted with CDBG funds, the clearance activities may be treated as a part of the construction costs.

Davis-Bacon wage requirements are not typically triggered by demolition work alone. Demolition, by itself, is not necessarily considered to be construction, alteration or repair (i.e. the activities to which Davis-Bacon requirements may apply). However, if the demolition is an integral part of a construction project or if subsequent construction at the site is planned or contemplated in the future, then the demolition work is considered part of the overall construction project. In such cases, if the subsequent construction work is subject to Davis-Bacon requirements, then the demolition would be covered also.

Therefore, in most cases demolition alone is not covered by Davis-Bacon requirements. This policy applies whether demolition is financed or assisted with CDBG or other non-CDBG funding. In the context of CDBG program activity, Davis-Bacon coverage would necessarily involve knowledge that there will be subsequent construction and that the subsequent construction work will be covered by Davis-Bacon. This knowledge, whether of planned or contemplated work, implies that there is documented evidence of the expected subsequent construction. Such evidence may include contract specifications, disposition plans, budgets, applications for assistance, and similar records.

A demolition checklist as well as sample private owner agreements and permissions are included in the attachments.

### Liens

CDBG can be used to help a locality pay for the upfront costs of demolition but will require a lien to recoup those costs, unless:

- ◆ The demolition is done to address and support crime prevention efforts in a target LMI neighborhood; and
- ◆ The CDBG total cost related to demolition (such as legal, lead/asbestos testing and removal, air monitoring, demolition, disposal, etc.) does not exceed \$10,000 per property.

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If the cost for demolition of multiple properties owned by one landowner exceeds \$10,000, liens should be placed on each of the properties.

Properties demolished or cleared that do not meet the above guidelines will require a lien:

- ◆ Generally the lien should be repaid if the property is sold within 5 years of the demolition or clearance.
- ◆ If the property is redeveloped for an LMI purpose the lien can be forgiven in whole or in part depending on the amount of assistance.

Recovery of CDBG costs from a lien is considered program income.

### Section 4 - Service Laterals and Limited Rehabilitation

The installation of lateral service lines on private property, and establishment of connections are considered housing rehabilitation activities. Also eligible is limited rehabilitation to provide bathroom or kitchen facilities to units connected to water/sewer that have no facilities.

- ◆ In projects where water and/or sewer lines are being upgraded from a smaller size to a larger one, all households (LMI and non-LMI) may be reconnected to the upgraded line using CDBG funds. In these projects, the existing service is considered part of the overall system. However, vacant and non-residential reconnections may not be paid for with CDBG funds. Further, if new service lines (on private property) are installed, CDBG funds can only be used for LMI households.

Note: Limited housing rehabilitation, which is the installation of lateral service lines on private residential property and/or the provision of indoor plumbing facilities in connection with water/sewer connections, is also discussed in Chapter 5.

- ◆ LMI households that do not have any indoor plumbing (e.g., bathroom/kitchen plumbing facilities) must be connected to the system and provided with indoor plumbing facilities, if they do not have such facilities, at no cost to the LMI household as part of the service line project. This is referred to as limited rehabilitation. This requirement is not intended to provide bathroom or kitchen repairs. It is intended solely for those units that have no facilities. Limited rehabilitation costs generally may not exceed \$10,000. Contact your grants manager for approval if costs are expected to exceed this amount. For those units that do not have indoor facilities, additional rehabilitation may be provided if

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needed to bring the unit up to applicable housing codes for the work done. All housing rehabilitation policies and guidelines apply.

- ◆ Limited rehabilitation projects involving rental units have the following requirements:
  - For rental units occupied by non-LMI tenants, the owner must pay for any tap, connection, or service lines on private property.
  - For rental units occupied by LMI tenants, the investor should pay for any connection, tap or service line on private property. However, CDBG funds may pay any of these costs that are CDBG eligible after the rental property owner enters into an agreement with the unit of local government to maintain affordable rents and rent to LMI households for one year.
- ◆ In the event connection and service lines involve a mobile home park, an affordable rent agreement must be obtained from the mobile home park owner prior to the provision of the assistance.

### **Section 5 – Direct Assistance to LMI Homebuyers**

Direct assistance may be provided to facilitate and expand homeownership among persons of low- and moderate-income by using such assistance to:

- ◆ Subsidize interest rates and mortgage principal amounts for low- and moderate-income home-buyers,
- ◆ Finance the acquisition by low- and moderate-income home-buyers of housing that is occupied by the home-buyers,
- ◆ Acquire guarantees for mortgage financing obtained by low- and moderate- income homebuyers from private lenders (eligible only in certain circumstances, see Grants Administration for more information),
- ◆ Provide up to 50 percent of any down payment required from low- and moderate- income homebuyers, or
- ◆ Pay reasonable closing costs (normally associated with the purchase of a home) incurred by low- and moderate-income homebuyers.

While direct assistance for LMI homeownership is an eligible activity, typically other housing programs such as HOME or USDA are more appropriate sources of funding.

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## Section 6 - New Housing Construction

Although the CDBG program does not allow new construction of housing by local governments, the regulations allow for certain "eligible subrecipients" to carry out this activity. The eligible subrecipients include neighborhood-based nonprofit organizations (NBOs), Section 301(d) Small Business Investment Companies (SBICs), and local development corporations (LDCs). To receive funding, eligible subrecipients must be undertaking neighborhood revitalization, community economic development, or energy conservation projects with CDBG funds, and the grantee must determine that the project is necessary or appropriate to achieve its community development objectives. Eligible subrecipients must carry out the project in name and in deed. Although inexperienced eligible subrecipients may need technical assistance from the grantee, the eligible subrecipient must actually implement the activity.

## Section 7 – Activities in Support of Affordable Housing

There are several activities eligible under CDBG that help to support the development of affordable housing. Activities aimed at reducing development costs is one way of making housing affordable, since lower costs and improved sites reduce the ultimate sale price for homes or monthly rent for apartments.

These activities, depending on the program year of funding may include:

- ◆ *Acquisition:* Acquisition of property may be eligible under CDBG, provided the acquisition follows the rules in Chapter 10 of the *Implementation Manual* and those in the Uniform Relocation Act (URA). CDBG funds should not be used to carry out activities that will result in displacement, unless there is a public health or safety threat where there are no other feasible alternatives. No property may be acquired for a CDBG-assisted project until after environmental review and Release of Environmental Conditions.

Recipients may assist private individuals, non-profits and private for-profit entities with the acquisition of vacant property for the purpose of rehabilitation or construction. The property must be used or sold for low and moderate income residential purposes.

Identification of sites for acquisition should be based on market information regarding the availability of suitable sites, including maps showing vacant and for-sale parcels and information concerning land use, zoning, floodplain, tax value, heir's property, etc. In assessing the market, localities can talk to potential sellers regarding available property, but care must be taken so that there is no appearance of coercion,



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persuasion or pressure to sell or donate the property. If a potential seller were to feel pressure, they could take legal action against the locality.

In many cases, acquisition can be done as voluntary acquisition (because most localities do not intend to use their power of eminent domain to acquire property for housing). However, if all properties in an area are to be acquired, the acquisition cannot be considered voluntary.

An option to purchase the property can be obtained (for 6 months at least) prior to grant award, but it must contain language making the option contingent upon environmental review and removal of environmental conditions. Prior to obtaining an option, a voluntary sale letter or notice of interest in acquiring property (for involuntary transactions) must be sent, and wording should be added that public funds are being sought for the project and an offer might not be pursued if funds are not obtained. The voluntary letter must include an estimate of fair market value (obtained from comparable sales in the neighborhood), and a statement that no eminent domain powers will be used. Sample letters are included in the attachments to *Chapter 10 - Acquisition*. After grant award, the sale must be closed within 120 days of grant award or the grant may be rescinded.

- ◆ *Demolition and clearance of sites:* Recipients may demolish existing structures and/or clear a site to be used for housing.
- ◆ *Site improvements:* Recipients may improve publicly owned sites for housing purposes. Using CDBG funds for improvements to a site after disposition to a private developer is eligible only if carried out by an eligible subrecipient (as discussed under New Housing), in which case the activity must be for neighborhood revitalization, community economic development, or energy conservation, and the recipient must determine that it is necessary or appropriate to achieve community development objectives.
- ◆ *Infrastructure improvements:* The construction of publicly owned water, sewer, streets and drainage facilities is eligible as a public facilities activity. Refer to Chapter 5 of the *Implementation Manual* for detailed information on the requirements pertaining to infrastructure improvement activities.
- ◆ *Public Facilities:* Construction of and improvements to publicly owned facilities in support of the housing development are eligible for CDBG funding.

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## Section 8 – Affordable Housing Program Design

In developing affordable housing, applicants must consider the following:

- ◆ Identify the target population to be served. What are the housing needs of this population?
- ◆ Develop a market analysis to determine need. What is the current supply of units and how quickly will new units be absorbed by the market, given existing levels of demand? What is the overall condition of the housing stock? What is the demand for this type of housing in this location? What housing costs are feasible given the current market? Are they competitive?
- ◆ Prepare a development budget showing sources and uses of funds. (A sample form is included in the attachments to this chapter.) How much CDBG funding will be required to assist the project? What are the potential development costs of the project? What financial resources are needed? What financial resources are available (private and public)? What are the timing constraints involved with the various funding sources?
- ◆ Develop a pro forma operating budget for rental projects. (A sample form is included in the attachments to this chapter.) What is the potential income of the property? What are the potential operating expenses?
- ◆ Develop a marketing and management plan for the proposed project. How will the units be marketed and how will the affordability be maintained? Who are the likely owners of the project and what do they know about owning and operating federally-assisted housing? Obtain written commitments from the developer to ensure low- and moderate-income persons will occupy the units.
- ◆ Develop a project timetable for implementation. When will all assisted units be occupied by low- and moderate-income persons?

### Determining the Need for the project

A strong market study is important to the success of an affordable housing project. The market study should include an absorption schedule/rate for the project, or a rate which indicates how quickly the units will be rented or sold (absorbed) after completion. Since the project cannot be programmatically closed until a national objective has been met (100% LMI if homeownership, or 51% if rental), the market absorption rate is critical to timely completion of the project. Generally, occupancy must be achieved within six months of obtaining the certificate of occupancy.

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If a national objective is not met, repayment of the funds will be required.

### **Determining the Amount of CDBG funds needed**

The sources and uses development budget and the pro forma operating budget are necessary to determine what other funding sources can be obtained and to determine the gap in financing. All costs must be reasonable. CDBG assistance should not exceed the financing gap, and may not exceed 50% of the total development costs up to a maximum of \$10,000 per LMI unit.

When a private developer owns all or most of the units to be developed the assistance should generally be via a repayable loan. Assistance for the development costs associated with homeowner new construction should be in the form of a construction loan and the amount to be repaid will be based on the homeowner required subsidy at the sale of the unit.

Useful HUD guidance for determining subsidy levels can be found in the attachments to this chapter. Additional information regarding sources and uses development budgets, pro forma operating budgets and gap financing is available at the following HUD website:

<http://www.hud.gov/offices/cpd/affordablehousing/training/web/underwriting/gapanalysis/layering.cfm>

### **Development Partners**

Most affordable housing programs will involve the development of partnerships among Federal, State and local governments, private industry and non-profit organizations to utilize effectively all available resources to provide more affordable housing. Leveraging involves using the minimum amount of public subsidy necessary to obtain private dollars to fund a project. Underwriting should be done to determine the appropriate amount of subsidy. (The attachments to this chapter include HUD guidance regarding the layering of subsidies.) Public funding sources which may be used in tandem with CDBG to develop affordable housing include the Home Investment Partnerships Program (HOME), State Housing Trust Fund, Low Income Housing Tax Credits and USDA Rural Development. Private funding sources may include developer's equity, local financial institutions or private contributions. Grants Administration will require written commitments for all non-CDBG funding sources involved in a project. These funds must be committed and available to be obligated at the time CDBG funds are released.

These types of projects may include the participation of for-profit developers, non-profit housing providers, or local governments as owners, developers, sponsors, property managers, or program administrators (as subrecipients). Development agreements must be executed between the local government and

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the partner(s) that detail the project and the roles and responsibilities of each party. (The attachments to this chapter include a sample development agreement.) In addition, CDBG funded affordable housing projects are required to use the HUD Equal Opportunity logo in advertisements.

All new housing development must be done through an eligible non-profit (local development corporation), and the non-profit must be carrying out a neighborhood revitalization or community economic development project in the area. When selecting partners, localities should consider information on the eligibility of the non-profit, operation funding, past history of development, activity in the project area, etc.

### **Developer Fees**

Generally developer fees should not exceed 10%, and CDBG can only pay the percentage of the fee equal to the percentage of CDBG funds in the development cost. If such fees are charged by a non-profit, they will be considered activity delivery costs and general administration should be lower than the CDBG limits. CDBG funds should not be used to pay for developer fees incurred by for-profit development partners.

### **Sale of Units/Program Income**

Homeownership activities should be targeted to LMI households with incomes between 60-80% of median income and that have sufficient resources to become home owners. Housing activities that involve the eventual sale or rental of units will generate program income that generally must be returned to the state.

The sales price of each unit must be based on appraised value. The first mortgage must be based on the amount the homebuyer can afford (using HUD or private loan criteria). The CDBG subsidy to the purchaser must be based on the difference (gap) between homebuyer down payment + amount of loan they can afford, and the sales price up to a maximum subsidy allowed by CDBG according to the published limits for the program year of funding. The subsidy must be structured as a deferred forgivable second mortgage (100% forgiven after five years).

The second mortgage to the purchaser (as a deferred, forgivable loan) would only be repaid if the unit is sold by the LMI owner within the 5 year affordability period. If HOME funds are involved, HOME rules apply.

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## Section 9: Exterior Housing Rehabilitation

### Housing Rehabilitation

Housing rehabilitation projects may involve exterior improvement assistance for properties within in town neighborhoods or near business centers. These improvements are designed to make communities more economically competitive by improving the overall physical appearance and stabilizing neighborhood property values. Visual impact will be enhanced by painting and making necessary repairs to facades and exteriors of concentrated neighborhood housing units occupied by low and moderate-income persons.

In designing a housing rehabilitation program, recipients should adhere to the following HUD and Grants Administration requirements.

### Local Housing Committee

The design of a local housing assistance program may be done in conjunction with a local housing rehabilitation advisory committee composed of persons representative of low-income neighborhoods, local government representatives and other members of the community at large. This committee is normally involved in setting policies and procedures for the program and serving as a liaison between citizens in the project area, local staff and local elected officials.

### Eligible Units/Improvements

Eligible units for rehabilitation include stick built or modular units that will be **occupied** by LMI households after rehabilitation. Manufactured housing and vacant units are not eligible for CDBG funding.

Eligible activities should create a positive visual/physical impact on the target area and may not exceed \$10,000 per unit. Exterior improvements to make LMI units more energy efficient are also eligible. Typical façade/exterior repairs might include:

- ◆ Painting of exterior surfaces or siding;
- ◆ Roof repairs or replacement;
- ◆ Porch repairs;
- ◆ Installation of handrails, guardrails or handicap ramps;
- ◆ Front or visible side window or exterior front door repairs or replacement; or storm/energy efficient windows and doors throughout;
- ◆ Gutter, fascia or eave repairs;
- ◆ Crawl space door and vent repairs.

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Installation of indoor facilities, if none exist within an LMI housing unit, are also eligible as housing rehabilitation, when the activity is part of a water/sewer connections project. Costs should not exceed \$10,000.

Given the amount of CDBG funding available, it may not be possible to address all of the exterior repairs needed on a housing unit. The locality is encouraged to obtain the necessary leveraging to complete all such repairs. If this is not possible, then improvements should be prioritized and targeted to those items that will make the greatest visual impact on the community as a whole, beginning with exterior surfaces such as painting. The donation and installation of smoke detectors or thermostats will be considered leveraging, even though they are interior improvements.

Generally, assistance should not be provided to units that have previously received rehabilitation assistance. Prior Grants Administration approval is required when such assistance is proposed.

### **Vacant Properties**

Vacant properties should not generally be assisted.

### **Eligible Households**

All households (homeowners/occupants) participating in a housing rehabilitation project are required to be LMI. CDBG housing rehabilitation is a “direct benefit” activity and income eligibility must be established for all persons directly benefiting from a CDBG project. Simply because a household is elderly, disabled or exhibits other limited clientele characteristics, does not mean that household automatically qualifies for CDBG housing assistance.

### **Homeowner Commitment**

Prior to rehabilitating housing units (not including limited rehabilitation), there must be a written agreement with each homeowner that specifies a commitment by the homeowner to participate in the program and agree to the following:

- ◆ Clean house and yard prior to rehabilitation. Recipients should insure that accumulations of large piles of trash, garbage or other discarded debris on or about the premises are removed or properly and safely stored. Such conditions, if not addressed, can pose a serious threat to the health and safety of the residents as well as serve as a breeding ground for rats, mice or vermin.
- ◆ Contribute a minimum of five hours to any of the following:
  - Improvement to their own property (beyond routine maintenance),

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- Improvements to their neighborhood, or
- Any other community service activities.

If the homeowner is physically and financially unable to contribute, it is acceptable for a family member or other volunteer to provide the assistance. Grantees should document the extent of the homeowner's contribution.

- ◆ Homeowner agrees to occupy the unit or rent to an LMI household at affordable rents for one year after the assistance.

### Type of Assistance

With regard to the type and terms of assistance, recipients are responsible for designing a housing rehabilitation program that meets community needs. Programs can be comprised of deferred forgivable loans or traditional loans. In determining the type of assistance to be provided, recipients should consider the income level of households to be assisted.

The following definitions are offered to explain possible program types and terms.

- ◆ Deferred Forgivable Loans: Deferred forgivable loans may be provided to eligible households for the cost of rehabilitation. These do not have to be paid back if the homeowner commitments are met.
- ◆ Loans: Loans to landlords must be conditional upon their provision of the required cash match at the time of contract award and a written agreement to make their units available, for at least one year or the term of the loan (whichever is greater), at rents affordable to lower income tenants, or available for Section 8 Existing Housing Assistance.

Loans should be recorded to ensure payback if the unit is sold or if terms are not met.

Traditional loans require repayment of a principal amount plus interest. Funding recipients may provide loans at a single interest rate, or establish a sliding scale where interest rate is related to household income or ability to pay. The term of the loan is also at the discretion of the recipient. All loans may be made for the same term or terms may be adjusted depending upon the size of the loan and the borrower's ability to pay (e.g., larger loans having longer terms). Grants Administration recommends that single family rehabilitation loans have terms that do not exceed 5 years. Multi-family loans should typically have terms of 20 years or less. The amortizing loan is instituted through the use of a mortgage and often accompanied by a promissory note.

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## Maximum Levels of Assistance

All costs should be determined to be reasonable. A maximum of \$10,000 in CDBG funds is allowed for exterior improvements to stick-built or modular homes.

## Property Standards and Improvements

All work completed must meet locally adopted codes. The state is also prioritizing the use of green building and energy conservation techniques in construction practices, materials and products. Efficient homes save homeowners money in operation costs, so all CDBG-funded improvements, where feasible, should meet the State-adopted International Energy Efficiency Code, ENERGY STAR, or a similar energy efficiency standard.

## Rental Properties

There are additional requirements for rental projects assisted with CDBG which include the following:

- ◆ Owners of rental units must provide a ten to fifty (depends on the number of properties owned) percent cash match to the CDBG cost of rehabilitation of the unit and sign a commitment to participate in the program. Match must be provided prior to executing the construction contract. An exception to the cash match requirement may be allowed if the homeowner is LMI and they receive no rent for the unit.
- ◆ The remaining CDBG costs may either be provided through a forgivable loan, repayable loan, or a combination of the two. Repayable loans are encouraged where there is ability to pay.
- ◆ Owners must be required to maintain insurance on the assisted property, keep taxes paid and adequately maintain the property for at least one year if assistance is \$10,000 or less and 5 years for projects involving greater level of assistance (for multi-family).
- ◆ Owners must rent to LMI tenants. Affordable rents must be instituted to protect renters from rent increases or eviction due to housing rehabilitation. An affordable rent is defined generally as rent plus utility costs which does not exceed the Section 8 Fair Market Rent (FMR) for existing housing established by HUD under 24 CFR Part 888. These rent controls must be instituted for a period of at least one year if assistance is \$10,000 or less and 5 years for multifamily projects, or for as long as there is a below-market rate for rehabilitation loan, whichever period is



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longer. During this period, investor-owners may only be allowed to impose minimal increases, primarily related to increased taxes or insurance.

- No authorized increase shall exceed 30 percent of the tenant's monthly adjusted income and/or the Section 8 FMR for the area, whichever is less. In no case shall rents increase at a greater rate than the increase in the Consumer Price Index (CPI) for the preceding twelve months.
  - Where the rent paid by a tenant prior to CDBG rehabilitation exceeds the FMR, after rehabilitation rents may not increase at a greater rate than the increase in the Consumer Price Index (CPI) for the preceding twelve months.
  - The rent amount must be clearly established in the contract agreement and all terms and conditions shall remain in effect for at least five years or for the entire term of the loan, if longer.
- ◆ If a project proposes to rehabilitate multiple (more than one) properties owned by one landlord, technical assistance is required prior to submission of the application. For landlords owning multiple properties proposed for assistance in a target area, the following applies:
- A match of 30% of the assistance will be required if one landlord owns 2-4 units proposed for rehabilitation.
  - A match of 50% of the assistance must be provided if one landlord owns 5 or more of the units proposed for rehabilitation.
  - The match must be provided prior to construction.
- ◆ Limited rehabilitation (water/sewer connection) projects involving rental units have the following requirements:
- In the event an LMI tenant does not occupy a particular rental unit, the owner must pay for any connection, tap, or impact fees.
  - For rental units occupied by LMI tenants, the investor should pay for any connection, tap or impact fees. However, CDBG funds may pay any hard costs (no fees) that are CDBG eligible after the rental property owner enters into an agreement with the unit of local government to maintain affordable rents and rent to LMI households for a reasonable period of time.
  - In the event connection costs involve a mobile home park, an affordable rent agreement must be obtained from the mobile home park owner prior to the provision of the assistance.

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## Initial Inspection

An initial inspection of the property should be conducted to determine the condition of the unit's exterior and the extent of work required. The inspection should be done by a person capable and qualified to perform such duties. An inspection checklist should be used for the initial inspection to evaluate the dwelling's exterior condition. Once completed, this checklist forms the basis for outlining the type work necessary to bring the property to desired standards.

- ◆ Depending on the level of assistance and the year the unit was built, a visual assessment, paint testing or risk assessment may also be required to comply with the lead based paint regulations. See the following Summary of Lead Based Paint Requirement.

## Lead-Based Paint Hazard Reduction

All units in a project assisted with CDBG funds must comply with the lead based paint regulations which require notifications to occupants, owners and purchasers.

The approach to addressing lead-based paint in CDBG funded projects depends on the level of assistance. See the table on the following pages for more information about each approach.

- ◆ Approach 1: Do No Harm
- ◆ Approach 2: Identify and Stabilize Deteriorated Paint
- ◆ Approach 3: Identify and Control Lead-Based Paint Hazards
- ◆ Approach 4: Identify and Abate Lead-Based Paint Hazards

The lead-based paint requirements established by the regulation fall into the five major categories listed below:

- ◆ Notification: Recipients must meet four notification requirements:
  - *Lead Hazard Information Pamphlet* - Occupants, owners, and purchasers must receive the EPA/HUD/Consumer Product Safety Commission (CPSC) lead hazard information pamphlet, or an EPA-approved equivalent.
  - *Disclosure* - Check that property owners have provided purchasers and lessees with available information or knowledge regarding the presence of lead-based paint and lead-based paint hazards prior to selling or leasing a residence.
  - *Notice of Lead Hazard Evaluation or Presumption* - Occupants, owners, and purchasers must be notified of the results of any lead hazard

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evaluation work or the presumption of lead-based paint or lead hazards.

- *Notice of Lead Hazard Reduction Activity* - Occupants, owners, and purchasers must be notified of the results of any lead hazard reduction work.
- ◆ Lead Hazard Evaluation: The evaluation activity required depends on the nature of the activity funded and the amount of Federal funding. Evaluation methods include visual assessments, paint testing, and risk assessments. Refer to the "Summary of Lead-Based Paint Requirements by Activity" table for more information.
- ◆ Lead Hazard Reduction: The reduction activity required depends on the nature of the activity funded and the amount of Federal funding. Reduction methods described include paint stabilization, interim controls, standard treatments, and abatement. Refer to the "Summary of Lead-Based Paint Requirements by Activity" table for more information.
- ◆ Ongoing Maintenance: Ongoing maintenance is required if the grantee has an ongoing relationship with the Federal government (e.g., tenant assistance activities). Ongoing maintenance includes periodic visual assessments to determine if lead-based paint hazards have reappeared.

Failure to comply with the lead-based paint requirements under the new regulation will subject a recipient to sanctions authorized under the Federal funding programs providing assistance to the property, and violations may be subject a recipient to other penalties available under state or local law. Notifying owners, purchasers, or occupants of possible lead-based paint hazards does not relieve recipients of the responsibilities under the new regulation.

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## Four Approaches to Implementing Lead Hazard Evaluation and Reduction

<b>APPROACH 1. DO NO HARM</b>		
<p><b>Lead Hazard Evaluation</b></p> <ul style="list-style-type: none"> <li>◆ Paint testing performed on surfaces to be disturbed.</li> </ul>	<p><b>Lead Hazard Reduction</b></p> <ul style="list-style-type: none"> <li>◆ Repair surfaces disturbed during work.</li> <li>◆ Safe work practices used when working on areas identified as lead-based paint.</li> <li>◆ Clearance performed.</li> </ul>	<p><b>Options</b></p> <ul style="list-style-type: none"> <li>◆ Presume lead-based paint is present and use safe work practices on all surfaces being disturbed.</li> </ul>
<b>APPROACH 2. IDENTIFY AND STABILIZE DETERIORATED PAINT</b>		
<p><b>Lead Hazard Evaluation</b></p> <ul style="list-style-type: none"> <li>◆ Visual assessment performed to identify deteriorated paint.</li> </ul>	<p><b>Lead Hazard Reduction</b></p> <ul style="list-style-type: none"> <li>◆ Paint stabilization of identified deteriorated paint.</li> <li>◆ Safe work practices used.</li> <li>◆ Clearance performed.</li> </ul>	<p><b>Options</b></p> <ul style="list-style-type: none"> <li>◆ Perform paint testing on deteriorated paint. Safe work practice requirements only apply to lead-based paint.</li> </ul>
<b>APPROACH 3. IDENTIFY AND CONTROL LEAD HAZARDS</b>		
<p><b>Lead Hazard Evaluation</b></p> <ul style="list-style-type: none"> <li>◆ Paint testing performed on surfaces to be disturbed.</li> <li>◆ Risk assessment performed on entire dwelling.</li> </ul>	<p><b>Lead Hazard Reduction</b></p> <ul style="list-style-type: none"> <li>◆ Interim controls performed on identified hazards.</li> <li>◆ Safe work practices used.</li> <li>◆ Clearance performed</li> </ul>	<p><b>Options</b></p> <ul style="list-style-type: none"> <li>◆ Presume lead based paint and/or lead based paint hazards are present and perform standard treatments.</li> </ul>
<b>APPROACH 4. IDENTIFY AND ABATE LEAD HAZARDS</b>		
<p><b>Lead Hazard Evaluation</b></p> <ul style="list-style-type: none"> <li>◆ Paint testing performed on surfaces to be disturbed.</li> <li>◆ Risk assessment performed on entire dwelling.</li> </ul>	<p><b>Lead Hazard Reduction</b></p> <ul style="list-style-type: none"> <li>◆ Abatement performed on identified hazards.</li> <li>◆ Interim controls performed on identified hazards on the exterior that are not disturbed by rehabilitation.</li> <li>◆ Safe work practices used.</li> <li>◆ Clearance performed.</li> </ul>	<p><b>Options</b></p> <ul style="list-style-type: none"> <li>◆ Presume lead-based paint and/or lead-based paint hazards are present and perform abatement on all applicable surfaces – deteriorated, impact, friction, chewable surfaces, and surfaces to be disturbed.</li> </ul>

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## SUMMARY OF LEAD-BASED PAINT REQUIREMENTS BY ACTIVITY

	Homeowner and Rental Rehabilitation (Subpart J)			Acquisition only and Homebuyer (Subpart K)
	≤\$5,000	\$5,000 - \$25,000	>\$25,000	
<b>Approach to Lead Hazard Evaluation and Reduction</b>	1. Do no harm	3. Identify and control lead hazards	4. Identify and abate lead hazards	2. Identify and stabilize deteriorated paint
<b>Notification</b>	Yes	Yes	Yes	Yes
<b>Lead Hazard Evaluation</b>	Paint Testing	Paint Testing and Risk Assessment	Paint Testing and Risk Assessment	Visual Assessment
<b>Lead Hazard Reduction</b>	Repair surfaces disturbed during rehabilitation	Interim Controls	Abatement (Interim Controls on exterior surfaces not disturbed by rehabilitation)	Paint Stabilization
	Safe work practices Clearance	Safe work practices Clearance	Safe work practices Clearance	Safe work practices Clearance
<b>Ongoing Maintenance</b>	For HOME rental only	For HOME rental only	For HOME rental only	Yes (if ongoing relationship)
<b>Response to poisoned children</b>	No	No	No	No
<b>Options</b>	Presume lead-based paint Use safe work practices on all surfaces	Presume lead-based paint and/or hazards Use standard treatments	Presume lead-based paint and/or hazards Abate all applicable surfaces	Test deteriorated paint. Use safe work practices only on lead-based paint surfaces.

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<b>SUMMARY OF REQUIRED ACTIVITIES TO ADDRESS LEAD-BASED PAINT</b>	
<b>Category</b>	<b>Required Activities</b>
<b>Notification</b>	<p>All of the following notices must be provided as appropriate:</p> <ul style="list-style-type: none"> <li>✓ Pamphlet</li> <li>✓ Disclosure</li> <li>✓ Notice of Lead Hazard Evaluation or Presumption</li> <li>✓ Notice of Lead Hazard Reduction Activity</li> </ul>
<b>Lead Hazard Evaluation</b>	<p>One or more of the following may apply:</p> <ul style="list-style-type: none"> <li>✓ Visual Assessment</li> <li>✓ Paint Testing</li> <li>✓ Risk Assessment (or Lead Hazard Screen)</li> </ul>
<b>Lead Hazard Reduction</b>	<p>One or more of the following may apply:</p> <ul style="list-style-type: none"> <li>✓ Paint Stabilization</li> <li>✓ Interim Controls (or Standard Treatments)</li> <li>✓ Abatement</li> </ul> <p>The following always apply:</p> <ul style="list-style-type: none"> <li>✓ Safe Work Practices</li> <li>✓ Clearance</li> </ul>
<b>Ongoing Maintenance</b>	<p>This requirement may apply.</p> <ul style="list-style-type: none"> <li>✓ Inspect and maintain lead hazard reduction work.</li> </ul>

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## Section 10 – Setting Up a Housing Rehabilitation Program

### Housing Committee

The design of a local housing assistance program should be done in conjunction with a local housing rehabilitation advisory committee composed of persons representative of low-income neighborhoods, local government representatives and other members of the community at large. This committee is normally involved in marketing of the program, unit selection and approval. The committee also serves as a liaison between citizens in the project area, local staff and local elected officials.

### Developing Written Policies and Procedures

The funding recipient must develop written policies and procedures to govern the operation of the CDBG housing rehabilitation program. These procedures must be submitted to Grants Administration for review and approval **prior** to draw down of CDBG funds. This section provides detailed guidance on what must be included in the policies and procedures.

### *Types, Amount and Terms of Assistance*

With regard to the type and terms of assistance, recipients are responsible for designing a housing rehabilitation program that meets community needs. Programs can be comprised of conditional grants only, loans only and/or a combination of grants and loans. In determining the type of assistance to be provided, recipients should consider the income level of households to be assisted.

The following definitions are offered to explain possible program types and terms.

- ◆ **Conditional Grants:** Grants may be provided to eligible households for the cost of rehabilitation. Grants come with only the homeowner commitment restrictions.
- ◆ **Loans:** The use of loans may enable the recipient to recover all or a portion of the original financial assistance for use in accomplishing additional housing rehabilitation and provides the recipient with security on the property not available in a grant program.
  - Loan programs are self-perpetuated when loan proceeds are used to provide other loans. Repayments from housing rehabilitation loans made with CDBG funds are considered program income and are to be expended according to Grants Administration requirements. (See Chapter 4: Program Income for more information and guidance.)

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- Loans to landlords must be conditional upon their provision of the required cash match at the time of contract award and a written agreement to make their units available for one or five years (depending on the applicable grant program requirement) or the term of the loan (whichever is greater), at rents affordable to lower income tenants, or available for Section 8 Existing Housing Assistance.
- There are three basic types of loan programs that may be established:

- ◇ Forgivable loans: A forgivable loan is set up such that each year the owner retains ownership and resides in the home, a certain percentage of the loan amount is forgiven. Should the owner continue as owner-occupant of the home until the term of the loan expires, the owner pays nothing and has no further conditions on the disposition of the property. Should the property be sold, vacated or its use changed prior to the conclusion of the affordability period, the owner must pay whatever balance remains on the note in accordance with the terms established by the executed Grant/Loan Agreement. If CDBG assisted property is sold prior to the end of the affordability period, whether it's to a LMI or non-LMI household, those funds must be paid back to the program and, if applicable, returned to the state. The only time repayment of any outstanding CDBG housing loan amount is not necessary is if an owner dies and the unit is transferred to an immediate family member.

The forgivable loan is instituted through the use of a mortgage and often accompanied by a promissory note.

- ◇ Deferred loans: A deferred loan is a loan made to an eligible homeowner that require repayments at some later point in time, typically after a certain period of time or when the property is sold. Funding recipients often use deferred loans to provide assistance to households that are unable to afford loan repayments at the time of the assistance, but from whom they would like a repayment at some point in the future. Unlike a forgivable loan, which are forgiven over a period of time or at a specific time, deferred loans must be paid off at some point in time. Funds received for repayment of a deferred loan may be recycled for additional housing rehabilitation when repaid. The deferred loan is instituted through the use of a mortgage and often accompanied by a promissory note.

- ◇ Traditional amortizing loans: Amortizing loans are traditional loans that require repayment of a principal amount plus interest. Funding recipients may provide loans at a single interest rate, or establish a sliding scale where interest rate is related to household income or ability to pay. The term of the loan is also at the discretion of the recipient. All loans may be made for the same term or terms may be



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adjusted depending upon the size of the loan and the borrowers ability to pay (e.g., larger loans having longer terms). Grants Administration recommends that rehabilitation loans have terms that do not exceed 15 to 20 years. The amortizing loan is instituted through the use of a mortgage and often accompanied by a promissory note.

- There are several techniques or practices that can be used by recipients in loan programs to leverage funds:
  - ◇ Writedowns or principal subsidy: A writedown, also commonly referred to as a principal or interest subsidy, is a mechanism in which rehabilitation is financed by a loan, but the amount repaid by the property owner is partially subsidized, or offset by the inclusion of grant funds. The amount of writedown is predicated by the owner or renters ability to pay. CDBG funds may be used to pay the writedown either as a grant or forgivable loan. The remaining amount is loaned to the owner and is amortized by monthly payments. The loan portion of the writedown may be provided by a bank or other private or public funding sources.
  - ◇ Loan leveraging: Loan leveraging is the practice of using CDBG funds along with funds from private lending institutions. Having other entities involved in the financing of a project will leverage CDBG dollars. Funding recipients should be aware that some low-income residents residing within the target areas may not meet the financial institution's underwriting and credit requirements which may reduce the number of households who could be assisted by these funds. The funding recipient should work with the financial institution to negotiate loan application conditions that may help benefit a larger percentage of the residents who reside within the targeted area than if applying for a conventional loan. Loan leveraging programs often require sophisticated funding recipients whose staffs have a high level of financial background and experience.
- ◆ The maximum amount of CDBG assistance for replacement activities, also referred to as a subsidy limit or cost cap, is established by the State and is detailed in Section 2 of this Chapter under the applicable program approach.

### ***Eligible Program Participants***

Funding recipients must establish applicant eligibility criteria and procedures for selecting applicants.

- ◆ CDBG housing rehabilitation is a "direct benefit" activity and income eligibility must be established for all persons directly benefiting from a

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CDBG project. Simply because a household is elderly, disabled or exhibits other limited clientele characteristics, does not mean that household automatically qualifies for CDBG housing assistance. All income must be verified and documented in the case file. In establishing whether a household's income is within the acceptable LMI requirements, the income for all members of the household must be counted. If an adult reportedly has no source of income, verification that no income is earned must be obtained and placed in the case file.

- ◆ CDBG funds may only be used to assist low- and moderate-income households as defined by HUD. LMI is defined as 80 percent of the median family income, adjusted by family size, for the county of residence or of the statewide non-metropolitan median family income, whichever is higher. Single-family (one to four units) structures must be occupied by an LMI household. Fifty-one percent of the units in multi-family properties (more than four units) must be occupied by LMI households.
- ◆ The procedures must specify income limits and definitions for the program at the time of grant award and use current income limits when conducting third party income verification of the beneficiaries. Grantees are expected to serve the specific households listed in the application. As all beneficiaries and alternates are chosen at the time an application is submitted to Grants Administration, to maintain fairness throughout the program, the yearly increasing income limits should not be used as a means to serve beneficiaries that were not eligible at the time of grant award.
- ◆ See Chapter 13: National Objectives for more information about documenting and verifying income.

Priorities for assistance may be developed and could include the elderly, disabled, very low-income families, families with children, owner-occupied or other local requirements.

- ◆ If the funding recipient determines that it will target a special population for housing rehabilitation assistance, this targeting must be identified at the application public hearing and in the application.
- ◆ If changes in the target area or target population are planned, a public hearing should be held to advise citizens of the program change.

### ***Conflict of Interest Provisions***

The policies and procedures must include provisions regarding conflicts of interest that are consistent with CDBG requirements. Please refer to Chapter 14: Other

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Requirements for detailed information on the CDBG conflict of interest requirements. The State Ethics Law is provided in the CDBG Reference Manual.

### ***Homeowner Requirements***

This section of the local policies and procedures should include any conditions or responsibilities that homeowners or tenants are expected to follow in order to receive assistance, including those required by the State CDBG program.

- ◆ Clean house and yard prior to rehabilitation. Recipients should insure that accumulations of large piles of trash, garbage or other discarded debris on or about the premises are removed or properly and safely stored. Such conditions, if not addressed, can pose a serious threat to the health and safety of the residents as well as serve as a breeding ground for rats, mice or vermin.
- ◆ Participation in homeowner maintenance and education classes (described below).
- ◆ A one to five year) maintenance clause, with pro rata repayment for non-compliance (to be included in the assistance agreement which will be recorded). This period may be extended for rental owners.
- ◆ A pro-rata repayment provision if house is sold or transferred within five years. No repayment will be required if the owner occupant transfers the property to an immediate family member upon their death.

### ***Home Maintenance / Education Requirements***

Funding recipients may incorporate home buyer education and training on home maintenance into their housing program. The objectives of such a program are to provide families with the skills necessary to own and maintain their property at a standard level and provide training in issues related to home finance and credit, maintenance, and housekeeping.

- ◆ This training should be structured as an educational program that includes either formal classes or home demonstration visits to show techniques and to distribute information.
- ◆ Documentation should be kept indicating that a formal homeowner education program has been carried out for each assisted household.
- ◆ The recipient may enlist the services of the local community organizations trained in providing this type homeowner education or carry out its own homeowner maintenance education program.

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Such organizations include:

- Department of Social Services,
- State Dept. of Consumer Affairs,
- University Extension Service Programs,
- Local lending institutions, and
- Nonprofit consumer counseling organizations.

Suggested areas to be reviewed in a typical home maintenance program may include:

- ◆ Home systems maintenance: How to maintain major systems (e.g., furnace, water heater, plumbing, electrical and drainage). Subtopics may include:
- ◆ General Housekeeping Procedures: Routine seasonal and annual cleaning and maintenance of the house.
- ◆ Household Budgeting and Managing Personal Finances: Topics covered by this kind of class include budgeting, banking, utility bill payment and insurance.

## ***Eligible Units***

As a general rule, three questions must be asked before deciding to rehabilitate a house. Is it feasible to rehabilitate? Is it cost effective to rehabilitate? What would a comparable new unit cost? Answering these three questions will also provide guidance on whether to rehabilitate a house, replace it or “walk away.” To be eligible for rehabilitation, each unit must meet the following tests:

- Feasibility - The unit must be structurally or financially feasible for rehabilitation.
- Reasonableness - The unit must be worth more than the cost of the rehabilitation plus rehabilitation personnel after rehabilitation.
- Comparable Replacement Cost - The cost of the rehabilitation must be 50% or less than the cost of comparable (same size, same neighborhood) new construction.

Eligible units for rehabilitation must be occupied by LMI households after rehabilitation and generally, must be substandard. A substandard unit is defined as a unit with at least one or more major structural or system deficiencies based on Section 8 HQS or a more stringent local code.

Two exceptions to the substandard definition exist:

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- ◆ Minor exterior repair activities to complete a visual/physical impact on the target area do not have to meet the definition of substandard. Minor repairs do not bring the unit up to code and generally may not exceed \$10,000. Additionally, minor repairs are limited to:
  - Painting of exterior surfaces or siding;
  - Roof repairs or replacement;
  - Porch repairs;
  - Installation of handrails, guardrails or handicap ramps;
  - Front or visible side window or exterior front door repairs or replacement; or storm/energy efficient windows and doors throughout;
  - Gutter, fascia or eave repairs;
  - Crawl space door and vent repairs.
  - Installation of indoor facilities, if none exist within an LMI housing unit, are also eligible as housing rehabilitation, when the activity is part of a water/sewer connections project. Costs should not exceed \$10,000.

Programs that provide water and sewer hook-ups and indoor plumbing facilities to individual properties are unique in terms of the applicability of property codes and standards. It is not required that the housing unit assisted under Limited Rehabilitation be brought up to a minimum code in its entirety; however, the work that is being performed should be done to the HQS or appropriate local codes and standards. Additional work to bring the unit up to code may be allowed, if warranted.

Generally, assistance should not be provided to units that have previously received rehabilitation assistance. More in depth counseling such as life skills training or home maintenance, beyond the regular required program counseling, is required for residents who had previously received housing assistance.

### ***Replacement Housing Policy***

Sometimes due to the condition and cost of rehabilitating an existing dilapidated unit, replacement is necessary. There are two types of replacement housing. Type 1 replacement housing refers to situations where the need for replacement of a unit was not determined until after rehabilitation had already commenced. Type 2 replacement housing cases are those in which the recipient determines that the unit is not suitable for rehabilitation prior to the start of the project and its replacement is part of a neighborhood rehabilitation effort.

Depending on the program requirements and funding year, housing units/homeowners selected for replacement must meet the following requirements:

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- ◆ Housing units selected for replacement must be owned and occupied by low- and moderate-income households.
- ◆ Homeowners must also own the land upon which the unit is located.

### **Rental properties are not eligible for replacement.**

To carry out a replacement housing activity, a recipient must show:

- ◆ That the unit is not structurally sound to rehabilitate, *and*
- ◆ That the cost of rehabilitation and rehabilitation personnel (including lead-based paint rehabilitation and personnel costs) is greater than the unit's after-rehabilitation value, *and*
- ◆ That the cost of rehabilitation exceeds 50% of the cost of comparable (same size, same neighborhood) new construction.

Replacement Housing options include modular, stick built, manufactured or vacant existing housing which can be moved and/or rehabilitated. The replacement units must be rebuilt or replaced on the same property as the original unit. Any replacement unit must meet Section 8 HQS prior to occupancy.

Participation by the owner of the unit needing replacement is strictly voluntary. If a homeowner refuses to participate for any reason, the recipient must obtain a written statement to that effect from the owner. The recipient may then opt to rehabilitate a previously approved alternate unit. Refer to CDBG guidelines for the program year of funding for additional guidance.

### ***Replacement Housing and Temporary Relocation***

The recipient will be responsible for coordinating and paying all temporary relocation costs associated with the demolition and replacement of a dilapidated unit. Such costs are eligible CDBG costs and may be included in the approved budget. An Optional Temporary Relocation Plan or Relocation Policy conforming to the criteria outlined in Chapter 11. A sample agreement, between the recipient and the occupant of the unit being temporarily displaced can be found in attachments to this chapter.

### ***Section 104(d) One-for-One Replacement Requirements***

In replacement housing, CDBG assistance will be used to demolish a unit occupied by a low- and moderate-income person; therefore, the Federal requirements of Section 104(d) may be triggered depending upon the project circumstances.

- ◆ If the unit is owner occupied and the owner is voluntarily participating in the reconstruction program, Section 104(d) one for one replacement is not

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triggered. This is the case for programs where the grantee will demolish an existing *owner occupied* substandard unit and replace it on the same site with a new unit, even if the new unit contains fewer bedrooms than their old home. The owner must be voluntarily participating in the reconstruction program, voluntarily agree to the fewer bedrooms, and the new unit must be suitable in size for the family.

- ◆ If the unit to be demolished contains a tenant – even if the owner also lives in the unit – the Section 104(d) one for one unit replacement requirements may be triggered when the existing unit is demolished. This means that if fewer bedrooms are constructed in the new home or if the home contains fewer dwelling units, Section 104(d) may be triggered and the grantee may be required to replace those lost units. Grantees must consult with Grants Administration before undertaking any such project.

See Chapter 11 for more information on the one-for-one replacement requirements.

### ***Replacement Housing Approval***

Recipients must obtain approval to replace a housing unit for Type 1 replacement, where the need for replacement was not determined until after rehabilitation had already commenced. For Type 2, approval for replacement will occur at the time of the local government application for a CDBG project. To document the replacement determination, complete the following items:

- ◆ Applicants must determine the feasibility of each unit to be replaced.
- ◆ Provide representative interior and exterior pictures of the unit to be replaced and submit with housing application.
- ◆ Document the rehabilitation versus replacement cost. For Type 2 replacement, submit the Replacement Housing Initial Assessment form with the CDBG Application. Although not required with the application, the documentation will include:
  - Complete HQS Property Inspection Report identifying the HQS violations;
  - A work write-up/public body estimate (PBE) of the cost to rehabilitate the unit;
  - Obtain and submit documentation of unit's After Rehabilitation Fair Market Value. Explain how it was derived and the source of the determination. (A tax assessor's estimate of value is acceptable documentation.)
  - Estimate cost of replacement unit:

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- ◇ For manufactured or modular units, identify the total cost of replacement. Include all items associated with having the replacement unit delivered to the site and completely set-up including clearance, underpinning, tie downs, all utility connections (e.g., plumbing, electrical, telephone, septic tank, well and steps/porches/handrails).
  - ◇ For stick-built units, determine the total cost of constructing a new unit on site including all utility connections utilizing current new construction costs per square feet. Also include demolition and disposal of the existing unit.
  - ◇ For substandard units to be used as a replacement, determine the total cost of acquisition, moving, and rehabilitation of the unit to HQS (if the replacement unit has to be moved to the site and it is presently substandard).
  - ◇ If other funding sources are used to supplement the CDBG cost of replacement, submit evidence of other funding to Grants Administration.
- ◆ Have the homeowner sign and date the Replacement Housing Assistance Agreement (acknowledging that the homeowner voluntarily agrees to allow the grant recipient to demolish and replace their housing unit).

Type 2 replacements are approved as part of the recipient's application. Feasibility of each replacement will be reviewed with each housing application submitted. If the application is funded, the proposed replacements will be considered approved by Grants Administration. If during the implementation of the project cost estimates or units significantly change, the grantee should immediately contact Grants Administration for technical assistance and approval of changes.

### ***Disposal of Existing Unit***

If replacement is determined feasible, the recipient must determine the appropriate means of disposing of the existing unit. Typically, if the unit to be replaced is a mobile home and the replacement involves another manufactured unit, removing the existing unit and properly disposing of it can be included in the purchase price of the new unit. For a "stick built" unit, demolition usually includes razing the existing structure down to the ground and clearing the site.

### ***Insurance***

#### ***Hazard Insurance***

It is recommended that homeowners assisted with CDBG funds be required to maintain hazard insurance, particularly if the recipient is providing assistance in



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the form of a loan. As stated earlier, rental property owners are required to maintain insurance.

This coverage should, at a minimum, be for the amount of the federal assistance invested in the property and should be renewed annually by the owner.

The funding recipient should maintain evidence of hazard insurance in the individual case files.

### ***Flood Insurance***

CDBG funds may not be provided in a Federal Emergency Management Agency (FEMA) designated special flood area unless certain requirements are met. Specifically, if substantial repair is proposed for property that is located within a HUD-designated flood hazard area and the local government participates in the flood insurance program, flood insurance must be purchased for the property being rehabilitated. If the local government does not participate in the flood insurance program, the property may not be assisted.

Substantial repair is defined as:

- ◆ Any repair, reconstruction, modernization or improvement to a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair started, or if the structure was damaged, before the damage occurred; or
- ◆ Any repair, reconstruction, modernization or improvement to a structure that results in an increase of more than 20 percent in the number of dwelling units in a residential project.

Substantial improvements do not include:

- ◆ Any project for the improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions; or
- ◆ Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.
- ◆ The initial cost of the flood insurance premium is an eligible CDBG expense.

### ***Rehabilitation Standards and Specifications***

The term 'rehabilitation standards' refers to the extent of work that must be done and the quality and substance of the workmanship involved in making the required improvements (i.e., the standard set of specifications).

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The policies and procedures must state the minimum housing codes and standards that will be followed in the program.

- ◆ Generally assisted units except for limited rehabilitation (carried out as part of an infrastructure activity as discussed in Chapter 5) or minor repairs must be rehabilitated to at least comply with HUD Section 8 HQS Standards. However, if a recipient identifies another housing code such as the Standard Housing or International Residential Code as its rehabilitation standard, then all assisted units must be brought up to that code, even if it is more stringent than HQS.
- ◆ These standards must also include the elimination of lead-based paint hazards.

Additional requirements for rehabilitation may include the following:

- ◆ **Smoke detectors:** The recipient shall insure that every unit addressed with CDBG funds is provided with an approved listed smoke detector. Smoke detectors shall be installed in each sleeping room, outside of each separate sleeping area in the immediate vicinity of the bedrooms, and on each additional story when rewiring a unit. All detectors shall be interconnected so that when one is activated, all alarms will activate.
- ◆ **General property improvements:** After all health and safety and code-related deficiencies and lead based paint requirements have been addressed, the grantee may undertake general property improvements up to 25 percent of the CDBG funds expended on correcting the health and safety deficiencies and code violations for that unit. In general, recipients should try to use building products, materials, or methods that enhance the sustainability and economic life of the units and reduce maintenance costs. In hurricane prone areas, this might include installation of storm shutters. It may also include the use of vinyl siding and windows, steel doors, etc.
- ◆ **Energy Efficiency Standards:** Efficient homes save homeowners money in operation costs, so all CDBG-funded improvements, where feasible, should at least meet the State-adopted International Energy Efficiency Code, or should meet the higher standards of an ENERGY STAR home, or a similar energy efficiency standard.
- ◆ **Generally, 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:

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1. Window air conditioner, or
2. Washer or dryer (but a stove or refrigerator may be addressed if it violates HQS or other local housing standards).

◆ **Walk-away policy: A unit is considered unsuitable for rehabilitation if:**

- The unit is not structurally or financially feasible for rehabilitation. This assessment may be based on such factors as the absence of a solid foundation or lack of a structural base capable of supporting rehabilitation construction (due to flooding, termite damage, inadequate original construction, etc.), thereby preventing the unit from being improved (feasibility test).

Or

- The unit, after rehabilitation, would not be worth more than the cost of the rehabilitation plus rehabilitation personnel (reasonableness test).

Or

- The cost of the rehabilitation exceeds 50% of the cost of comparable (same size, same neighborhood) new construction (comparable replacement test).

If a unit meets any of the above criteria, it cannot be rehabilitated. The unit may be eligible for replacement, if it meets the criteria listed below in the section on replacement housing policy.

### ***Contracting Requirements***

The rehabilitation policies and procedures should specify how contractors will be selected and any other applicable procedures that govern the conduct of work done by contractors, such as those relating to lead training and certifications, change orders, dispute resolution and acceptance of work and payment methods.

- ◆ While the preferred model is that homeowners are allowed to select and execute contracts with contractors for rehabilitation work, local grant recipients may select and enter into agreements with contractors with the following conditions:
  - If recipients are selecting contractors, the procurement requirements discussed in Chapter 8 must be followed.
- ◆ It is recommended that the recipient maintain a list of local contractors who are eligible, qualified, licensed, and certified for lead paint work, as appropriate.

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- ◆ If homeowners are allowed to select contractors, the policies and procedures should define the guidelines to be used. Homeowners may solicit a bid from a contractor of their own choosing if the contractor meets all of the qualifying requirements of the program or the contractor is included on the recipient's list of contractors. Bids obtained by homeowners should be within a ten percent plus or minus range of the recipient's cost estimate.
- ◆ The contract should also provide procedures and conditions for termination if the contractor fails to perform in an acceptable manner or in accordance with all the terms and conditions of the contract.

Section 4 of this chapter provides detailed guidance on soliciting and securing contractors. See also Chapter 8: Procurement and Contracting and Chapter 9: Construction Management and Labor Standards for additional guidance.

### ***Volunteers and Donations***

The use of volunteers can help leverage the impact of the project on the neighborhood. If the recipient wants to use volunteer labor in its housing or other projects, then local policies and procedures should outline the procedures to be followed.

In accordance with Title I of the Community Development Act of 1974, as amended, volunteer labor may be used in carrying out CDBG-funded housing rehabilitation on private residential property. If the recipient decides to incorporate this element into its program design, the volunteer commitment must be provided in the application. A commitment from the organization (or individual if not part of an organization) estimating the approximate type of work, number of hours, and available time frame should be submitted with the application. Also, volunteers must have demonstrated capacity to do the required work and the following rules apply:

- ◆ If volunteers will be provided through the efforts of a non-profit organization, the locality should enter into an agreement with the non-profit to specify the work to be done, quality and standards to be met and timeframe for completion.
- ◆ An agreement should be executed between the homeowner and the volunteer group clearly outlining all the work to be accomplished through donated labor and what donated materials and supplies may be involved.
- ◆ Grants Administration will require the same documentation to be in the files as if a private, for-profit contractor has been contracted to complete the work. That documentation should include a work write up or specification showing materials required and the estimated cost for materials and labor.

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- ◆ All required elements of the rehabilitation work should be detailed in a work schedule. The work schedule should specify all work items the volunteers will perform and alternate means of accomplishing the work if the volunteers fail to perform satisfactorily.
- ◆ All costs must be determined eligible and payments to contractors, subcontractors and suppliers for materials and supplies purchased and used in the project must be documented and procured in accordance with Grants Administration requirements. Invoices from the supplier must be provided for work items and materials actually used on the job.
- ◆ A local government that utilizes volunteer labor for CDBG-funded housing rehabilitation must inspect and insure the work is done in a quality manner and in compliance with applicable codes and Grants Administration requirements.
- ◆ Volunteer sign in or timesheets must be kept to document the total contribution to the project. All time must be calculated at \$20.00 per hour worked (regardless of activity) or based on the latest rate as indicated on the website [www.independentsector.org](http://www.independentsector.org).
- ◆ The locality or non-profit organization providing the volunteers should obtain a blanket liability policy for the project. The policy is CDBG eligible as long as it only covers the CDBG project. All volunteers should also sign a waiver of liability form.

### ***In-Kind and Donated Materials and Equipment***

Donated materials, equipment and in-kind labor will extend the level of impact of a project. If used to meet the match/leveraging requirement, documentation must be kept to verify actual values. For in-kind work, timesheets must be kept, and the value should be based on the current hourly rate of the employee performing the work. The value of donated materials and supplies should be based on the market value at the time of donation. Documentation should include:

- ◆ Date of donation
- ◆ Name of donor
- ◆ Estimate of market value and how the estimate was determined

For donations involving equipment, the FEMA rate should be used. The web site for this information is <http://www.fema.gov/schedule-equipment-rates>.

Documentation should include:

- ◆ Name of operator

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- ◆ Type of equipment used
- ◆ Date/time/quantity used
- ◆ Description of work

Storage of materials for use by volunteers is an eligible CDBG expense. Any materials purchased by CDBG for the project but not used become the property of the unit of local government and must be used by the unit of local government or donated to a non-profit (such as Habitat for Humanity) for future use on CDBG eligible activities.

### ***Grievance Procedures***

The policies and procedures should specify how complaints or grievances would be handled. The major parts of the procedures can be taken from the Citizen Participation Plan (discussed in Chapter 14), which contains provision pertaining to this subject.

- ◆ As discussed in Chapter 14, the recipient's Citizen Participation Plan must provide for a written answer to written complaints and grievances within fifteen working days (where practical).
- ◆ The grievance procedure also must state the name, address and phone number of the person to whom written grievances are to be delivered and the procedures by which grievances will be handled, including any appeal process.
- ◆ The grievance procedure must provide that, prior to any response to a written grievance that involves State law or policy, State CDBG program guidelines, or Federal regulations governing the CDBG program, the community will provide the written grievance and its proposed response to Grants Administration for review and approval of the response.
- ◆ The grievance procedure must also provide for the appeal of any written grievance to Grants Administration; however, the CP Plan must state that Grants Administration will deny those appeals that involve the consistent application of the community's local program policies.
- ◆ The grievance procedure should also indicate that after the appeal process has been exhausted, the complainant may seek relief in the appropriate court of law.

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## ***Relocation Policies***

The recipient must certify that it is following a Residential Anti-Displacement and Relocation Plan that is consistent with the Uniform Relocation Act as part of the application for CDBG assistance.

- ◆ Recipients that assist rental housing units that will involve any temporary relocation or permanent displacement of tenants must adhere to their Residential Anti-Displacement and Relocation Plan and all applicable rules and requirements.
- ◆ Recipients that choose to provide optional temporary relocation assistance for owner occupants that need to be temporarily relocated during rehabilitation must develop and adopt a Voluntary Relocation Plan for approval by Grants Administration.
- ◆ In addition, the recipient must make provisions for the replacement of low- and moderate-income dwellings that are demolished as a result of CDBG-assisted activities.

See Chapter 11: Relocation and One-for-One Replacement for more guidance.

## ***Amendments***

The policies and procedures should also include guidelines pertaining to amendments to the policies and procedures, particularly if they are changed during the approved project or grant.

## **Section 11 – Housing Rehabilitation Implementation Steps**

### **Screening Applicants**

Applicants must be screened to determine eligibility under income and other criteria, as may be specified in the guidelines.

The application for rehabilitation assistance should contain, at a minimum, the following information:

- ◆ Name of the owner and address of the property.
- ◆ Signature of the owner and the date.
- ◆ Number of persons (adults and children) in the occupant household and their ages.
- ◆ Sufficient information concerning the occupant's household income.

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- ◆ The recipient should also verify that property taxes are current and in the case of an existing mortgage, that principle and interest payments are current and the mortgage is not in a delinquent or fail status.
- ◆ Sufficient information to show that the occupant meets the recipient's program eligibility criteria, including income.
- ◆ Verification of the above-referenced information.

### Verifying Income and Ownership

Income and employment for all household members must be verified to determine a low-income household occupies the unit. Information about the income verification process and documents required can be found in Chapter 13: National Objectives.

The recipient must also verify that the applicant owns the property. The preferred form of home ownership is fee simple title. A certificate of title examination from an attorney or title examination company is required. If the title of the property is unclear, you may obtain the following documentation:

- ◆ Proof from the local taxing authority that indicates who the tax bill is sent to and the tax billing is paid and current.
- ◆ Proof through the local utility companies, i.e., electric, gas, water, telephone, etc., that the applicant receives services under the applicant's name at the property to be assisted.
- ◆ Affidavits or notarized statements from 1) a simple majority (at least 51 percent) or 2) all of the legally entitled heirs attesting to the applicant's apparent entitlement to heirship or agreeing to the proposed improvements to the property.
- ◆ Affidavit or notarized statement from the applicant that there have been no legal challenges to the applicant's heirship by other entitled heirs.

The recipient should verify all dependents living in the unit and their ages.

- ◆ Documentation of Applicants: It is important for funding recipients to keep documentation of applicants regardless of their approval status for their programs. All applicants are also to be reported on the *Quarterly Report (Q-1)* and at closeout.
  - Rejection: If assistance to the applicant is not approved, the recipient should notify the applicant in writing of the results and maintain the application on file for possible future reference.



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- Approval: If assistance to the applicant is approved, written confirmation of approval needs to be forwarded to the applicant and kept in the recipient's case file. This confirmation should contain, at a minimum:
  - ◇ Name of the applicant
  - ◇ Address of the property to be rehabilitated
  - ◇ Type and amount of the assistance approved including any terms and conditions, if applicable.
- If the Housing Committee is charged with reviewing eligibility requirements and approving or denying assistance, any communication regarding the applicant's status should come from the Committee.
  - ◇ Make sure there is documentation in the files that indicates date of the approval of assistance (i.e., Housing Committee meeting date and meeting minutes).

### Executing Grant/Loan Agreements

The funding recipient must enter into a formal agreement with the applicant for the amount of the assistance made available. The agreement should be entered into after the work write-up and public body estimate has been completed, but prior to awarding bids for the rehabilitation.

- ◆ This agreement needs to be signed and dated by the homeowner, generally at closing, and represents the official financial obligating instrument between the homeowner and the recipient.
- ◆ At a minimum, this agreement shall certify the legal owner of the property, the type of assistance (i.e., type of loan or combination), as well as outline all conditions associated with the assistance.
- ◆ Conditions of the agreement may include a monthly payment schedule if applicable, hazard insurance and property maintenance requirements, rent restrictions (if investor-owned), death of the applicant, conversion, transfer or sale of the property rehabilitated, and any other conditions that if violated, may result in a reimbursement of funds by the applicant.
- ◆ The recipient must utilize the proper legal instruments, typically a note and mortgage, to secure the amount of the federal investment.

Following approval, project officials should meet with the applicant to review item-by-item, the proposed scope of work to be undertaken. The recipient may require the applicant to initial each work item or page of work items, thereby attesting to the fact that the applicant was made aware of the improvements to be made to

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the property. The homeowner should also receive all proper notices and information about lead-based paint. See the *Summary of Lead-Based paint Requirements by Activity* for more information.

Recipients must amend the agreement with the property owner if change orders occur that result in a change to the amount of assistance or if any other conditions have changed.

### **Conducting Initial Inspections and Developing Work Write-Ups and Cost Estimates**

#### ***Initial Inspection***

An initial inspection of the property should be conducted to determine whether the dwelling is substandard or in compliance with the adopted minimum housing standards, and the condition of the unit's exterior and the extent of work required. The inspection should be done by a person capable and qualified to perform such duties. An inspection checklist should be used for the initial inspection to evaluate the dwelling's condition. Once completed, this checklist forms the basis for outlining the type work necessary to bring the property to desired standards.

- ◆ Depending on the level of assistance and the year the unit was built, a visual assessment, paint testing or risk assessment may also be required to comply with the lead based paint regulations. See the following Summary of Lead Based Paint Requirement.
- ◆ The inspection should be done by a person capable and qualified to perform such duties.
  - Qualifications may include a high school diploma or G.E.D., certification and considerable knowledge and/or experience in various aspects of housing construction, considerable inspection experience in government funded rehabilitation programs or in residential construction management, or certified in the completion of recognized building codes and/or rehabilitation standards training programs.
- ◆ Depending on the level of assistance and the year the unit was built, a visual assessment, paint testing or risk assessment may be required to comply with the new lead based paint regulations. See the *Summary of Lead Based Paint Requirements by Activity* for guidance.
- ◆ An inspection checklist should be used for the initial inspection to evaluate the dwelling and its condition.
  - This checklist should indicate code violations as well as incipient violations, which if corrected now would avoid more expensive remedial action later.

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- Once completed, this checklist forms the basis for outlining the type work necessary to bring the property to desired standards.

### ***Work Write-Up***

The work write-up should specify all the work that must be done to bring the building into compliance with the recipient's health and safety standards (if applicable) and other applicable codes such as HUD's Section 8 Housing Quality Standards (HQS), as minimally required by Grants Administration.

- ◆ The technical specifications used by the recipient should be included or incorporated by reference in the work write-up.
- ◆ Work write-ups are usually done on a room-by-room basis and are sufficiently detailed as to quantity and quality of the work to be performed.
  - Each work item should be clearly identified by location (room and section, i.e., "northeast corner of living room") and approximate quantity ("15 square feet of sub floor").
  - Write-ups should specify definite quantities rather than using vague language such as "replace all unsatisfactory sub flooring." This will remove a question of interpretation for the contractor.
  - Write-ups should be clear and specific on each work item to be completed and written in a manner that eliminates any misunderstanding by the homeowner or the contractor.
- ◆ Write-ups must include lead-based paint requirements that are specific to the work being performed as well as incorporate all safety requirements such as using properly licensed or trained personnel, protecting occupants' and their belongings and having the unit pass clearance. Depending on the level of assistance, the work-write up may include items that have been identified by the risk assessment. See the *Summary of Lead-Based Paint Requirements by Activity* for more information.
- ◆ The inspector should certify, by signature to the work write-up, that the specified repairs would be adequate to bring the unit up to health and safety, HQS and other applicable codes.
- ◆ Although requirements for quality of workmanship and materials can be included in the work write-up of specifications, in most cases it is simpler to use a separate document for this purpose.
  - A document most often used by recipients to insure consistency in quality of work and materials is a Performance Standards or Specification Manual. (See Grants Administration's Housing Specialist for suggestions on a Performance/Specification Manual.) This manual

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accompanies the work write-up and outlines in more detail the full scope of the work, the quality and type of materials required and the manner in which work is to be performed.

- All contractors in the program should receive a copy of the construction performance standards or specifications for reference.

### ***Cost Estimate***

The cost estimate is a document that is used to determine if rehabilitation of the dwelling unit is economically feasible and whether bids are appropriate. Cost estimates must be completed prior to bids being solicited.

- ◆ The Public Body cost estimate should be professionally derived and based on the scope of the work and the technical specifications contained in the work write-up. This should be determined earlier in the process - not at the cost estimate phase.
- ◆ Cost estimates should be figured on a line item basis.
  - "Lump sum" estimates are not allowed as they are not very accurate and may lead to cost overruns and a great deal of confusion.
  - The bid accepted by the recipient generally should not exceed or under run the cost estimate by more than ten percent.
- ◆ Lead hazard reduction costs and clearance may add additional costs to the project. See the section in this chapter on lead requirements for more information.

### **Soliciting and Selecting Contractors for the Project**

The recipient should try to identify possible contractors and interest them in program participation. In addition to formal advertising, recipients should consult the local yellow pages, building supply companies in the area, and industry publications or trade guides. The recipient should require that all contractors meet applicable minimum State and local contracting laws.

- ◆ Recipients must also ensure and document that participating contractors have all required documentation evidencing liability insurance and adequate workmen's compensation coverage, if applicable. It is recommended that all contractors be required to have Workers' Compensation coverage even if not required by state law.
- ◆ Grants Administration recommends that the recipient name the locality as a policyholder with all participating contractor insurance companies.
  - It will be necessary to update continuing coverage annually, to ensure that the contractor maintains minimum coverage levels.

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- ◆ A rehabilitation program may limit the number of rehabilitation contracts awarded to one contractor at the same time.
  - This is done to create a more competitive opportunity for all contractors who wish to participate in the program and to protect smaller contractors from over extension.
  - Most recipients limit this number to three, but this can be dependent on the size of the firm and/or previous CDBG housing rehabilitation experience.
- ◆ Recipients should also have a list of Risk Assessors, Paint Testers, Clearance Technicians, Lead-Based Paint Abatement Supervisors and Trained Workers available in case their services are required for projects that contain lead-based paint hazards.
  - Depending on the level of assistance and the required lead hazard reduction measures, certified or trained abatement supervisors and workers may be required to perform the lead-hazard reduction work. See the *Summary of Lead-Based paint Requirements by Activity* for more information.
- ◆ The recipient should take steps to encourage minority and female owned business enterprises to participate in every facet of contracting for goods and services.
  - The recipient should develop and maintain files that document recruiting efforts.

### ***Process for Homeowner Selection of the Contractor***

Grants Administration and HUD have encouraged recipients to maximize the participation of property owners and contractors in the rehabilitation process. As the beneficiary of the program, the property owner should have first-line control over what happens to his or her property.

- ◆ If the owner carries out the procurement transactions, the requirements of the procurement procedures outlined in Chapter 8 do not apply. However, the contractor must still meet eligibility requirements as outlined previously. Bids should generally not be awarded if the bid is out of the ten percent plus or minus range of the recipient's cost estimate.
- ◆ Owners often require the assistance of the unit of local government in retaining a contractor.
  - The funding recipient may assist the owner by providing technical assistance and preparing or reviewing cost estimates.

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- At the owner's request, may provide a list of contractors to property owners, collect and summarize contractor bids, advise the owner on how to evaluate a contractor's proposal or provide information on past work of specific contractors.
- Usually the recipient provides basic contract documents, including work specifications (as agreed with the owner) and applicable Federal requirements.
- The homeowner may negotiate with and select his/her own contractor provided that the contractor meets all of the program's requirements for participation and the bid submitted is within an acceptable range as established by the work write-up and public body cost estimate.
- The homeowner should also be encouraged by the recipient to consider the contractor's ability to start and finish the job in a timely manner when making decisions regarding contractor selection.

### ***Process for Recipient Selection of the Contractor***

It is important that recipients understand the distinction between controlling contractor selection for their rehabilitation clients and assisting clients to choose and work with their rehabilitation contractors, and how their level of involvement may trigger the application of the procurement procedures outlined in Chapter 8.

The procurement procedures outlined in Chapter 8 will not apply if the owner performs many of the procurement responsibilities with minimal assistance from the recipient. Even in such cases, however, open competition through the use of an adequate available contractor pool and obtaining more than one estimate will generally be of benefit to an owner.

If the funding recipient assumes responsibility for the procurement by selecting the contractor and negotiating the price, and only requires the owner's written approval of the contractor selection, the procurement procedures outlined in Chapter 8 would apply.

- ◆ If competitive bidding is required, written quotes in response to written solicitation from a minimum of three qualified sources is required and award should go to the lowest responsible, responsive bidder.
- If the lowest bid exceeds the cost estimate by more than ten percent, negotiations may be conducted with the bidder to bring his bid to within the acceptable bid range. If an acceptable bid cannot be negotiated, all bids may be rejected and the job re-bid.
- If the bid is below ten percent of the estimate it may be awarded if it is determined that all contract work can be completed as called for in the work write-up and project specifications.

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- ◇ If it is determined that the job cannot be completed in an acceptable manner and in accordance with all contract terms and conditions, the bid may be rejected and the next lowest bid considered, if it is within 10 percent of the job estimate.
- ◇ If the next lowest bid is not within the acceptable estimate range, all bids may be rejected and the project re-bid.
- The funding recipient must document and explain all negotiations and/or re-bid actions.

### ***Contract Requirements***

Following the award of the contract, the contractor and the homeowner must execute the contract documents. (Note: Grants Administration advises the recipient not to be a party to the contract.)

- ◆ The contract for rehabilitation must include the following:
  - Date,
  - Address of the property being rehabilitated,
  - Name of the contractor,
  - Amount of the contract (cost of the job),
  - Schedule for work to begin and end,
  - Project milestones triggering progress payments,
  - Right of Rescission,
  - Method of payment, and
  - Standard contractual provisions and requirements specified in applicable Federal, State and local laws binding the program. (See Chapter 8: Procurement and Contracting for the required provisions.)
- ◆ As with general construction contracts, some Federal provisions are triggered depending on the amount of the contract. See Chapters 12 and 14 to determine if other federal regulations apply.

Funding recipients should also include the following provisions in rehabilitation contracts.

- ◆ Requirement that the contractor:
  - Obtain and to pay for all necessary permits and licenses.
  - Perform all work in conformance with local codes and requirements.

The more explicit and inclusive the contract, the less likely the chances of disagreement or misunderstanding with the contractor or homeowner.

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- Keep the premises clean and orderly during repairs and remove all debris at the completion of work.
- Obtain written consent as appropriate.
- Provide all installed equipment and material warranties to the homeowner or to the grantee who can provide these to the homeowner.
- Warrant the work for one year from final acceptance.
- ◆ Provision for workers' compensation insurance coverage.
- ◆ Provisions for termination and for non-performance should also be included.
- ◆ It is also recommended that the recipient attach a copy of the work write-up to the contract.
- ◆ A ten percent retainage should be held on each payment made to the contractor.

### **Managing Construction**

The following steps should occur once a contractor has been selected and secured.

### ***Notice to Proceed***

A Notice to Proceed should be issued to the contractor at least three business days following the date of contract execution. The Notice should specify the time period within which the work should begin and when the work should be completed. A contract extension must be executed if work is not complete by the specified date.

### ***Inspections***

Systematic, thorough inspections are critical to successful housing rehabilitation. Carrying out thorough, regular inspections throughout the rehabilitation process can prevent many problems that arise at the end of a job.

- ◆ Inspections should identify and remedy problems as early as practical. Inspections of the work performed by each contractor should be made at least once a week, and preferably daily, to ensure that the contractor is following the work write-up.
- ◆ The inspections should be documented by completion of an inspection report and signed and dated by the inspector.
- ◆ The inspections should compare actual work completed with the contract requirements.



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## ***Construction Change Orders***

Change orders, generally for building code compliance items and not general property improvements, may occur as a rehabilitation job progresses, with the results often changing the final amount of assistance.

- ◆ Any change orders should be agreed upon and signed by the owner, contractor and recipient. The requirement for determining reasonableness of cost applies to change orders just as required with the initial bid. The change order should be evaluated for cost and to determine if the change order will result in an increase in the grant/loan approved for the homeowner, prior to approval. The cost analysis of the recommended change should be documented and attached to the change order by the recipient and should include a statement verifying that the approved cost is both reasonable and acceptable.
- ◆ The construction advisor should establish the cost reasonableness of the change order.
- ◆ The contractor should sign the change order as well as the homeowner or their designee.
  - The homeowner should sign all approved change order forms and any additional loan/grant agreement forms that may be necessary to reflect the new financial amount.

## ***Progress Procedures and Requirements***

Progress payments should be tied to acceptable completion of items listed on the work write-up and documented by progress inspection reports (discussed above).

- ◆ This can most effectively be accomplished by requiring the contractor to submit requests for payment based on the line item/unit prices submitted with the original proposal. The recipient must then verify the cost of work items listed against what has been satisfactorily completed on the job site.
- ◆ Payment for work should only be made after an inspection has been completed and verification made that all work for which payment is being requested, has been satisfactorily completed.
- ◆ Payments should never be made for "stored" materials on-site that are not installed.
- ◆ Checks to contractors for payment should be made payable to both the homeowner and the contractor, or at a minimum, the homeowner should sign some acknowledgment that he or she is aware of payment being made for rehabilitation work completed on their property and there are no objections.

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- ◆ Payments are the primary leverage in dealing with contractors and should be withheld until faulty work is corrected.
  - If serious deficiencies are identified through inspection, they should be itemized in writing and given to the contractor.
  - The contract can be terminated if the contractor fails to satisfactorily correct the deficiency.

### ***Escrow Account Requirements***

The use of escrow accounts under rehabilitation is limited to loans and grants for the rehabilitation of primarily residential properties containing no more than four dwelling units.

- ◆ Funding recipients using this option must establish a single interest bearing account for all rehabilitation contracts.
  - Funds deposited into escrow accounts shall be used only to pay the actual cost of rehabilitation incurred by the owner under the contract with a private contractor.
  - Once the rehabilitation contract is signed, the amount of funds deposited into the escrow account shall be limited to the amount expected to be disbursed within ten working days from the date of deposit.
    - ◇ If the escrow account contains funds exceeding ten days cash needs the grantee shall immediately return these excess funds to HUD via the Department of Commerce, Finance.
- ◆ Any interest earned in an escrow account, less any service charges for the account, shall be remitted at least quarterly, but not more frequently than monthly, to HUD via the Department of Commerce, Finance.
  - Earned interest in excess of \$100 must be immediately returned to HUD via the Department of Commerce, Finance.

### ***Final Inspections and Payment***

Both homeowners and recipients should assume the final authority for sign off of completion of all work. The final inspection should be made in the presence of the owner and documented by a final inspection report.

- ◆ Any change from the original work write-up should be justified by an approved change order.
- ◆ The owner should sign the final inspection report and an Acceptance Form.

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- ◆ If all contract requirements have been satisfied, any remaining retainage may be disbursed.
- ◆ Final payment should be made after the unit has been cleared for lead and a final inspection has been conducted.
- ◆ A release of liens and any warranties should be secured from the contractor as well as a work guarantee which covers all work performed by the contractor on the project for one year from the date of final release.
  - In order to ensure maximum protection against unknown claims and/or possible liens placed against rehabilitated houses for unpaid materials, the recipient may wish to obtain statements from all known subcontractors and suppliers that all debts owed are satisfied.
- ◆ All manufacturers' warranties and service certificates should be supplied to the homeowner.
  - Recipients may wish to place copies of all warranties in the respective case files as evidence of receipt or have a statement signed by the property owner that all warranties were provided.

### Section 12 – Housing Rehabilitation Recordkeeping

It is important for funding recipients to maintain complete files and recordkeeping of the work they are performing and the units being rehabilitated. The following records should be set up and maintained to help administer a housing rehabilitation program. Contents of these records are also discussed in Chapter 1: Program Start-Up Requirements.

#### *General Files*

- ◆ Local Rehabilitation Policies and Procedures
- ◆ Documentation of marketing and outreach efforts
- ◆ Pending applications
- ◆ Disqualified applicants
- ◆ Housing Committee meeting minutes
- ◆ Information on code enforcement efforts
- ◆ Information on investor-owned properties
- ◆ Evidence of contractor participation

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## *Individual Housing Case Files*

- ◆ Application and approval
- ◆ Lead Base Paint Hazards Notification
  - Pamphlet – Protect Your Family From Lead In Your Home
  - Lead Disclosure Notice – Homebuyer
  - Lead Disclosure Notice – Renter
  - Lead Hazard Evaluation Notice
  - Lead Hazard Presumption Notice
  - Lead Hazard Reduction Notice
- ◆ Ownership and income verification
- ◆ Initial Property Inspection Report
- ◆ Lead Safe Housing Rule Compliance Checklist
- ◆ Lead-based Paint Inspection/testing Report or Risk Assessment Report or Lead Hazard Screen Report
- ◆ Visual assessment or risk assessment (for lead hazards)
- ◆ Work write-ups and cost estimates that Document Rehabilitation Activities and Cost Versus Lead-Based Paint Activities and Cost
- ◆ Property owner agreement, executed and recorded
- ◆ Construction bids and bid award
- ◆ Executed Contract (with contractor)
- ◆ Progress and final inspection reports
- ◆ Progress payments and final payment documentation
- ◆ Change orders
- ◆ Owner's Acceptance of Work
- ◆ Lead Based Paint Clearance Test Report
- ◆ Warranties and Release of Liens
- ◆ Certification of Safe Work Practices

## CH 7: HOUSING ACTIVITIES

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### *Optional Lead Forms*

- ◆ Elderly Waiver for Relocation
- ◆ Protection of Occupants' Belongings and Worksite Preparation for Projects with Lead Hazard Reduction Activities
- ◆ Pre-Construction Safe Work Practices Certification
- ◆ Post-Construction Safe Work Practices Certification
- ◆ Contractor/Employee Certification of Worker Training
- ◆ Clearance Report Review Worksheet
- ◆ Abatement Report Review Worksheet
- ◆ Calculating Level of Rehabilitation Assistance- Single Family Unit
- ◆ Relocation of Occupants for Projects with Lead Hazard Reduction Activities
- ◆ Prior Lead-Hazard Reduction Work

## Chapter 7: Housing Activities Attachments

- Affordable Housing Project Development Budget
- Affordable Housing Project Pro Forma Operating Budget
- HUD Guidance on Layering Subsidies
- Items to be Included in Affordable Housing Development Agreements
- Performance Agreement for Housing Assistance
- Housing Rehabilitation Flowchart
- Temporary Relocation Agreement
- Replacement Housing Worksheet
- Replacement Housing Assistance Agreement
- Rehabilitation Homeowners/Escrow Report
- Individual Homeowner Ledger
- Housing Rehabilitation Case File Checklist
- Housing Quality Standard Regulations
- HUD Inspection Form
- Determination to Demolish (H-1)
- Demolition Agreement
- Demolition Permission Agreement
- Demolition Checklist
- Pre-Construction Conference Checklist
- Volunteer Programs
- Lead Materials:
  - ◆ Lead Based Paint Rehabilitation Process Threshold Flowchart
  - ◆ Lead-Safe Housing Rule Applicability Form
  - ◆ What Is Lead Hazard Reduction and Who Is Qualified to Perform
  - ◆ Summary of Training Resources for Lead-Certified Personnel
  - ◆ What is Abatement: Applying Policy in the HUD/EPA Abatement Letter
  - ◆ Lead-Safe Housing Rule Checklist and General Compliance Documentation
  - ◆ Lead Hazard Information Pamphlet "Protect Your Family from Lead in Your Home"
  - ◆ Lead Disclosure Notice – Homebuyer
  - ◆ Lead Disclosure Notice – Renter
  - ◆ Notice of Lead Hazard Presumption
  - ◆ Notice of Lead Hazard Evaluation

Forms and resources listed here can be downloaded from [www.cdbgSC.com](http://www.cdbgSC.com)

## **Chapter 7: Housing Activities Attachments**

- ◆ Notice of Lead Hazard Reduction
- ◆ Elderly Waiver for Relocation
- ◆ Protection of Occupants' Belongings and Worksite Preparation for Projects with Lead Hazard Reduction Activities
- ◆ Pre-Construction Safe Work Practices Certification
- ◆ Post-Construction Safe Work Practices Certification
- ◆ Contractor/Employee Certification of Worker Training
- ◆ Clearance Report Review Worksheet
- ◆ Abatement Report Review Worksheet
- ◆ Calculating Level of Rehabilitation Assistance- Single Family Unit
- ◆ Relocation of Occupants for Projects with Lead Hazard Reduction Activities
- ◆ Prior Lead-Hazard Reduction Work