
Introduction

Welcome to the Community Development Block Grant Program

How to Use the CDBG Management Guide

Planning, administering and operating a CDBG project is a rewarding – but challenging – venture. The regulations with which recipients must comply can be very complex. The Iowa Economic Development Authority (IEDA) Community Development Division provides you with this Guide as a tool to help you manage your CDBG award smoothly.

Management Guide Format

The CDBG Management Guide serves as the basic administrative reference manual for CDBG recipients. The Guide is divided into four chapters:

Introduction

- Getting Started
- The Next Steps
- Down the Road

Federal Requirements

- Primary CDBG Program Requirements
- Environmental Review
- Procurement
- Civil Rights and Fair Housing
- Labor Standards
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Financial Management

- General Financial Management
- Requesting CDBG Funds and Reporting on Activity Status
- Program Income

Residential Sustainability

- Owner-Occupied Rehabilitation
- Administrative Costs
- Subrecipient Agreement – Parameters
- Income Calculation and Benefit Determination
- Lead Safe Housing

Forms and Supplements

The appendices at the end of the Guide contain all referenced forms and supplemental materials. There is an appendix associated with each chapter. For example, Appendix 2 and 3 contains the forms and documents related to federal requirements (Chapter 2 and 3). At the end of each chapter is a list of items contained in its appendix.

Additional Assistance

While this Guide is intended to provide you the information you need to manage a CDBG project, you may encounter problems or have questions you do not find addressed here. Do not hesitate at any time to call IEDA for additional assistance. IEDA staff members – particularly the project manager assigned to your project – are available to help you. A list of staff members and their contact information is included in the appendix to this Chapter.

Getting Started

You have received your award letter and have this Guide in hand. What do you do next (after you read this Guide carefully, of course)? Here are five steps you should take – if you have not already – to get started.

- 1) Determine who will handle project administration.** Many CDBG recipients contract with professionals to handle the day-to-day management of their projects. If you decide to contract for administration, you must select an administrator according to a federal law requiring that professional services be procured on a competitive basis. Procurement instructions are outlined in Chapter 2.

Recipients choosing to contract for administrative services with Regional Planning Commissions or Councils of Governments do not have to go through the competitive procurement process. See Chapter 2 for details.

- 2) Obtain/Submit your DUNS Number immediately.** The DUNS Number is a unique nine-digit identification number provided by Dun & Bradstreet (D&B). The DUNS Number is randomly issued, never used twice, and is site-specific.

Most potential and existing US Government Contractors, Grantees and Loan Recipients are required to obtain a DUNS Number for US Government registration purposes. This requirement flows down to the CDBG program and its recipients. In order to add your project activities to the program that disburses money for the CDBG program, each funded entity must have this number. Many cities and counties may have already obtained it, and will simply have to provide the number IEDA in writing.

If you do not have a DUNS Number currently, you will find the instructions on how to get one in Appendix 1 of this manual. After you have been issued a DUNS Number, please provide the number to your project manager.

If you submitted your CDBG application “on behalf of” another entity (e.g., day care center, housing, rural water association), you must establish a formal relationship with that entity (who will be known as your “subrecipient”). Before you distribute any CDBG funds, you must **execute a written agreement with your subrecipient**. The appendix to this Chapter includes a list of the minimum required provisions for the subrecipient agreement and a sample subrecipient agreement.

- 3) **You will soon be receiving contract documents from IEDA.** When they arrive, review them carefully. If there are changes that should be made, notify your IEDA project manager immediately. If the contract is correct, have it signed in the appropriate place by the Chief Elected Official (CEO) for the project. Return the original documents to IEDA and retain a copy for your records.
- 4) Adopt a Prohibition on the Use of **Excessive Force**, a Residential Anti-displacement and Relocation Assistance Plan (**RARA**), a **Code of Conduct** and an **Equal Opportunity Policy**. These are all requirements for local governments tied to the acceptance of CDBG funds. Copies of the excessive force prohibition and RARA must be submitted to IEDA before funds will be released. Samples of these documents are included in the appendix to this Chapter.
- 5) Complete signature **authorization forms**, if necessary. The authorized signatory for your project is established when your contract is signed. If you want another person to be able to sign official documents related to the project, or if someone other than the original signatory takes over as CEO, you must complete the Alternate Signature Authorization or the Signature Authorization for Change in CEO Form. These forms are included in the appendix to this Chapter.

The Next Steps

You are on your way, but there are still some major tasks to complete. Here are five more steps to take:

- 1) **Begin the environmental review process.** The environmental review process required by federal law has some built-in time constraints. You should begin the environmental review as early as possible. The process involves using a review checklist to document that the project will not have an adverse impact on the environment and contacting other agencies for comments on the environmental impact of your project. This process is described step-by-step in Chapter 3 and Appendix 3. **Remember: you cannot go out to bid, sign construction contracts, acquire property, and/or start construction until you have completed the environmental review and received a Release of Funds from IEDA.**
- 2) **Clear contract conditions.** Your contract may have some special conditions that must be cleared before you can incur costs on your project. Examples of possible contract conditions include receipt of building permits or clearance by other state agencies. You should clear any contract conditions and submit notification to IEDA so construction can begin on schedule. If you have any questions about the conditions in your contract, contact your assigned project manager.
- 3) If necessary, **procure technical services, architectural and/or engineering services.** Many projects require technical services procurement, engineering and/or architectural services. If yours does, you should procure them as soon as possible. You must procure technical services, engineering and architectural services following 2 CFR 200 requirements as outlined in the Procurement section of this chapter. Ideally, the architect or engineer will be familiar with CDBG or similar programs, competent in the required technical areas and able to provide services in a timely manner.

Community facility project and stormwater project design teams will consult with Iowa Department of Agriculture and Land Stewardship (IDALS) Urban Conservation Program Team on project stormwater management designs at 30, 60, 90 percent, and final design. The Recipient will secure and upload to www.iowagrants the Milestones Checklist from IDALS confirming stormwater management designs meet the requirements of the Iowa

Green Streets Criteria and the [Iowa Stormwater Management Manual](#).

The IEDA intends to make available to CDBG community facility and stormwater project recipients a design consultant team with expertise in stormwater, energy efficiency, building design, and construction best practices. This team will be available for a limited number of hours to assist your project's design professionals in delivering high performing projects designed to meet many of the Iowa Green Streets Criteria. Contact your assigned IEDA project manager to request design assistance form IEDA. Specific procurement requirements are described in Chapter 2.

- 4) **Prepare to contract for construction.** If your project will involve construction, you must follow applicable labor laws. You must follow competitive bidding procedures to select contractors. After you have executed your contract with IEDA and completed any necessary planning, you should prepare a bid package. When applicable, the Iowa Green Streets project plan, checklist and criteria must be included in or linked to in the bid package provided to contractors. Stormwater projects are to follow the specifications in the Iowa Stormwater Management Manual.

In most cases, a wage rate determination will be necessary. You should request a wage rate determination from IEDA 30 days before advertising for bids. Also, 10 days before the bid opening date you should call IEDA to determine if the wage rate has been modified or superseded. Before awarding any contract, you must check to verify that the selected contractor is not on a federal or state debarred list. You should inform IEDA of the date construction will begin. Specific procurement and labor requirements are described in Chapter 2 and Appendix 2.

Do not go out to bid for your project until after you have received a release of funds letter from IEDA.

- 5) **Establish your financial management and reporting procedures.** There is a specific process to be used to draw down federal funds. Additionally, there are some important financial management and reporting requirements with which recipients must comply. Review Chapter 4 carefully for instructions on financial management and how to request CDBG funds.

Down the Road

As you get going on your project, it pays to think ahead. Here are seven more issues you will encounter as you move forward with your project:

- 1) It may be months – or even further down the line – but it is never too soon to think about **project monitoring**. Your IEDA project manager will perform an on-site review of your project. The purpose of this visit is to assess your performance and compliance with program requirements and to provide you with any technical assistance you may need. The monitoring visit will go more smoothly if you have kept good records from the very beginning, documenting the progress of the project and the actions you have taken to satisfy the various federal requirements. The appendix to this Chapter includes a record-keeping checklist. Appendix 5 has a record-keeping checklist if you are doing housing rehabilitation. The monitoring checklist is available on the IEDA website. Recipients and grant administrators should review the checklist prior to a monitoring visit to ensure information IEDA staff will need to review is available at the visit.

- 2) Recipients are responsible for monitoring the performance of any third-party contractors under any general administration or subrecipient agreement. The recipient is responsible for ensuring that all activities comply with all Federal and state regulations.
- 3) Hold a **public hearing on the status of funded activities**. Section 508 of the Housing and Community Development Act of 1987 requires local governments to comply with the State's Citizen Participation Plan. You should have already had a public hearing on your CDBG application. You must also have a public hearing on the status of funded activities during the project and not after project activities are complete. The status of funded activities hearing should be held when the project is at 50% completion. Once a project is reported at 50% complete, IEDA will not process any draw requests until documentation from the public hearing has been provided. A list of requirements for the public hearing is included in the appendix to this Chapter.
- 4) If you encounter some unforeseen change to your project after contract execution, you must submit to your IEDA project manager a contract amendment request through lowagrants.gov. A contract amendment is a formal, substantive change to the contract for time extensions, new activities or alteration of existing activities that will change the scope, location, objectives or scale of the approved activities or beneficiaries. Instructions for contract amendments are included in the appendix to this Chapter.
- 5) If you are acquiring any property or relocating any person(s), business or operations, refer to Chapter 2 – Acquisition and Relocation Requirements.
- 6) Upon completion of your project, if the beneficiaries have changed since the project was originally funded, you must submit the **Grantee Performance Report** (Form 3-D). The report form and instructions are included in the appendix to this Chapter.
- 7) For projects required to follow the Iowa Green Streets Criteria, upon completion of your project, submit through lowagrants.gov completed Iowa Green Streets Criteria Appendices D, E (new construction, gut rehabilitation projects), and F (rehabilitation projects only).

The appendix to this Chapter contains copies of the federal regulations governing the CDBG program. You should familiarize yourself with these rules and regulations and refer to them as necessary.

- 8) Updated Applicant/Recipient Disclosure/Update Report. This provides a listing of any persons with a financial interest in the project. An initial report should have been included as part of your CDBG application. If there are any changes in the information that was provided in the initial report, an updated report must be submitted to IEDA. The report form and instructions are included in the appendix to this Chapter.
- 9) The appendix to this Chapter includes guidelines on audit and closeout procedures. It is a good idea to understand these requirements early in your project since you may need to have audits conducted prior to completion of the project.

In the Appendix to Chapter 1

The Appendix to Chapter 1 contains the following:

- Community Development Staff Members
- Definitions and Acronyms
- Requirements for Subrecipient Agreements
- Sample Subrecipient Agreement
- Sample Policy on the Prohibition of the Use of Excessive Force
- Sample Equal Opportunity Policy Statement
- Sample Residential Anti-displacement and Relocation Assistance Plan
- Signature Authorization Forms
- Record-keeping Checklist
- Citizen Participation Requirements
- Sample Notice of Public Hearing/Status of Funded Activities
- Contract Amendment Procedures
- Applicant/Recipient Disclosure/Update Report and Instructions
- Audit and Closeout Requirements
- Grantee Performance Report and Instructions (Form 3-D) – Refer to Appendix 5 for Housing Rehabilitation
- DUNS Number Guide
- Federal Regulations, State Community Development Block Grant Program
(24 CFR Part 570, Subpart I)
- Title 1 of the Housing and Community Development Act of 1974, Section 105(a)
- CDBG Application & Administration steps and references

Your Notes

Federal Requirements

This Chapter describes all the federal requirements, with the exception of Environmental Review, that apply to the CDBG program. Recipients should review this Chapter carefully and refer to it as necessary to ensure compliance.

National Objective

The authorizing statute of the CDBG program requires that each activity funded except for program administration and planning activities meet one of three national objectives. The three national objectives are:

- 1) **Benefit to low- and moderate- income (LMI) persons.** The LMI national objective is often referred to as the “primary” national objective because the statute requires that recipients expend 70 percent of their CDBG funds to meet the LMI national objective. There are four subcategories that can be used to meet the LMI national objective:

Area benefit activities (Low Mod Area or LMA): An area benefit activity is one that benefits all residents in a particular area (primarily residential), where at least 51 percent of the residents are LMI persons.

Programs that use this National Objective: Water and Sewer Fund, Community Facilities and Services Fund, and Opportunities and Threats fund

Limited clientele activities (low Mod Limited Clientele or LMC): Under this category, 51 percent of the beneficiaries of an activity have to be LMI persons. Activities in this category provide benefits to a specific group of persons rather than everyone in an area. Benefit a clientele that is generally presumed to be principally LMI such as:

- abused children,
- battered spouses,
- elderly persons,
- severely disabled adults,
- homeless persons,
- illiterate adults,
- persons living with AIDS and migrant farm workers;
- or have income eligibility requirements limiting the activity to LMI persons only; or be of such a nature and in such a location that it can be concluded that clients are primarily LMI.

Programs that use this National Objective: Community Facilities and Services Fund benefiting a certain clientele like Senior Centers and Child Care Centers.

Housing activities (Low Mod Housing Activities or LMH): The housing category of LMI benefit national objective qualifies activities that are undertaken for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by LMI households.

Programs that use this National Objective: Housing Fund

Job creation or retention activities (Low Mod Job creation or retention activities or LMJ): The job creation and retention LMI benefit national objective addresses activities designed to create or retain permanent jobs, at least 51 percent of which (computed on a full-time equivalent basis) will be made available to or held by LMI persons.

Programs that use this National Objective: Job creation, Retention, and Enhancement Fund

- 2) **Aid in the prevention or elimination of slums or blight.** Activities under this national objective are carried out to address one or more of the conditions which have contributed to the deterioration of an area designated as a slum or blighted area. The focus of activities under this national objective is a change in the physical environment of a deteriorating area. Under the elimination of slum and blight national objective, determining the extent of and physical conditions that contribute to blight is central to qualifying an activity. There are two categories that can be used to qualify activities under this national objective:

Prevent or eliminate slums and blight on an area basis (SBA): This category covers activities that aid in the prevention or elimination of slums or blight in a designated area. The designated area in which the activity occurs must meet the definition of a slum, blighted, deteriorated or deteriorating area under state or local law. Additionally, the area must meet either *one* of the two conditions specified below:

- Public improvements throughout the area are in a general state of deterioration; or
- At least 25 percent of the properties throughout the area exhibit one or more of the following:
 - Physical deterioration of buildings/improvements;
 - Abandonment of properties;
 - Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;
 - Significant declines in property values or abnormally low property values relative to other areas in the community; or
 - Known or suspected environmental contamination.

Programs that use this National Objective: Downtown Revitalization Fund and/or Opportunities and Threats Fund

Prevent or eliminate slum and blight on a spot basis (SBS). These are activities that eliminate specific conditions of blight or physical decay on a spot basis and are not located in a slum or blighted area.

Programs that use this National Objective: Downtown Revitalization Fund and/or Opportunities and Threats Fund

- 3) **Meet a need having a particular urgency (referred to as urgent need).** Use of the urgent need national objective category is rare. It is designed only for activities that alleviate emergency conditions. Urgent need qualified activities must meet the following criteria:
- The existing conditions must pose a serious and immediate threat to the health or welfare of the community;
 - The existing conditions are of recent origin or recently became urgent (generally, within the past 18 months);
 - The grantee is unable to finance the activity on its own; and
 - Other sources of funding are **not** available.

Programs that use this National Objective: Opportunities and Threats Fund

Procurement

CDBG recipients must comply with the federal procurement requirements of 2 CFR Part 200. These regulations direct that all supplies, equipment, construction and services be acquired efficiently and economically, through open and fair competition. You must use sound business judgment, not only in the acquisition of supplies, equipment, construction and services, but in the settlement of all contractual and administrative issues, protests, disputes and claims.

As required by 2 CFR 200 Part 318, recipients must adopt a written procurement policy and a code of conduct. Samples are included in the appendix to this Chapter.

Recipients will need to certify that CDBG project procurement was completed following 2 CFR 200 requirements. The Certification of Compliance form, available in Appendix 2, should be signed and uploaded into lowagrants.gov.

Recipients must ensure nondiscrimination in the solicitation and award of contracts funded in whole or in part with CDBG funds, including nondiscriminatory advertising and distribution of solicitations, nondiscriminatory bid specifications or evaluation criteria and nondiscriminatory awards of contracts. Recipients and subrecipients also must take affirmative steps to use small businesses and minority- and women-owned businesses when possible as sources of supplies, equipment, construction and services. For a list of clearinghouses for solicitation of minority-owned and female-owned businesses, see Appendix 2.

Five Methods of Procurement

The regulations at 2 CFR Part 200.320 detail five methods of procurement. These regulations are included in the appendix to this Chapter.

Micro Purchase Procedures

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

Small Purchase Procedures

This method of procurement can be used for the relatively simple and informal procurement transactions of securing certain services, supplies, equipment or other property that does not cost more than \$100,000 in the aggregate. Price or rate quotations are obtained from an adequate number of qualified sources to determine the most advantageous provider.

Sealed Bids

The sealed bid (formal advertising) method of procurement is consistent with state law for procurement transactions undertaken for public improvement projects (Chapter 26, Code of Iowa). For more detail, reference the Code and/or 2 CFR 200.320). This is the preferred method of procurement for construction services regardless of cost.

Competitive Proposals

Procurement by competitive proposals generally is the method used for the selection of professional services. More than one source submits an offer and either a fixed-price or cost reimbursement (with a maximum amount or not to exceed figure) type of contract is awarded. Proposals from an adequate number of qualified sources are solicited through a formal, written request for proposals (RFP). The RFP must be publicized and must identify all evaluation factors and their relative importance.

Recipients must have a method for conducting technical evaluations of the proposals received and for selecting awardees. Any response to publicized requests for proposals must be honored to the maximum extent practical. An award is made to the responsible firm whose proposal is most advantageous, with price and other factors considered.

When procuring architectural/engineering (A/E) professional services, qualification-based procurement procedures should be used. Qualifications are solicited through a formal written request for qualifications (RFQ) process including a publicized notice. The most qualified competitor is selected based on established evaluation review criteria (sample evaluation criteria are included in the appendix to this Chapter). The award is then made subject to fair and reasonable negotiated compensation. This method of procurement, where price is not used as a selection or evaluation factor, may be used only in the procurement of actual A/E professional services.

Please note that 2 CFR Part 200.319 prohibits contractors from competing for procurement if the contractor has assisted or participated with development of draft specifications, requirements, statements of work, and invitations for bids or requests for proposals. For example, if a consultant assists a community by preparing an RFP for CDBG grant administration, the consultant cannot respond to the RFP for those services. IEDA provides templates for recipients to use when procuring a grant administrator, technical services provider (CDBG housing projects), and engineering/architectural services. Recipients must submit a certification to IEDA stating that the consultant selected for services did not assist the community with the procurement process in any manner.

Noncompetitive Proposals

This method of procurement involves the solicitation of a proposal from only one source. Procurement by noncompetitive proposals (sole-source procurement) may be used only when one of the four following circumstances applies:

- 1) The item is available only from a single source.
- 2) Public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- 3) The federal (state) grantor agency authorizes noncompetitive proposals.
- 4) After solicitation from a number of sources, competition is determined inadequate.

Sole source procurement is unusual and the circumstances and rationale for its use must be fully documented. Additionally, IEDA must approve in advance sole source procurement for contracts or purchases valued at \$25,000 or more.

Exception for Administrative Contracts

Recipients wanting to contract for administrative services with regional or metropolitan planning commissions or councils of governments existing pursuant to Chapter 28H, Code of Iowa, may do so without regard to the provisions of 2 CFR 200.320, provided that such services are billed on an actual cost basis. IEDA has determined that a primary function of metropolitan and regional planning commissions and councils of governments existing under Chapters 28E and 28H, Code of Iowa, is to provide assistance to units of local government, under the direct supervision and control of elected officials from the local units of government served. The public purpose served by the metropolitan and regional planning commissions or councils of governments, combined with their local control, tends to provide protection equal to those contemplated by the provisions of Subpart 320. However, nothing prevents any recipient from complying with the provisions of Subpart 320 when procuring administrative services if the recipient deems compliance to be equitable and in the best interest of the program.

Conflicts of Interest

Recipients must avoid conflicts of interest. In the procurement of property and services, 2 CFR 200.319 (for local governments and for non-profit organizations) regarding conflicts of interest apply. In all cases not governed by those rules, conflicts of interest are not permitted. If a person is an employee, agent, consultant, elected official or appointed official of a recipient or subrecipient of CDBG funds and has project-related responsibilities or access to inside information, he or she may not obtain a financial benefit or interest from the project for himself or herself or those with whom he or she has family or business ties during his or her tenure or for one year thereafter.

Civil Rights and Fair Housing

Your contract lists several federal regulations related to civil rights, equal opportunity and fair housing. These regulations mandate that no person in the United States shall, on the grounds of race, color, national origin, religion, creed, age, sex, disability, familial status, political affiliation, citizenship, gender identity, or sexual orientation be denied benefits or be subjected to discrimination under any program funded in whole or in part with federal funds. By signing your contract, you certify that you will comply with the laws listed. If you do not understand the

requirements, you should request the full text of the regulations from IEDA and consult with your project manager.

While some of the civil rights and fair housing regulations simply prohibit discrimination, others require you to take some affirmative steps or action. These are addressed below.

Affirmatively Furthering Fair Housing

Title VIII of the Civil Rights Act of 1968 and Title I of the Housing and Community Development Act of 1974 require that recipients take some action to affirmatively further fair housing in their communities. Acceptable actions range from using the equal housing opportunity logo on your letterhead to sponsoring fair housing training for landlords, real estate agents and lenders.

A list of mandatory & optional affirmative fair housing actions is included in the appendix to this chapter. **All grantees receiving CDBG funds through the State must complete the two mandatory strategies and at least one elective strategy regardless of the CDBG funded project. This requirement is not limited to CDBG housing sustainability projects.** When your project is monitored, your project manager will review the actions you took to affirmatively further fair housing, so be sure to document your activities and the results.

Affirmative Action in Soliciting Minority/Women Business Enterprises

Executive Orders 11625, 12432 and 12138 generally require recipients to make every effort to solicit the participation of minority and women business enterprises (MBE/WBE) in their projects. Recipients must specify the outreach actions they will take to ensure the inclusion, to the maximum extent possible, of minorities and women and entities owned by minorities and women, in all contracts.

Per 2 CFR 200.321, recipients must take the following affirmative steps to solicit MBE/ WBEs:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in in the steps above.

You should include qualified MBEs and WBEs on your solicitation lists and solicit their participation whenever they are potential sources of goods or services you need. A list of clearinghouses for solicitation of MBEs and WBEs is included in the appendix to this Chapter.

Recipients should also utilize the state of Iowa's Targeted Small Business (TSB) directory to help identify MBE/ WBEs that can provide services associated with your CDBG project. Iowa's TSB directory can be found at at <https://www.iowa.gov/tsb>.

When your project is monitored, your project manager will review the efforts you took to solicit MBE/WBE participation and the results. You will also be asked to report on your achievements in this area after your project is completed.

Section 3

The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses which provide economic opportunities to low- and very low-income persons.

Section 3 applies to CDBG funding. Please visit the Section 3 chapter in the Management Guide for more information on Section 3 requirements and how recipients must document compliance.

Section 504 of the Rehabilitation Act of 1973 / Americans with Disabilities Act

Section 504 and the ADA require accessibility of CDBG projects to persons with disabilities. The law requires that new facilities assisted with federal funds be designed and constructed to be readily available to and usable by individuals with disabilities. Alterations to existing (non-housing) facilities shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities. For existing (non-housing) facilities, recipients shall operate programs and activities receiving CDBG assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

You should work closely with your architect/engineer to ensure plans comply with Section 504 and ADA.

Labor Standards

Federal laws and regulations relating to labor standards include the following:

- The Davis-Bacon Act
- The Copeland "Anti-Kickback" Act
- The Contract Work Hours and Safety Standards Act

As applicable, you must comply with these laws, and make sure your contractors and subcontractors comply as well. These laws apply to all construction contracts in excess of \$2000.

Davis-Bacon Act

Davis-Bacon requires that the wage paid to employees must be equal to or higher than the U.S. Department of Labor's (DOL) determination of the prevailing wage rates for the project type and locality in which the work is being done.

Copeland "Anti-Kickback" Act

The basic requirements of the Copeland "Anti-Kickback" Act are as follows:

- 1) Payment to employees must be made at least once a week and without subsequent deductions or rebate on any account, except for "permissible" salary deductions.
- 2) You must obtain and review payroll forms, including the "Statement of Compliance" from contractors and subcontractors, on a weekly basis.
- 3) You must retain these documents for five years after work completion; each employer must maintain records supporting the payrolls for three years after work completion.

Contract Work Hours and Safety Standards Act

The basic requirements of the Contract Work Hours and Safety Standards Act are as follows:

- 1) Employees shall not work in excess of 40 hours in any workweek unless they receive overtime compensation at a rate not less than one and one-half times the basic rate of pay for those overtime hours worked. The contractor or subcontractor shall be liable to any affected employee for unpaid wages.
- 2) Contractors in violation of the Contract Work Hours and Safety Standards Act (overtime law) are liable to the United States government for liquidated damages, computed at \$10 per day for each employee who worked overtime and was not paid overtime wages. The contractor must submit a certified check for the total amount of liquidated damages to IEDA upon request. Funds may be withheld from contractors and subcontractors to satisfy unpaid wages and liquidated damages only after the contractor or subcontractor receives written notification that funds will be withheld to satisfy labor standards provisions.

Labor Standards Compliance Officer

The labor standards described in this section are complicated and require thorough documentation. Therefore, you must designate a Labor Standards Compliance Officer. This person has overall responsibility for labor compliance and for maintaining the project's labor files. The Labor Standards Compliance Officer must do the following:

- 1) Visit the construction site to confirm the required posters ("Notice to Employees," "Job Safety and Health Protection" and "Equal Employment Opportunity") and correct wage determinations are posted in clear view of employees. Copies for your reference are included in the appendix to this Chapter; you may receive a complete packet upon request with your wage determination.
- 2) Collect and examine weekly payrolls as they are submitted so any necessary corrective action can be initiated immediately. Items to be reviewed include classification of workers, comparison between the classification and wage to verify the rate is at least equal to that required by the wage rate determination; overtime pay, if applicable; deductions; apprentice/trainee information and statement of compliance signature by owner or officer of contractor. If compliance signature is from a representative other than owner, an authorization for alternative signature must be provided.
- 3) Conduct employee interviews. The number of interviews must be sufficient to establish compliance and must represent all classifications of employees.

- 4) Maintain the labor standards file. The file should include the following:
- Verification of eligibility of each contractor
 - Wage rate determination
 - Construction bid package
 - Public advertisements for bids
 - Documentation of efforts to solicit minority/women contractor participation
 - List from the general contractor of all subcontractors and lower-tier subcontractors that will work on project
 - Scope of work statement for each contractor and subcontractor
 - Contract documents (with required federal language)
 - Pre-construction conference minutes
 - Indication of construction start date
 - Contractor/subcontractor employee payroll sheets/statement of compliance
 - Employee interview forms (including Section 3 interviews, if applicable)
 - Other related correspondence
 - Resource Documents
 - Federal Labor Standard Requirements in Housing and Urban Development Programs: HUD Handbook 1344.1 Rev. 2
 - A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects: Labor Relations Desk Guide LR01.DG

Requesting Wage Rate Determinations

Recipients obtain wage rate determinations by making a request in lowagrants.gov. The request should be submitted 30 days in advance of the bid advertisement date. Upon receipt of the request, IEDA will review the information provided and issue the appropriate wage rate determination.

General wage rate determinations published by the DOL Employment Standards Administration, Wage and Hour Division, are effective until superseded or modified in a subsequent published wage rate determination. **You must contact IEDA 10 days before the bid opening date to verify that your wage rate is still current.** Changes to wage rate determinations published less than 10 days before bid opening do not apply if your files include a statement of justification or other documentation establishing that there was not reasonable time available to notify all the contractors planning to submit bids. **You must also contact IEDA for an update if you have not awarded a contract within 90 days after the bid opening.**

Wage rate determinations must be included in all bid solicitations and construction contracts. The construction bid solicitation should include language that the project is a federal project subject to the Davis-Bacon prevailing wage requirements. Contractors must post the wage rate determination in a prominent work site location that is accessible to all workers employed on the project.

Requesting Approval of Additional Classifications

If a contractor or subcontractor must use a craft or category of worker that is not listed on the wage rate determination, the contractor or subcontractor must submit to you, on the company's

letterhead, a description of the craft to be employed and the hourly basic rate and fringe benefits to be paid. The rate must fall within the range of other skilled classification rates in the wage determination. The description must also include a statement signed by the company's CEO and affected employee(s) stating that the reported wage rate is believed to be prevailing for that work classification and geographic area.

You must forward the information described above to IEDA. A sample form is included in the appendix to this Chapter for requesting approval of additional classifications. IEDA will review the request and forward it to the Department of Labor for approval. **You should allow six weeks for this process.**

Contractor Eligibility

Recipients must verify the eligibility status of all contractors to ensure they are not listed on HUD's Consolidated List of Debarred, Suspended and Ineligible Contractors or DOL's Consolidated List of Debarred and Suspended Contractors. This requirement also applies to engineers, architects, and grant administrators. Recipients must also verify that all contractors are registered in the State of Iowa and have a valid registration number. **This must be done before any contract is awarded.**

Recipients will need to check the federal SAM database (www.sam.gov) prior to awarding or entering into a contract to ensure contractors are not on the debarred list.

Recipients should enter the date that SAM was checked for contractor eligibility in lowagrants.gov. You can then request verification of contractor eligibility by submitting the request in lowagrants.gov. Upon receipt, IEDA will verify the listed contractors and email a verification of eligibility to the recipient.

Labor Standards Administration and Compliance

Other DOL administration and compliance activities which recipients and their contractors and subcontractors are responsible for include the following:

- 1) The prime contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with all labor provisions.
- 2) You must hold a pre-construction conference with the prime contractor and available subcontractors before the start of construction. Participants must be advised of their responsibilities to abide by labor standards provisions and the wage determination contained in the contract documents. Minutes documenting each conference must contain the project name, location and description; wage determination number; name of contractor; contract amount; date and place of conference; conference participants and a summary of items discussed. You should retain minutes of each pre-construction conference in your labor standards file.
- 3) Contractors must make pertinent records available for review and permit on-the-job interviews of employees.
- 4) Contractors and subcontractors may be terminated for noncompliance with labor standards and will be liable for any excess cost involved in completing the work.
- 5) Contractors must be able to furnish certificates from the Bureau of Apprenticeship and Training for apprentices or trainees employed on a particular project. All apprentices must be identified in each payroll submission. The ratio of apprentices to journeymen must not exceed the

approved ratio under their respective program and their wage rate must not be less than prescribed under those programs. A DOL Summer Youth Program allows contractors to hire 18-22 year old workers at lower than the prevailing wage. Contractors must secure IEDA approval before using these workers and the lower pay scale.

- 6) All construction contracts covered by Davis-Bacon and subject to labor standards must contain standard provisions and certifications. A copy of the "Federal Labor Standards Provisions" is included in the appendix to this Chapter. All contracts entered into by the contractor with subcontractors must include the same provisions and certifications as those of the major contract with respect to federal laws.
- 7) Contractors and subcontractors may use DOL Form WH-347 ("Payroll") or any other alternate form which provides the same information. If an alternate payroll form is used, the certification language on the back of WH-347 must also be attached. Each contractor and subcontractor and any lower-tier subcontractor must submit weekly payrolls to your designated Labor Standards Compliance Officer for each workweek from the time work starts until it is completed. If no work is performed during a workweek, weekly payrolls need not be submitted. Weekly payrolls shall be numbered sequentially and the final payrolls marked "final." A sample payroll form with instructions is included in Appendix 2. Any subcontractor whose owner is working without any employees on a given work week must be listed on the general contractor's weekly certified payroll.
- 8) You must examine payrolls and related records to ensure compliance with DOL labor standards clauses and applicable federal statutes. You should examine payrolls, related records and employee interviews; verify that apprentices and trainees are registered or certified; ensure the wage rate determination was posted at the work-site; and check the handling of labor-related complaints.
- 9) Underpayments of \$1,000 or more per employer, contractor or subcontractor must be reported to DOL through IEDA. For further information on reporting requirements, contact IEDA's labor specialist.

Summer Youth Employment

Contractors employing workers aged 18-22 (who are bona fide high school, technical school or college students) on HUD-insured or assisted HUD construction projects during the summer (May 15 through September 30) may be exempt from Davis-Bacon and related labor acts.

Requirements and stipulations that must be met before summer youth are employed at less than Davis-Bacon rates are as follows:

- 1) Youth must be sponsored by a responsible employment, training and/or community outreach organization, such as the National Association of Home Builders, Associated Builders and Contractors, Urban Coalition, Private Industry Council, National Urban League, organized labor, a local school, or similar organization, as part of a bona fide Youth Opportunity Program.
- 2) Youth must be bona fide students employed on a temporary basis for the summer.
- 3) Where collective bargaining agreements covering workers performing similar or related activities at the work-site to which youth are stationed exist, the union or unions representing those workers must provide concurrence as to the design of the employment project and the use of the youth.

- 4) The employment must be provided in accordance with state and federal statutory safety, child labor and minimum wage requirements.
- 5) Competent supervision must be provided to all youth employed on the project work-sites. Ratios of youth to such supervisors should be no greater than four to one.

To ensure that the administration of summer youth employment complies with DOL policies and regulations, requests for exceptions to Davis-Bacon must be made to IEDA, which will review the request for its appropriateness and forward it the HUD Field Office Labor Relations Staff for final disposition. Requests must meet the requirements listed above and include the number of youth to be employed and the name of the referring organization. IEDA will advise the requesting contractor in writing of the HUD Labor Relations Office decision.

Programs sponsored by the Workforce Investment Act of 1998 (which replaced the Job Training Partnership Act) that are registered with the Bureau of Apprenticeship and Training would be recognized as bona fide training programs. Therefore, they could be exempt from complying with Davis-Bacon requirements. Check with IEDA's Labor Standards Officer if the project employs apprentices under the WIA.

Required Contract Provisions

Recipients must certify that all federal requirements listed in their contracts with IEDA are satisfied. Further, the certifications must be part of every contract and subcontract the recipient executes. A full listing of required contract language is included in the appendix to this Chapter.

Recipients must ensure that all contracts include the following provisions, as applicable:

- Davis-Bacon Act
- Copeland "Anti-Kickback" Act
- Contract Work Hours and Safety Standards Act
- Access to records by government officials
- Maintenance of records for five years
- Termination clauses
- Federal Labor Standards Provisions – Form 4010 (included in the appendix)
- Required civil rights provisions (included in the appendix)
- Executive Order 11246, for Contracts in excess of \$10,000 (included in the appendix)
- Required provisions for contracts in excess of \$100,000 (included in the appendix)
- Section 3 clause

Project Construction Sign

In order to increase awareness of the benefit that CDBG funds provide to communities, please have a sign placed at the construction site during construction. Specifications for the sign can be found in Appendix 2. You should give these sign specifications to the project architect or engineer so they can be placed in the construction specifications book that will be given to each contractor bidding on the project. If you have questions about the project construction sign, please call your project manager.

Site and Easement Acquisition and Relocation

The requirements in this section apply to acquisition of **real property** and/or **permanent easements** and/or **temporary easements** for CDBG projects. The primary source for HUD real estate acquisition and relocation policy is HUD Handbook 1378, available on the HUD website.

There are two laws that govern property acquisition when CDBG funds are involved: The Uniform Relocation and Real Property Acquisition Act of 1970 (URA) and Section 104(d) of the Housing and Community Development Act of 1974. This section provides a general summary of the most common requirements of CDBG recipients under these laws.

Acquisition and relocation requirements are applicable to the CDBG recipient (City or County government) or the sub-recipient (non-profit organization or Rural Water District). It does not matter if the property used for the CDBG project is purchased with federal funds or local funds, the purchase must still follow the acquisition and relocation requirements outlined in the following pages.

Section 104(d) requires local governments receiving CDBG assistance to provide a one-for-one replacement of all occupied and vacant, occupiable lower-income dwelling units that are demolished or converted to another use in connection with a CDBG assisted activity, unless the State of Iowa determines that objective data indicates that there is an adequate supply of vacant lower-income dwellings in standard condition available.

Acquisitions Procedure

Does the purchaser of the property have the power of eminent domain?

NO: (for entities such as non-profit organizations and rural water districts)

Then, complete the following steps in order:

- 1) The sub-recipient notifies the property owner in writing by certified mail that it does not have the power of eminent domain and therefore, it will be unable to acquire the property in the event negotiations fail.
- 2) Inform the owner in writing by certified mail of the fair market value for the property; an appraisal is not necessary, but the offer must include an explanation of how the value was reached.

(An example notice: The Guideform "Voluntary Acquisition for Agencies without Eminent Domain Authority" is in Appendix 2)

YES: (for entities such as Cities and Counties)

Will the purchase be **voluntary or involuntary**?

Voluntary

Must meet **all** of the following criteria:

- 1) No specific property is needed but the search for alternative sites may be limited to a general geographic area.
- 2) The property is not part of a planned or designated area where all the property in the area will eventually be acquired.

- 3) The recipient agrees that it will not use its power of eminent domain even if negotiations fail.

If all of the above is true, the Recipient must inform the property owner in writing by way of certified mail:

- 1) The power of eminent domain will not be used if negotiations fail
- 2) Fair market value for the property; an appraisal is not necessary, but the offer must include an estimate of Fair Market Value. The offer does not have to equal the Fair Market Value.

(An example notice: The Guideform Voluntary Acquisition for Agencies with Eminent Domain Authority is in Appendix 2)

Involuntary

If all of the above criteria for voluntary acquisition are not met then the recipient will complete the following steps in order:

- 1) Notice of Interest to the Property Owner:** This notice tells the owner of the recipient's interest in acquiring the property. It should be issued as soon as is feasible, following the recipient's identification of the real property in which it has an interest. The notice must outline the protection available to the owner and should include information on the recipient's process and obligation in conducting an appraisal. The HUD brochure "When a Public Agency Acquires Your Property" found in Appendix 2 (Form HUD-1041-CPD) explains the URA policies. The text of this brochure is included in the appendix to this Chapter. Copies of the printed brochure are available upon request from IEDA. This must be given to the property owners.
- 2) Notice:** Recipient must provide as required to tenants throughout the process
- 3) Appraisal:** After the owner has been notified of the recipient's interest in the property, an appraisal must be conducted. The appraisal should be done before negotiating the purchase price. The property owner or a representative must be given the opportunity to accompany the appraiser while on site.

Appraisals are defined as written statements setting forth the market value of a specific property on a specific date. This analysis must be conducted independently and impartially by a certified appraiser and must be supported by analysis of relevant market information. The market value of a partial acquisition is the value of the whole property less the value of the remaining property. To the extent possible under the law, the appraiser should disregard any enhanced or decreased value to the property to be caused by the project.

Appraisals conducted for the acquisition of property for federal funded projects must follow the Uniform Standards of Professional Appraisal Practice (USPAP). These standards can be found at http://www.appraisalfoundation.org/s_appraisal/sec.asp?CID=3&DID=3.

For a review of minimum appraisal standards reference Helpful Acquisition Information found in Appendix 2.

Appraisals are not required if the owner is donating the property and releases the recipient from its obligation after being informed in writing of the right to an appraisal.

Appraisals are also not necessary when the Agency determines that the property valuation problem will be uncomplicated and the available data indicate a market value of less than \$10,000 (up to \$25,000 if the Agency offers the landowner an appraisal and he refuses it in writing). If the above criteria are met then the Agency will prepare a waiver valuation drafted by a person having sufficient understanding of the local real estate market. If the property owner requests an appraisal one will be conducted.

Recipients must establish minimum qualifications for appraisers. These vary according to the difficulty of the review. Inexperienced appraisers should not be asked to examine complex properties. The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) standards apply to URA. Fee appraisers making a detailed appraisal must be state certified. For a list of state certified appraisers, go to <http://www.asc.gov/default.aspx?id=11>.

Appraisers must not have any conflicts of interest with the owner or property they are to review. This includes direct and indirect ties. Payment for conducting the appraisal may not be tied to the resulting property value.

The appraiser shall disregard any decrease or increase in the market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

- 4) **Review of Appraisal:** After the initial appraisal is conducted, it must be checked by a qualified review appraiser. The review appraiser must examine all appraisals to check for accuracy, documentation and soundness of opinion. If the review appraiser does not accept an appraisal, a second full appraisal must be sought. If the review appraiser does not agree with the original appraisal and it is not practical to do a second appraisal, the review appraiser may present and analyze market value information to support a recommended value. The reasons for the change and the new value must be set out in a certified document.
- 5) **Purchase offer and Summary Statement of the Basis for Just Compensation:** After an appraisal determines the fair market value of the property and is approved by the review appraiser, the recipient should promptly deliver a Purchase Offer and a Summary Statement of the Basis for Just Compensation to the owners. The Purchase Offer should be at an amount not less than the approved appraisal. The Summary Statement of the Basis for Just Compensation is a written explanation of the purchase offer. Please review Helpful Acquisition Information found in Appendix 2 for what it should contain.

If the acquisition will leave the owner with an "uneconomic remnant," the recipient must offer to buy the full property (an uneconomic remnant is considered to be a parcel of property left after acquisition that has little or no value to the owner). If the owners retain or remove property improvements from the site, the salvage value of the improvements should be deducted from the offer of just compensation.

- 6) **Negotiation of Purchase Price:** When feasible, negotiations should be conducted in person. Owners have the right to suggest alternatives or additions to the offer of just compensation and to suggest changes in the appraisal. If the owner's information or suggestions warrant a new appraisal, one must be conducted. A review appraisal also may be needed if significant time has passed since the original appraisal. If the second appraisal suggests an increase in the fair market value, this must be communicated to the owner and a new offer of just compensation must be made.

Recipients may not take any coercive action (e.g., advancing the time of condemnation or depositing just compensation funds with the court) to rush or influence the owner's decision. Recipients may allow an owner or tenant to remain on the purchased site at a market rent for the property. However, recipients should ensure that this lease would enable them to legally and readily take possession of the property as required by the project plans.

Recipients may authorize an administrative settlement that exceeds the amount of just compensation. The recipient should document such action with information such as court awards exceeding market value, estimated legal costs or valuation errors. Recipients must not pressure appraisers to change the value of their estimates.

Before taking possession of a property, the recipient must pay the owner the agreed upon price. In the case of a condemnation, money must be deposited with the court for the owner. This amount should be no less than the market value or court award of compensation. Only in exceptional circumstances and with the owner's approval may the recipient enter the property before payment.

The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for the following:

- Recording fees, transfer taxes, documentary stamps, evidence of title, boundary survey and legal description of the real property (however, the recipient is not required to pay costs solely required to perfect the owner's title to the real property);
- Penalty costs and other charges for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering the real property; and
- The pro rata portion of any prepaid real property taxes allocable to the period after the recipient obtains title to the property or effective possession of it, whichever is earlier.
- Whenever feasible, the recipient shall pay for the incidental expenses directly so the owner will not have to pay such costs and then seek reimbursement from the recipient. To avoid duplicate expenditures, the property owner should be informed early in the acquisition process of the recipient's intent to make such arrangements.

- 7) Tenant Assistance:** The Recipient must provide advisory services, moving assistance, and relocation payments as applicable.

Condemnation Proceedings

If a property is to be taken by eminent domain, the recipient must initiate formal condemnation proceedings. Recipients may not require the owner to prove the taking of his/her property. Inverse condemnations are takings in fact, but not through legal means. For example, an airport is placed next to a property and the noise from planes makes the property unusable. Even though this property has not been taken through legal means, the use of it has been lost and the owner is entitled to compensation.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal and engineering fees, which the owner actually incurred because of a condemnation proceeding if:

- The final judgment of the court is that the recipient cannot acquire the real property by condemnation; or
- The condemnation is abandoned by the recipient other than under an agreed upon settlement; or
- The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the recipient affects a settlement of such proceeding.

Property Donation

If a property owner wishes to donate their property no appraisal is necessary. The property owner must release the recipient from the obligation to conduct an appraisal in writing. The property owner must also be informed of their rights and be sent a copy of “When a Public Agency Acquires Your Property” (found in Appendix 2).

Relocation Procedure

If the property that is acquired for the CDBG funded project has tenants (households, businesses, non-profit organizations or farm operations) the buyer must provide to each tenant one of the following Notifications: Notice of Relocation Eligibility (NOE) (49 CFR 24.203(b)) or Notice of Nondisplacement.

Tenant households, businesses, non-profit organizations, or farm operations that occupy the property and are “**displaced persons**” as defined in the regulations are eligible for all **advisory services and financial benefits under either the URA or Section 104(d)**. The buyer must provide all the required notifications in a timely manner. Property owners cannot waive these rights for tenants of their properties on a voluntary transaction.

The buyer must provide all the required notices to tenant households, businesses, non-profit organizations or farm operations that occupy the property and are “displaced persons” as defined in the regulations either at URA or 104d. The notices are in the appendices to Handbook 1378.

In the Appendix to Chapter 2

Procurement

- Sample Form of Resolution - Procurement Policy
- Instructions for Procurement for CDBG projects
- Sample Evaluation Criteria for Recipient Use in the Procurement of Professional Services
- 2 CFR 200 Frequently Asked Questions
- Sample Form of Resolution - Code of Conduct
- CDBG Procurement Regulations (2 CFR 200.318)
- Links to Sample Procurement Documents for Communities
- Certification of Compliance with CDBG Procurement Standards

Civil Rights and Fair Housing

- Civil Rights – Equal Opportunity Applicable Laws and Regulations
- Equal Housing Opportunity Logo
- Sample Public Notice - Affirmative Fair Housing Policy
- Clearinghouses for Solicitation of Minority-owned and Female-owned Businesses
- Mandatory and elective Fair Housing strategies for communities

Labor Standards

- Link to Project Construction Sign: Specifications
- Request for Wage Determination Form
- Request for Approval of Additional Classification Form and Instructions
- Request for Contractor Eligibility Form
- Sample Payroll Form and Instructions
- Record of Employee Interview Forms (English and Spanish)
- Federal Labor Standards Questionnaire (English and Spanish)
- On-line Employee Questionnaire
- Federal Labor Standards Complaint Intake Form
- Job Site Poster Samples
- Federal Labor Standards Provisions

Required Contract Provisions

- Required contract language and provisions & Section 3 Clause

Acquisition

- “When A Public Agency Acquires Your Property”
- General URA Acquisition Process
- Helpful Acquisition Information
- Guideform Notice to Owner – Involuntary Acquisition (Threat/Use of Eminent Domain)
- Guideform Notice to Owner – Voluntary Acquisition – Informational Notice (Agencies Without Eminent Domain Authority)
- Guideform Notice to Owner – Voluntary Acquisition – Informational Notice (Agencies With Eminent Domain Authority)
- HUD handbooks and forms for relocation activities

Your Notes

Federal Requirements Continued

Issues Related to Environmental Review

Overview

The National Environmental Policy Act of 1969 (NEPA) establishes national policies, goals, and procedures for protecting, restoring and enhancing environmental quality. CDBG recipients must comply with this law and with related federal regulations, which are referenced in 24 CFR Part 58. As a CDBG recipient, you have taken on the responsibility to evaluate how your project will affect the environment by complying with the requirements set out in 24 CFR Part 58. The requirements are complex, and are only summarized below. For a definitive description of environmental requirements, you may want to consult the regulations, which can be found at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title24/24cfr58_main_02.tpl.

The recipients of CDBG funds assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in Sec. 58.5.

If another federal agency has funds invested in your project, it will also be conducting an environmental review. You are encouraged to coordinate your review with that agency. This will help eliminate the unnecessary duplication of effort. However, before making a finding based on another agency's review, you should ensure the process of determination is adequate to meet responsibilities under 24 CFR Part 58. Although you may concur with the finding and any assessments conducted by another agency, you are still responsible for making sure the contents of your environmental review record (discussed later in this section) is complete. Also, you must still fulfill the publication and comment requirements outlined in this section. Note also that until approval under HUD regulations at 24 CFR Part 58 has been obtained, even though another federal agency may have approved a project, no action may be taken to commit HUD funds to the project or begin a "choice-limiting action." Choice limiting actions include going out to bid, property acquisition or transfer, rehabilitation, conversion, lease, repair, construction or demolition.

Incurring Costs (24 CFR Part 58.22) and Submitting Draw Requests

Completion of the environmental review process is mandatory before taking any action on a specific site, or making a commitment or expenditure of HUD or any other non-HUD project funds for property acquisition or transfer, rehabilitation, conversion, lease, repair construction or demolition activities. Note: 24 CFR Part 58.22 has limitations on activities pending clearance. “(a) neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in 58.1(b) on an activity or project until HUD or the State has approved the recipient’s RROF (Request for Release of Funds) and the related certification from the responsible entity. In addition, until the RROF and the related certification has been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.”

Recipients can be reimbursed for certain costs incurred prior to the Release of Funds. These costs include:

- Administration costs
- Design costs including architectural and engineering
- Costs associated with the new environmental process

These costs must have been incurred after the contract effective date.

For all other project activities, recipients cannot incur costs or draw down funds until the environmental review requirements are satisfied and the IEDA has released funds for the project. If any construction activities, including the signing of the construction contract and/or acquiring property are started before IEDA’s approval of the Request for Release of Funds, it will result in all construction costs becoming ineligible for reimbursement.

Steps to conducting an environmental review

- 1) Create the Environmental Review Record
- 2) Define the project activities
- 3) Determine what level of review is required:
 - Exempt
 - Categorical Exclusions Not Subject to §58.5
 - Categorical Exclusions Subject to §58.5
 - Environmental Assessment
 - Environmental Impact Statement
- 4) Initiate contacts with outside sources, e.g. State Historic Preservation Office
- 5) Collect data

- 6) Complete applicable review format, i.e., Statutory Checklist or Environmental Assessment
- 7) Make environmental determination (i.e., compliance with NEPA-related laws and authorities), **or** finding of no significant impact, **or** finding of significant impact
- 8) Publish or disseminate public notices, when applicable
- 9) Submit “Request for Release of Funds and Certification” form to IEDA
- 10) Wait for release of funds letter from IEDA
- 11) Start project – commit funds

The Environmental Review Record (24 CFR Part 58.38)

Each CDBG project must have a written record of the environmental review process. This is the “Environmental Review Record” (ERR), which must be available for public review and comment. The ERR must contain a description of the project and all of its activities (including non-HUD assisted activities); a map of the project area showing the project limits; documentation of compliance with environmental laws; other relevant documents, notices or information; and public comments on the recipient’s environmental review. Public comments and your responses to those comments are extremely important and must be documented in the ERR.

The ERR will vary in length and content by project. Some projects are exempt from NEPA review, categorically excluded from NEPA, found to have no significant impact on the environment, or may require a full environmental impact statement. The steps to comply with NEPA and other applicable laws and regulations are outlined below.

All projects will need to submit the ERR to IEDA prior to a release of funds being issued.

Defining the project activities

Defining the project activity is a crucial step in the environmental review process. This step helps drive the level of environmental review and thus sets out the correct path for documenting compliance with 24 CFR Part 58. “Project” means an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective. When determining the scope of the project one should be sure to include both HUD and non-HUD funds. For example, if non-HUD funds are proposed to acquire property for a community center and HUD funds are planned to construction of the building, both the land acquisition and construction are subject to the environmental review. Likewise, if CDBG funds are being used to acquire a building or site, and non-CDBG funds are used to improve the project or otherwise effect the building or site, all changes to the building and site are reviewed the same.

Project Aggregation (24 CFR Part 58.32)

Recipients must group together and evaluate as a single project all individual activities which are related on either a geographical or a functional basis, or are logical parts of a composite of

contemplated actions. When grouping activities, the recipient should be aware that several sites, each requiring some degree of environmental review, actually might be considered for one project (e.g., 40 units being rehabilitated within a target area). The recipient is well served by grouping activities by projects, common locations and functions, and by activity phasing. Some factors can be considered on an activity-wide basis, while others require site-by-site analysis.

Project activities taking place in floodplains

When project activities take place in floodplains, the RE must go through the “Eight-Step Decision Making Process” and consider “practicable alternatives” to the proposed action (Executive Order 11988 / 24 CFR Part 55). Please refer to Appendix 3 for a step-by-step list of items that need to be addressed. Be sure to pay close attention to steps 2) and 7) for these call for two publications also located in Appendix 3. Both publications cannot be published concurrently together or with the RROF (there are a total of three publications that run consecutively).

Determine the level of environmental review

Every CDBG project requires some level of environmental review. The level of effort needed to prepare a review and the depth of analysis within should be proportional to the size and complexity of the proposed project. The following are the five levels of environmental review:

- Exempt
- Categorical Exclusions Not Subject to §58.5
- Categorical Exclusions Subject to §58.5
- Environmental Assessment
- Environmental Impact Statement

Exempt Activities (24 CFR Part 58.34)

Few funded by the Authority are exempt from NEPA requirements and other environmental reviews. For exempt activities, a recipient does not have to submit a RROF and certification, and no further approval from IEDA will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination (i.e., “Environmental Determination of Level of Review” form) that each activity or project is exempt and meets the conditions specified for such exemption under this section. The following activities are Exempt under §58.34:

- 1) Environmental and other studies, resource identification and the development of plans and strategies;
- 2) Information and financial services;
- 3) Administrative and management activities;

- 4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- 5) Inspections and testing of properties for hazards or defects;
- 6) Purchase of insurance;
- 7) Purchase of tools;
- 8) Engineering or design costs;
- 9) Technical assistance and training;
- 10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;
- 11) Payment of principal and interest on loans made or obligations guaranteed by HUD;

Categorical Exclusions (24 CFR Part 58.35)

Categorical Exclusions are those activities that are not exempt and require no environmental assessment. There are two types of Categorical Exclusions, **§58.35 (a)** Subject to §58.5 and **§58.35 (b)** Not Subject to §58.5:

§58.35 (b) Categorical exclusion not subject to Sec. 58.5

- 1) Tenant-based rental assistance;
- 2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;
- 3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;
- 4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;
- 5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.
- 6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
- 7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that

conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under Sec. 58.47. If your project is categorically excluded not subject to Sec. 58.5 using the above criteria you must complete these steps and include documentation in your ERR:

- Complete “Environmental Determination of Level of Review” form
- Complete “Requirements listed at 24 CFR 58.6” form

§58.35 (a) Categorical exclusion subject to Sec. 58.5

- 1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
- 2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
- 3) Rehabilitation of buildings and improvements when the following conditions are met:
 - i. In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland;
 - ii. In the case of multifamily residential buildings:
 - A. Unit density is not changed more than 20 percent;
 - B. The project does not involve changes in land use from residential to non-residential; and
 - C. The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
 - iii. In the case of non-residential structures, including commercial, industrial, and public buildings:
 - A. The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
 - B. The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
- 4) Demolition, New Construction or Both
 - i. An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or
 - ii. An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.
 - iii. Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).
- 5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

6) Combinations of the above activities.

If your project is categorically excluded subject to Sec. 58.5 using the above criteria you must complete these steps and include documentation in your ERR:

- Complete “Environmental Determination of Level of Review” form
- Prepare a “Statutory Checklist” and include supporting source documentation
 - Site visit, maps, photographs
- Complete “Requirements listed at 24 CFR 58.6” form
- Publish or disseminate “Notice of Intent to Request a Release of Funds”
 - If any comments are received in writing, the local government must consider the comments, respond in writing, and provide copies of all correspondence to IEDA.
- Once the local comment period expires, submit a signed “Request for Release of Funds and Certification” form to IEDA.
 - Through the Request for Release of Funds, the recipient accepts the role of responsible federal agency should there be a lawsuit concerning environmental laws and regulations. The CEO assumes responsibility for the jurisdiction when he/she signs the Request for Release of Funds and Certification.
- IEDA will issue a Release of Funds letter after the state comment period expires, pending resolution of any conditions or concerns by environmental agencies, individuals and groups.

After IEDA releases funds, the recipient may draw funds after applicable contract conditions have been satisfied.

Following is a **sample** timetable for the RROF process:

Day 1: RROF notice printed in newspaper (“Notice of Intent to Request a Release of Funds”, aka NOI-RROF)

Day 2: First day of 7-day Local comment period

Day 8: Last day of 7-day Local comment period

Day 9: RROF and Certification sent to IEDA, along with proof of publication of NOI-RROF

Day 12: State receives request

Day 13: First day of State comment period

Day 27: Last day of 15-day State comment period

Day 28: State approves RROF and Certification and issues a Release of Funds Letter

Environmental Assessment (24 CFR Part 58.36 & Subpart E)

If the activity is neither exempt nor categorically excluded, you must prepare an Environmental Assessment (EA). The EA examines and recommends feasible ways to eliminate or minimize adverse environmental impacts and examines alternatives to the project itself, if appropriate.

The EA is a “concise public document” (40 CFR 1508.9) which should focus on issues that are truly important rather than “amassing needless detail” (40 CFR 1500.1) and “analytic rather than encyclopedic” (40 CFR 1502.2). The EA should include direct effects (same time & place) as well as indirect effects – those that are “reasonably foreseeable” (40 CFR 1508.8).

The Environmental Assessment Worksheet is included in the appendix to this Chapter. When properly completed, this form serves as the EA and complies with the environmental requirements in 24 CFR Part 58.40.

If your project requires an EA you must complete these steps and include documentation in your ERR:

- Complete “Environmental Determination of Level of Review” form
- Complete “Environmental Assessment Worksheet” and include supporting source documentation
- Publish or disseminate combined “Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds” (FONSI/NOI-RROF)
 - If any comments are received in writing, the local government must consider the comments, respond in writing, and provide copies of all correspondence to IEDA.
- Once the local comment period expires, submit a signed “Request for Release of Funds and Certification” form to IEDA.
 - Through the Request for Release of Funds, the recipient assumes the role of the responsible federal agency should there be a lawsuit concerning environmental laws and regulations. The CEO assumes responsibility for the jurisdiction when he/she signs the Request for Release of Funds and Certification. (24 CFR Part 58.4)
- IEDA will issue a Release of Funds letter after the state comment period expires, pending resolution of any conditions or concerns by environmental agencies, individuals and groups.

After IEDA releases funds, the recipient may draw funds after applicable contract conditions have been satisfied.

If the EA indicates an activity may significantly affect the environment and requires an Environmental Impact Statement, contact IEDA for assistance.

- 1) If an amendment to the activity is proposed, the recipient must reevaluate its EA findings of no significant impact. An amendment may include new circumstances and/or environmental conditions arising during implementation or if an alternative not considered in the original EA is selected. The reevaluation determines if the FONSI is still valid. If it is, but data or conditions have changed, the recipient must amend the original EA and update the ERR.
- 2) If the project site changes, a new EA must be completed for the new site.

Following is a **sample** timetable for the FONSI/RROF process:

- Day 1: FONSI/NOI-RROF notice printed in newspaper
- Day 2: First day of 15-day Local comment period
- Day 16: Last day of 15-day Local comment period
- Day 17: RROF and Certification sent to IEDA, along with proof of publication of FONSI/NOI-RROF
- Day 20: State receives request
- Day 21: First day of State comment period
- Day 35: Last day of 15-day State comment period
- Day 36: State approves RROF and Certification and issues a Release of Funds Letter

In the Appendix to Chapter 3

Environmental Review

- Commonly Used Environmental Acronyms
- Environmental Process Flow Chart
- CDBG Recipient Guide to Lead Federal Agency Designation
- DNR and CDBG Section 106 and Environmental Review Lead Federal Agency Designation
- USDA-RD and CDBG Section 106 Lead Federal Agency Designation
- Environmental Determination of Level of Review
- Requirements listed at 24 CFR 58.6
- Statutory Checklist
- Sample Notice of Intent to Request a Release of Funds
- Environmental Assessment Worksheet
- Sample Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds
- List of Agencies to Whom Finding of No Significant Impact (FONSI) Should be Distributed
- Additional Information for EA and CEST Projects Section
- A - HUD Guide to Environmental Compliance: NEPA- Related Statues. Authorities and Requirements
- C - Noise Assessment Guidelines
- D - Historic Preservation
- Section 106 Agreements-
When to Consult with Tribal Authorities
- Tribal Authorities List
- E - Procedures for Making Determinations on Floodplain and Wetland Management
- F - Iowa Protected Water Area Designation
- Early Notice and Public Review of a Proposed Activity in Floodplain
- Final Notice and Public Explanation of a Proposed Activity in Floodplain
- IEDA CDBG Request for Release of Funds and Certification Instructions
- Request for Release of Funds and Certification Form (HUD 7015.15)
- IEDA Environmental Review Checklist
- Tier 2 Review Form & Instructions
- IEDA/SHPO Programmatic Agreement

Your Note

Financial Management

Issues Related to Requesting and Using CDBG Funds

Financial Management

Your financial management system must provide for accurate, current and complete disclosure of the financial activities related to the CDBG project.

General Guidelines

If you use a cash basis accounting system, you are not required to use an accrual system under the CDBG Program.

Your records must adequately identify the sources and uses of funds for CDBG projects. The records must contain information pertaining to the CDBG award and authorization, obligations, unobligated balances, assets, liabilities, outlays and income. All local effort (or other funds) must be documented in the same manner as CDBG funds and be incorporated into the project financial records. You must maintain separate records that readily identify the revenues and expenditures of CDBG and local funds.

You must adequately safeguard all funds, property and other assets through effective internal control and accountability and ensure that they are used solely for the purposes authorized. Your financial management system must provide for a comparison of actual outlays with budgeted amounts and show the relationship of financial information to program performance.

You must adopt procedures to minimize the amount of cash on hand (guideline is \$500 maximum if held for 10 working days or longer) and the time elapsing between receipt of funds from IEDA and disbursement for project activities. You should make requests for funds – called “draws” – from IEDA as close as possible to the time of disbursement, through a procedure that ensures funds are expended within 10 working days of receipt.

You should inform your contractors there might be a 4- to 6-week delay between their submission of an invoice and receipt of payment. Best practice is for the recipient to establish a line of credit to pay invoices while waiting for reimbursement from the state.

You must have a procedure for determining the reasonableness and allowability of costs in accordance with OMB Circular 2 CRF PART 200, Principles for Determining Costs Applicable to Grants and Contracts (found in Appendix 5). This circular provides the principles under which costs are allowable and makes the recipient responsible for grant administration through sound management practices and expenditures in compliance with the contract. You must ensure all costs are reviewed for allowability under the principles adopted by IEDA from 2 CFR part 200, the Housing and Community Development Act of 1974 as amended, State administrative rules and your CDBG contract.

Allowable Costs

Costs incurred in CDBG projects are allowable only under the following conditions:

- The CDBG contract with IEDA has been properly executed.
- Administrative and exempt activity costs are incurred on or after the date of receipt of a letter authorizing such costs or after the effective date of the CDBG contract.
- All other costs are incurred only after all necessary environmental requirements have been completed, and all applicable special conditions have been satisfied.
- Costs are accounted for in accordance with generally accepted accounting principles and are not prohibited by federal, state or local laws.
- Costs are authorized in the award made by IEDA and based on the project as defined in the application or otherwise approved as project modifications by IEDA.
- Costs are incurred for activities eligible under the CDBG Program.
- Costs must be documented in your accounting records (e.g., by invoices, vouchers, etc.).

Employees paid in whole or in part from CDBG funds or whose time is to be credited to the project as community financial support must prepare timesheets showing the time they worked on the assisted activity each pay period. The recipient must maintain a payroll analysis showing the time and pay associated with CDBG funds.

Property Management

Expendable personal property costing less than \$5,000 in the aggregate may be purchased without prior approval from IEDA. Such purchases must meet all other tests of allowability. Equipment with a purchase price of \$5,000 or more in the aggregate (“non-expendable personal property”) requires the written approval of IEDA prior to purchase. This condition is considered satisfied when such equipment is specifically referenced in the contract (in the project description or budget). For the use of equipment not purchased with federal funds, allowable use or depreciation charges may be allowed. See 2 CFR Part 200 for guidance on determining “allowable” charges.

Payment of Interest Costs

Interest costs that can be construed as reasonable and necessary for the delivery of CDBG activities and projects are considered project related and eligible. Interest costs are considered reasonable and necessary if the eligible project could not be implemented without incurring the interest costs. Related legal fees and bonding costs are also eligible.

General Accounting Procedures

Recipients must use a financial management system that assures proper and efficient administration of CDBG funds. Three basic principles should guide the development of your financial management system:

- 1) Procedures should be formalized so they can be applied consistently.
- 2) Procedures should be designed to ensure adequate internal control of funds.
- 3) Financial transactions should be documented so they can be clearly tracked in an audit.

Regardless of the financial management system used, separate accounting records must be maintained for CDBG funds to distinguish them from all other funds. CDBG revenues and expenditures must be readily identifiable in your accounting records.

Recommended Accounting Documents

Your financial management system should include the following accounting documents (or their equivalent):

- 1) **Cash Receipts Journal:** A journal to record the receipt of all funds applied to the project. The journal should include the date funds were received, the amount of funds received, the source of funds and the accounts into which funds were assigned. Each receipt should be listed separately.
- 2) **Cash Disbursement Journal:** A journal to record all checks issued for payment of program costs, including the date of payment, the payee, the check number, the amount and the program and expense account to which the charge was made.
- 3) **General Ledger:** A ledger maintained to summarize monthly cash receipts and disbursements for each activity included in the project.
- 4) **Journal Entry Vouchers or General Journal:** Records showing explanations and amounts of adjustments to the general ledger accounts.
- 5) **Fixed Assets Ledger:** A listing of all fixed assets acquired with CDBG funds.
- 6) **CDBG Federal Cash Register:** A record of draws (requests for funds), federal checks, EFT's, received and balance of CDBG funds.

Receipt and Disbursement of Funds

A critical factor in requesting and expending federal funds is the timing of receipt and disbursement of funds. Funds may be drawn down only for immediate cash needs and no more than 10 working days may elapse between receipt of funds and disbursement by the recipient. IEDA uses a guideline of \$500 maximum cash on hand following the 10-day limit in determining non-compliance. If non-compliance is determined, IEDA reserves the right to convert the recipient to a mandatory reimbursement system, where the recipient expends its own funds and then requests federal funds to cover the expenditure.

Requesting CDBG Funds and Reporting on Activity Status

Recipients draw down CDBG funds, report expenditures, and activity status using iowagrants.gov GAX form. A copy of this form and the instructions are included in the appendix to this Chapter.

You should not automatically request CDBG funds in the amount needed to cover all expenses when portions of those expenses will be paid with local or other funds. Requests for funds are to be made on an accrual basis. You should request funds only as they are needed.

When requesting funds, you must complete the Contract Activity Status section of the report including the status of special conditions which is found on the iowagrants.gov electronic claims form.

Funds must be drawn down for each activity in whole dollar amounts. Requests should be in amounts of no less than \$500, unless a final draw request.

Requests must be signed by the contract signatory, or by an officer or employee of the recipient designated by the contract signatory and whose attested signature and designation letter are on file at IEDA. See Chapter 1 for more information on designating alternate signatories. Alternate signature forms must be uploaded to electronic documents in iowagrants.gov

When requesting funds, you must submit the electronic claims form and upload the sign GAX form in iowagrants.gov. **After the initial draw request, draws for the project must be submitted at least every six (6) months for each activity (project activity and administration).**

The request will be verified by IEDA staff for completeness, accuracy, proper signature, and reasonableness in relationship to the status of the project. Major deficiencies may result in the request not being processed. You will be notified either in writing or by telephone or negotiation and likely will be asked to resubmit the request. If there is a minor deficiency, IEDA may correct it and notify you so you can correct your records. Recipients can anticipate a time lapse of 3-4 weeks between IEDA's receipt of a request and the direct deposit of funds in the recipient's designated account.

IEDA will send the recipient the state warrant or separate notification that a direct deposit is occurring. Please note the date of deposit to verify the availability of your funds, which are normally in your account three business days from the date shown on the slip. CDBG funds will be transferred to the account your City or County has previously set up with the State of Iowa. If you need to change which account is to receive money, please contact Katie Caggiano at 515.725.3033 or katie.caggiano@iowa.gov.

Program Income & Recaptured funds

Definition of Program Income

Program income refers to income a recipient receives that is directly generated by the use of CDBG funds. Program income also includes funds generated by the use of other program income. Examples of program income include the following:

- Payments of principal and/or interest on loans made using CDBG funds (or program income funds);
- Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated or constructed with CDBG funds (or program income funds);
- Interest earned on funds held in a revolving loan account; and
- Interest earned on program income pending its disposition.
- If you receive less than \$25,000 of program income (cumulative of all CDBG grants) in a program year, it is considered miscellaneous revenue and may be used for any purpose. Otherwise, program income must be used for the same activity from which it was generated, and all CDBG requirements remain in effect. (An exception to this rule occurs when dealing with Revolving Loan Funds - all repayments to the RLF are program income)

When program income is generated by projects that are only partially assisted with CDBG funds, the program income amount is pro-rated to reflect the percentage of CDBG funds used.

Definition of Recaptured funds

Recaptured funds are different from program income. Recaptured funds are those funds that are recouped by recipients when a CDBG assisted homeowner does not continue to be the principal residence of the assisted homebuyer for the full affordability period.

Handling Program Income and Recaptured funds

Due to federal reporting requirements, **recipients must return all program income and recaptured funds to IEDA when received.**

Recipients should contact their project manager if their CDBG project generates program income or recaptured funds for more information on returning funds to IEDA.

In the Appendix to Chapter 4

- When documents are due to IEDA
- Request for GAX payment signature form and instructions
- Electronic Funds Transfer (EFT) Authorization Form

Your Notes

Residential Sustainability

Owner Occupied Rehabilitation

Overview

Residential Sustainability, otherwise known as owner-occupied rehabilitation, refers to assistance provided to eligible, homeowners to make needed and necessary improvements to their dwelling units.

Owners must be low-income households (i.e., with household incomes less than 80 percent of the area median family income) and must occupy the property as their principal residence.

Eligible Property Owners

Homeowners receiving assistance must be low-income persons. An assisted owner must have a gross annual income that does not exceed 80 percent of the area median family income (MFI). Initial verification of income eligibility (based on annual gross household income) is valid for twelve (12) months. To ensure a prospective homeowner is eligible, the income needs to be verified early in the process. The verification must be updated if more than twelve (12) months transpires OR if the household income changes from the date of initial verification to the commitment of funds.

The assisted party must own and occupy the property as his/her principal residence. Ownership means:

- holding fee simple title to the property; or
- maintaining a 99-year leasehold interest in the property; and
- not having any restrictions or encumbrances that would unduly restrict the good and marketable nature of the ownership interest.

Eligible Property Types

A single-family property occupied as the principal residence by a qualified homeowner is eligible for rehabilitation assistance. This includes single-family, single-unit dwelling units, condominium units, cooperative units, and manufactured homes (when the land and the unit both are owned by the owner-occupant, the unit is installed on a permanent foundation, and is taxed as "real property").

Property Standards

Upon completion of rehabilitation, assisted properties must, at a minimum, meet the *IEDA Housing Quality Standards* and locally adopted standards or housing codes.

Recipients must adopt a method for addressing properties infeasible for rehabilitation (e.g., enforcement of an optional relocation plan or exclusion of such properties from the owner-occupied rehabilitation activity – a so-called “walk-away policy”). The method you selected should have been addressed in the Residential Sustainability application and must be specified in your Administrative Plan. Relocation plans must also be approved by IEDA as part of your Administrative Plan.

Residential Sustainability awards made in 2016 and 2017 may be eligible to establish a pilot project that exceeds normal project spending limits. Pilots will be targeted towards “Historic Preservation Single Family Rehab” and “Gut Rehab for Single Family” projects. Basic information on these pilots can be found in Appendix 5. Please contact your IEDA Project Manager for more information.

Median Family Income levels (MFI) by county are updated periodically by HUD; current lists are always available upon request from IEDA or as a link to IEDA’s website.

Administrative Plan

Your contract with IEDA requires the submission of an administrative plan prior to requesting funds for your owner-occupied rehabilitation project. An administrative plan is a blueprint that will describe your housing rehabilitation operational policies, procedures and processes. The plan helps ensure that your activity or project complies with federal laws and state administrative rules. The outline for an owner-occupied rehabilitation administrative plan is included in Appendix 5. Each administrative plan must address the items included on the outline. Some items are required to be included in every plan; Required language is included on the outline in Appendix 5,

Determine Program or Project Administration

Many Residential Sustainability recipients contract with a third party to handle the day-to-day management of their activity project. If you decide to contract for administration you must select an administrator according to federal procurement procedures. Refer to Appendix 2 for Procurement requirements.

General Administrative Services Provided by Regional Councils

For general administrative services only, there is no competitive procurement process required if the recipient chooses to contract for those general administrative services with a Regional Planning Commission/Council of Government.

General Administration versus Technical Services Administration

“Technical Services” are different from “General Administration”. They are two different types of activities and must be contracted for separately. Recipients must procure for technical services following 2 CFR 200 requirements. Refer to the guidelines on the next page titled “Residential Sustainability Administrative Costs”.

Sub-Recipient Agreements

If a recipient intends to enter into a sub-recipient agreement, the recipient must seek and obtain IEDA's review and approval of the proposed sub-recipient agreement prior to entering into the agreement. Sub-recipient agreements must at a minimum meet the "Sub-Recipient Agreement Usage Parameter-Residential Sustainability" criteria found on the next page.

Residential Sustainability Administrative Costs

The following breakdown should assist in your efforts to distinguish costs (all of which are administrative in nature) between "**general administration**" and "**technical services**" (direct administration; soft costs; and/or carrying costs). **General administration** is a separate activity contained in the recipient's approved budget and as shown on Attachment A (CDBG) of your contract with IEDA. General administrative costs are paid for out of the general administration line item of the budget. Not all awards have an approved general administration budget.

Technical Services is a part of the rehabilitation line item. Technical Services costs are billed to the activity line item, not the General Administration line item.

The following breakdown is not all-inclusive. All costs must be allowable costs per Federal requirements.

General Administration

- 1) Overall program coordination (e.g., establishing financial accounting documents and systems, management, internal controls and oversight responsibilities, etc.)
- 2) General administrative services (i.e., 3rd party contracts, accounting, legal, etc.)
- 3) Reporting to the IEDA (i.e., requests for funds, quarterly performance reports, etc.)
- 4) Advertising and marketing (general information, public outreach) about the activity or project
- 5) Direct costs and salaries of the recipient's staff directly involved in the administration of the activity or project
- 6) Indirect costs, such as office space rent, utilities, insurance, supplies, etc.
- 7) Costs incurred in the procurement of 3rd party administrative services, technical services or in the procurement / purchase of any indirect costs noted in #6 above
- 8) Internal monitoring and oversight of funded program activities
- 9) Coordination and resolution of monitoring and/or audit issues
- 10) Audit costs
- 11) Environmental Review (overall program)
- 12) Activities to affirmatively further fair housing (in a general way)
- 13) Preparation and adoption of Administrative Plans

Technical Services (Project Specific)

- 1) All technical services necessary for individual, scattered site types of activities, whether accomplished internally with staff or contracted for (e.g., initial inspections, work write-ups, cost estimates, construction supervision, etc.)
- 2) Project specific A/E or design services (plans and specifications)
- 3) Financing costs (e.g., security agreements, filing / recording fees, appraisals, etc.)
- 4) Processing of individual applications for assistance *
- 5) Third party verification of applicant's incomes *
- 6) Income eligibility determination and verification of applicants *
- 7) After-rehabilitation value determination
- 8) Activities to affirmatively further fair housing (project specific)
- 9) Underwriting costs and related fees associated with your financial assistance to individual projects
- 10) Project specific forms and documentation
- 11) Project specific environmental (i.e., SHPO clearance)
- 12) Costs of procuring construction services
- 13) Relocation services (advisory services, notices, locating replacement units, inspections, negotiations, counseling, etc.)
- 14) Homebuyer Education (as applicable)*
- 15) Radon testing (IEDA method)

* These could be performed as a general administrative expense

Sub-Recipient Agreement Usage Parameters – Residential Sustainability

- IEDA approval must be given before signing your Sub-recipient Agreement.
- Sub-recipient agreement use under the IEDA's Housing Fund will be limited to regional councils of governments only (no non-profit or for-profit entities will be allowed to enter into sub-recipient agreements with any of the IEDA's recipients).
- The language of all sub-recipient agreements must include a clause(s) that clearly states that the recipient remains the responsible entity regarding the federal funds awarded to them. This includes financial accountability and oversight, monitoring, audits, etc.
- Where the sub-recipient is also the contractual administrative agent (general administration) for the recipient, the funds budgeted for general administration (federal and/or other funds) will not be allowed to be included in (governed by) the sub-recipient agreement.
- Where the sub-recipient is also the procured and contractual technical services provider and/or the lead hazard reduction oversight services provider for the recipient, the funds budgeted for these services (federal and/or other funds) will not be allowed to be included in (governed by) the sub-recipient agreement.
- All general administration and technical services (and/or lead hazard reduction oversight) provision related costs will all need to be handled directly by the recipient through their otherwise normal internal approval and payment processes, separate from all costs allowed to be included under or governed by sub-recipient agreements.

- Where sub-recipient agreements are used, all IEDA required security agreements, depending on the type of activity awarded to the recipient, such as forgivable loan documents, covenants, etc., will be required to be recorded (filed) in the recipient's name, not the sub-recipient's name. The recipient must remain the responsible entity for all applicable long-term compliance requirements associated with their Housing Fund awards.
- If the recipient requests and the IEDA approves the re-use of any return on investment funds such as program income, forgivable loan defaults, recaptured funds, etc., the re-use of funds must be by the recipient, not the sub-recipient. Sub-recipient agreements will not be allowed to include the re-use of funds by the sub-recipient.
- All requests for funds from the sub-recipient, sought as reimbursement from (through) the recipient, must include copies of all supporting documentation applicable to each reimbursement request. The recipient must review and approve all sub-recipient requests for funds prior to making reimbursement payment to the sub-recipient. The recipient must retain all supporting documentation (i.e., billings and invoices from vendors; copies of checks that had been written by the sub-recipient to all vendors; documentation supporting the sub-recipient's approval processes; etc.) for their own program records retention requirements.
- Sub-recipients must ensure that amounts drawn from recipients are to be for funds expended (as a reimbursement) or for bills on hand only.
- Funds received from the IEDA by the recipient must be expended (either reimbursing the sub-recipient's line of credit or for the payment of bills on hand) within ten days of receipt from the IEDA.
- Interest costs incurred on all sub-recipient's lines of credit used to cover the recipient's award-related costs must be kept to a minimum and must be reasonable. Funds drawn from the IEDA by the recipient (used to reimburse the sub-recipient) must be requested frequently enough to reduce, or limit, the amount of interest charged on funds disbursed from the sub-recipient's line of credit. All requests for funds from the recipient must detail the following information as follows:
 - Interest costs for the reporting period \$ _____
 - Total interest costs to date \$ _____
 - Date of last principal and interest payment _____
Month Day Year
 - Date of receipt of funds (previous request) by the recipient _____
Month Day Year
 - Date of receipt of funds (previous request) by the sub-recipient _____
Month Day Year

Income Calculation and Benefit Determination

Recipients must use specific procedures to verify that assisted households are income-qualified to benefit from Residential Sustainability assistance. The recipient may not take any adjustments or deductions to determine a participant's initial income eligibility.

This section provides an overview of the income calculation and benefit determination process. For additional detail, consult the *Technical Guide for Determining Income and Allowances for the HOME Program, Third Edition, January 2005*, available from HUD. This document can be found here: http://portal.hud.gov/hudportal/documents/huddoc?id=19754_1780.pdf

Determination of Income Eligibility

Households that receive Residential Sustainability assistance must be income eligible. An income determination must be completed before assistance begins. A preliminary determination of eligibility should, however, be made much earlier in the process. Application processing is labor

intensive, so early screening for income eligibility can eliminate excessive work resulting from processing an ineligible applicant.

Verification of income eligibility is valid for twelve (12) months only. The verification must be updated if more than twelve (12) months transpires from the initial verification to occupancy or investment of funds. Households must qualify as low income at the time funds are invested or at the time of occupancy, whichever is earlier.

IEDA guidance on income verification and a sample income verification form is included in the appendix to this chapter.

Initial Income Verification Process

Your Administrative Plan must describe the process you will use to verify incomes. Generally, that process includes the following:

- 1) Conduct an application interview.
- 2) Document household members, sources of income and asset information.
- 3) Send third-party income verification forms to employers, banks, human service agencies, etc.
- 4) Once verification forms are returned, calculate annual gross income (and adjusted income, only if necessary to determine the level of benefit) using an income calculation worksheet.
- 5) Sign and date the income calculation worksheet.
- 6) Notify the applicant, in writing, of their eligibility (or ineligibility) for Residential Sustainability assistance.

Annual Gross Income

Annual gross income has a specific definition, involving a number of income inclusions and income exclusions. Annual gross income is “anticipated” for the future 12-month period, based on current circumstances or known upcoming income changes.

Assets are handled by counting income from assets in the computation of annual income. Assets more than and less than \$5,000 are treated differently. If the household's assets are \$5,000 or less, actual income from assets (e.g., interest on a checking account) is counted as annual income. If the household's assets are greater than \$5,000, income from assets is computed as the greater of actual income from assets or imputed income from assets based on a passbook rate. If a household disposes of assets for less than fair market value, the value of the disposed asset (market value less value received) must be counted for two years. This requirement eliminates the need for an assets limitation and penalizes people who give away assets for the purpose of receiving assistance or paying a lower rent. The recipient also should require participants to submit copies of their tax returns for the previous year. Information on the return will not be used to calculate anticipated income, but can support information provided by the participant (e.g., income amounts and sources, household size, assets).

Annual Income Inclusions

24 CFR Part 5 Annual Income Inclusions

- 1) The full amount, before any payroll deductions, or wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
- 2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, base on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
- 3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
- 4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a period amount (except for certain exclusions, listed in Annual Income Exclusions, number 14).
- 5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (except for certain exclusions, as listed in Annual Income Exclusions, number 3).
- 6) Welfare Assistance. Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income:
 - Qualify as assistance under the TANF program definition at 45 CFR 260.31; and
 - Are otherwise excluded from the calculation of annual income per 24 CFR 5.609(c).If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
 - The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - The maximum amount that the welfare assistance agency could allow the family for shelter and utilities. If the family's welfare assistance is reduced from the standard of need by applying a percentage, the amount calculated under 24 CFR 5.609 shall be the amount resulting from one application of the percentage.
- 7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.

- 8) All regular pay, special pay, and allowances of a member of the Armed Forces (except as provided in number 8 of Income Exclusions).

Annual Income Exclusions

- 1) Income from employment of children (including foster children) under the age of 18 years.
- 2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
- 3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (except as provided in number 5 of income inclusions).
- 4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
- 5) Income of a live-in aid (as defined in 24 CFR 5.403).
- 6) Certain increases in income of a disabled member of qualified families residing in HOME-assisted housing or receiving HOME tenant-based rental assistance (24 CFR 5.671(a)).
- 7) The full amount of student financial assistance paid directly to the student or to the educational institution.
- 8) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
- 9) Amounts received under training programs funded by HUD.
- 10) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS)
- 11) Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and made solely to allow participation in a specific program.
- 12) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time.
- 13) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.
- 14) Temporary, nonrecurring, or sporadic income (including gifts).
- 15) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
- 16) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding head of household or spouse).

- 17) Adoption assistance payments in excess of \$480 per adopted child.
- 18) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
- 19) Amounts received by the family in a form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
- 20) Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.
- 21) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to housing owners identifying the benefits that qualify for this exclusion.
- 22) Updates will be published and distributed when necessary. The following list income sources that qualify for that exclusion are:
 - The value of the allotment provided to an eligible household under the Food Stamp Act of 1977;
 - Payments to volunteers under the Domestic Volunteer Service Act of 1973 (employment through Americorps, VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);
 - Payments received under the Alaskan Native Claims Settlement Act;
 - Income derived from the disposition of funds to the Grand River Bank of Ottawa Indians;
 - Income derived from certain sub marginal land of the United State that is held in trust for certain Indian tribes;
 - Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;
 - Payment received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
 - The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted land, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands;
 - Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs;
 - Payments received from programs funded under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aides, Older American Community Service Employment Program);
 - Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
 - Earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;
 - The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement of costs incurred for such care) under the Child Care and Development Block Grant Act of 1990;

- Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs and career intern programs, AmeriCorps);
- Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990;
- Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;
- Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act; and
- Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998.

Asset Inclusions

The following are included as assets:

- 1) Cash held in savings accounts, checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average 6-month balance. Assets held in foreign countries are considered assets.
- 2) Cash value of revocable trusts available to the applicant.
- 3) Equity in rental property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs (e.g., broker fees) that would be incurred in selling the asset. Under HOME, equity in the family's primary residence is not considered in the calculation of assets for owner-occupied rehabilitation projects.
- 4) Cash value of stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts.
- 5) Individual retirement, 401(K), and Keogh accounts (even though withdrawal would result in a penalty).
- 6) Retirement and pension funds.
- 7) Cash value of life insurance policies available to the individual before death (e.g., surrender value of a whole life or universal life policy).
- 8) Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
- 9) Lump sum or one-time receipts, such as inheritances, capital gains, lottery winnings, victim's restitution, insurance settlements and other amounts not intended as periodic payments.
- 10) Mortgages or deeds of trust held by an applicant.

Asset Exclusions

The following are not included as assets:

- 1) Necessary personal property, except as noted in number 8 of Inclusions, such as clothing, furniture, cars, and vehicles specially equipped for persons with disabilities.

- 2) Interest in Indian trust lands.
- 3) Assets not effectively owned by the applicant. When assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone else who is not a member of the household and that other person is responsible for income taxes incurred on income generated by the asset.
- 4) Equity in cooperatives in which the family lives.
- 5) Assets not accessible to and that provide no income for the applicant.
- 6) Term life insurance policies (i.e., where there is no cash value).
- 7) Assets that are part of an active business. "Business" does not include rental of properties that are held as an investment and not a main occupation.

Using Adjusted Income to Determine the Level of Benefit

Certain adjustments or deductions may be taken from a participant's annual gross income only to determine a level of benefit (not to determine initial income eligibility). For example, if funds are provided for owner-occupied rehabilitation, adjustments to the annual gross income may be taken prior to determining the homeowner's contribution towards the cost of rehabilitation. The participant must still qualify under the initial eligibility criteria (annual gross income). Adjusted income is computed by deducting the following from annual gross income:

For all households

- \$480 for each dependent (i.e., a person, other than the head of household or spouse, who is under 18, or handicapped or disabled or a full-time student).
- Reasonable childcare expenses (for children 12 and under) that enable a household member to work or attend school.
- Expenses for the care of a disabled household member that enables that person or another person to work.

For elderly households only:

- \$400 per household (head or spouse is 62 or older, handicapped or disabled).
- Medical expenses in excess of 3 percent of annual gross income that are not reimbursed by insurance or other sources.

Lead Safe Housing

Regulations

The CDBG program is impacted by HUD's Lead Safe Housing Regulations. This legislation is formally known as the "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule" (24 CFR, Part 35, et. al.). HUD has also issued interpretive guidance to lead safe housing regulations which is included in the appendix to this chapter.

The applicability of the various subparts of these regulations will depend upon the type of activity you are undertaking.

Subpart B - "General Lead Based Paint Requirements and Definitions for all Programs" (All activities);

Subpart J - “Rehabilitation” (Any activity involving rehabilitation such as owner-occupied rehabilitation programs; rehabilitation in support of, or incidental to, homeownership; and rental rehabilitation);

Subpart R - “Methods and Standards for Lead-Based Paint Hazard Evaluation and Hazard Reduction Activities” (All activities).

You are encouraged to read and become familiar with the subparts of this legislation that apply to your activity. Be aware more than one subpart may apply. If this is the case, the most restrictive subpart takes precedence. Everyone should become familiar with Subpart B (definitions of terms) and Subpart R (details specific requirements and procedures for reducing or abating lead-based paint hazards).

HUD’s Lead Safe Housing regulations apply to all residential property constructed prior to January 1, 1978 (commonly referred to as “target housing”) being assisted with HUD funds. These requirements also apply to non-residential structures being converted into residential use (e.g., converting an old school building into multi-family, rental housing).

Exemptions

There are a number of exemptions to the regulations. Recipients should contact their IEDA project manager to determine if an exemption is applicable to a property. IEDA will make the final determination on any exemptions to the regulations.

Exemptions include (from 24 CFR Part 35):

- (1) A residential property for which construction was completed on or after January 1, 1978, or, in the case of jurisdictions which banned the sale or residential use of lead-containing paint prior to 1978, an earlier date as HUD may designate (see Sec. 35.160).
- (2) A zero-bedroom dwelling unit, including a single room occupancy (SRO) dwelling unit.
- (3) Housing for the elderly, or a residential property designated exclusively for persons with disabilities; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit
- (4) Residential property found not to have lead-based paint by a lead-based paint inspection conducted in accordance with Sec. 35.1320(a). Results of additional test(s) by a certified lead-based paint inspector may be used to confirm or refute a prior finding.
- (5) Residential property in which all lead-based paint has been identified, removed, and clearance has been achieved in accordance with 40 CFR 745.227(b)(e) before September 15, 2000, or in accordance with Secs. 35.1320, 35.1325 and 35.1340 on or after September 15, 2000. This exemption does not apply to residential property where enclosure or encapsulation has been used as a method of abatement.
- (6) An unoccupied dwelling unit or residential property that is to be demolished, provided the dwelling unit or property will remain unoccupied until demolition.
- (7) A property or part of a property that is not used and will not be used for human residential habitation, except that spaces such as entryways, hallways, corridors, passageways or stairways serving both residential and nonresidential uses in a mixed-use property shall not be exempt.
- (8) Any rehabilitation that does not disturb a painted surface.
- (9) For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse), occupants shall be protected from exposure to

lead in dust and debris generated by such emergency actions to the extent practicable, and the requirements of subparts B through R of this part shall not apply. This exemption applies only to repairs necessary to respond to the emergency. The requirements of subparts B through R of this part shall apply to any work undertaken subsequent to, or above and beyond, such emergency actions.

(10) If a Federal law enforcement agency has seized a residential property and owns the property for less than 270 days, Secs. 35.210 and 35.215 shall not apply to the property.

(11) The requirements of subpart K of this part do not apply if the assistance being provided is emergency rental assistance or foreclosure prevention assistance, provided that this exemption shall expire for a dwelling unit no later than 100 days after the initial payment or assistance.

(12) Performance of an evaluation or lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this part may be delayed for a reasonable time during a period when weather conditions are unsuitable for conventional construction activities.

(13) Where abatement of lead-based paint hazards or lead-based paint is required by this part and the property is listed or has been determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District, the designated party may, if requested by the State Historic Preservation Office, conduct interim controls in accordance with Sec. 35.1330 instead of abatement. If interim controls are conducted, ongoing lead-based paint maintenance and reevaluation shall be conducted as required by the applicable subpart of this part in accordance with Sec. 35.1355.

Requirements

The regulations detail five standard approaches to compliance with the HUD Lead Safe Housing Regulations, all activities. The five approaches for achieving compliance to the specific requirements are "Notification", "Identification", "Reduction", "On-Going Maintenance", and "Response to a Child with an Elevated Blood Level".

Notification

There is an up-front notification requirement to the current or the intended occupant(s) of the assisted unit. This initial notification is to convey general information of lead-based paint dangers. You need to use EPA's standard pamphlet "Protect Your Family from Lead in Your Home" or the Iowa Department of Public Health's pamphlet "Lead Poisoning - How to the Protect Iowa's Families" for this purpose. Documentation indicating this initial notification was conveyed to the occupant(s) must be contained in your project files.

A notice must be conveyed to the owner and the occupant(s) of any paint testing and risk assessment that will be done on their residential unit. A notice of the presumption of lead-based paint or lead-based paint hazards must be conveyed if paint testing and risk assessment is not going to be conducted.

You must also notify the owner and the occupant(s) of any lead hazard reduction activity to be accomplished on their unit (including a summary of any rehabilitation activity that will reduce or abate lead-based paint hazards). This information is typically contained in and subsequently conveyed by reports required following an inspection/risk, assessment, or presumption/visual risk assessment.

Following the completion of all rehabilitation work, lead hazard reduction or abatement activity (including cleaning, final visual risk assessment and clearance testing) the owner and occupant(s) must be notified of the clearance testing results.

In conjunction with the notification requirements, reports need to be prepared for all inspections/risk assessments conducted, presumptions/visual risk assessments, and for all final visual risk assessments/clearance testings conducted. Where lead hazard abatement or paint abatement was conducted; specific reports/documentation is required, particularly if a lead-free certification on the unit(s), is being sought. These reports need to be accomplished in accordance with the Iowa Department of Public Health's (IDPH's) requirements found in chapter 70 of the Iowa Administrative Code. Certified lead professionals must be familiar with the IDPH's requirements. Sample reports are available from the IDPH.

Be aware with any homeownership assistance activity (target housing), the seller must provide the buyer with another notice. Refer to Subpart A of the regulations, "Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property". For rental activities, the same notice is required from the property owner to all tenants prior to their occupancy and throughout the period of affordability.

Another notification requirement (an IDPH/EPA requirement) is the "Pre-Renovation Notification" - contractors are required to notify the property owner about lead-based paint and lead-based paint hazards when their renovation work will disturb painted surfaces. This requirement applies to any renovation work the contractor performs on target housing assisted with or without HUD funds.

There is notification requirements associated with on-going maintenance inspections (rental activities) as well.

Copies of various notices you may need (including the EPA or IDPH pamphlet used for the initial notification) are in this Chapters' appendices. Please note the form used for the final visual risk assessment and clearance testing results serves as both the notification and the required report.

Identification

There are also requirements for lead-based paint and lead-based paint hazards identification. What is specifically required in terms of identification will depend on what activity you are undertaking. If you are undertaking rehabilitation (of any kind), identification of lead-based paint and lead-based paint hazards requirements vary depending on the amount of HUD assistance invested per unit.

Some activities require only a visual risk assessment be conducted to determine if and where any lead hazards exist that need to be addressed. Most activities (rehabilitation in particular) require residential structures to be assisted be tested for lead-based paint (through XRF paint analysis testing and/or paint chip sampling and laboratory analysis) and evaluated (through a formal risk assessment) to determine if and where any lead-based paint is and if and where there are any lead-based paint hazards that need to be addressed. Recipients conducting rehabilitation activities can forego the need for testing and risk assessment by "presuming" that lead-based paint and lead-based paint hazards are present (all painted surfaces, the entire property). By making this "presumption" (which can only be made by a certified lead professional), the recipient avoids the need for paint testing and evaluation, but does not avoid the requirements relating to visual risk assessment, reporting, notification, lead hazard reduction or abatement, and/or on-going maintenance activities.

Another form of identification is clearance testing. Clearance testing (including the final visual risk assessment) is required following the completion of any and all rehabilitation that disturbs paint (known or presumed to be lead-based paint) and/or any specific lead-based paint hazard reduction or abatement activity that is undertaken.

Reduction

One form of reduction is paint stabilization. Paint stabilization is repairing deteriorated painted surfaces (e.g., wet scraping and/or wet sanding followed by repainting). Paint stabilization is only a temporary measure employed to make a residential unit temporarily lead safe.

Another form of reduction is known as interim controls. Interim controls may include paint stabilization, but is not limited only to that type of lead hazard reduction. Interim controls are measures, or a set of measures, to address any and all lead-based paint hazards identified. Interim controls are typically employed to reduce lead-based paint hazards identified in rehabilitation projects (those rehabilitation projects at or less than \$25,000 per unit of HUD assistance for the hard costs of rehabilitation) following required paint testing and risk assessment. Interim controls are only temporary measures employed to make a residential unit temporarily lead safe.

A third form of reduction is known as standard treatments. Standard treatments are the same as interim controls, with a couple of distinctions. Interim controls are measures to address lead-based paint hazards existing in specific locations following required paint testing and risk assessment (in other words, addressing only the hazards where it is specifically known that the painted surface contains lead-based paint). Standard treatments are employed based on the “presumption” of lead-based paint and all hazards and potential hazards must be addressed throughout the unit and the property as a whole. The application of standard treatments also requires that all flat, horizontal surfaces that are rough, porous and/or pitted be addressed (e.g., covering or coating, such as metal coil stock, plastic, polyurethane or linoleum); all dust generating conditions be addressed (i.e., accessible (chewable), friction or impact surfaces); and all bare soil be treated.

Another form of reduction (considered a permanent solution) is known as abatement (specifically, lead-based paint hazards abatement, not lead-based paint abatement). Lead hazards abatement is permanent elimination of all lead-based paint hazards. Total lead-based paint hazards abatement is required for all rehabilitation projects where the per unit HUD assistance is greater than \$25,000 for the hard costs of rehabilitation.

The remaining form of reduction (in actuality “elimination”) is lead based paint abatement, a permanent solution, whereby all lead based paint is removed from the unit(s), the building(s), and the property as a whole (common areas, grounds, etc.). Lead based paint abatement is recommended by IEDA only for multi-family (rental) projects and only when: (a) the property owner is desirous of opting out of the required real estate disclosure to tenants and obtains “lead-free” certification; and (b) is financially feasible to do so.

You should refer to the HUD and/or EPA regulations for more detail on various forms of reduction, elimination, and actual procedures for implementation of various methods of reduction or elimination.

Response to an Elevated Blood Level (EBL) Child

If and when it might become known there is, or there will be, a child residing in a residential unit to be assisted that has an elevated blood level, you need to immediately contact the local or state public health department and inform them of that information so that they can intervene with appropriate action.

Cross-Cutting Legislation

Implementation of HUD's Lead Safe Housing regulations has been a collaborative and cooperative effort between two state departments, the IEDA and the Iowa Department of Public Health (IDPH). The IDPH is responsible for administering the related and cross-cutting Environmental Protection Agency (EPA) regulations found at 40 CFR, Part 745. HUD's Lead Safe Housing regulations rely on a framework of personnel trained and/or certified in accordance with the IDPH's state EPA program.

Lead Professionals Needed to Implement the HUD Regulations

Those trained and/or certified under IDPH's program are collectively referred to as lead professionals. Certain procedures or processes involved in the implementation of HUD's lead safe housing regulations can only be accomplished by lead professionals.

Lead professionals include persons or firms who conduct lead abatement (lead hazard abatement or lead paint abatement), lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after lead abatement, clearance testing after interim controls, paint stabilization or standard treatments, on-going maintenance, or rehabilitation pursuant to 24 CFR 35.1340.

Safe Work Practices

HUD's Lead Safe Housing regulations require all rehabilitation activity (less than \$25,000 in rehabilitation hard costs) disturbing painted surfaces in assisted target housing (known or presumed to be lead-based paint) and any additional lead hazard reduction activity, employ "safe work practices". Safe work practices entails:

- Using only contractors (including their employees and subcontractors) having the required eight hours of safe work practices training;
- Not using any of the "prohibited methods of paint removal", such as:
 - Open flame burning or torching,
 - Machine sanding or grinding without HEPA exhaust controls,
 - Abrasive blasting or sandblasting without HEPA exhaust controls,
 - Heat guns operating above 1,100 degrees F,
 - Dry sanding or scraping,
 - Paint stripping in poorly ventilated areas using volatile strippers containing hazardous substances.
- Requiring and using thorough and specialized cleaning methods following any lead hazard reduction activity (including lead-based hazards addressed with normal rehabilitation work);
- Providing both the occupant(s) of the unit and all workers with adequate protection.

Safe work practices are not required when lead hazard reduction, rehabilitation that disturbs painted surfaces, or on-going maintenance activities do not disturb painted surfaces that total more than the regulatory "de minimis levels." The de minimis levels are: a) twenty (20) square feet or less on exterior surfaces; b) two (2) square feet or less on any one interior room or space; or c) ten percent (10%) of the total surface area or less of an interior or exterior component with a small surface area (e.g., window sills, baseboards, trim, etc.).

Occupant Protection

Occupant protection (including their belongings) must be provided during lead hazard reduction or abatement activity, rehabilitation that disturbs paint (known or presumed lead-based painted surfaces), or on-going maintenance activity. During any of this type of activity:

- The occupants of the assisted residential unit shall not be permitted to enter the workspace(s) until after the work has been completed, cleaned and has passed clearance testing;
- All workspaces (including access to and from the workspaces) shall be contained and secured to deter entry by anyone other than the trained or certified workers doing the work;
- The occupant's belongings shall be protected from contamination by lead-dust hazards and debris generated from the work. The occupant's belongings shall either be moved to a safe and secure area outside of the containment area(s), or moved to the center of the workspace and covered with an impermeable covering with all seams and edges taped or otherwise sealed;
- Temporary relocation of the occupants to a suitable, decent, safe and similarly accessible dwelling unit, free of lead-based paint hazards, shall be provided if:
 - Utilities will be shut off for more than eight (8) hours; or
 - The lead hazard reduction activity is being done in the only kitchen or in the only bathroom of the unit and cannot be completed within 8-daytime hours; or
 - There is extensive lead hazard reduction being done in several rooms and over an extended period of time (i.e., several areas over several days); or
 - A child under the age of six resides in the unit; or
 - Construction debris and/or dust cannot be contained and/or access to the work area(s) cannot be secured from entry by the occupants; or
 - You are performing lead hazard or lead paint abatement.
 - For owner-occupied rehabilitation activities (target housing), recipients are required to temporarily locate all assisted property owners during any interior rehabilitation that disturbs paint (known or presumed to be lead based paint) and/or during any interior lead hazard reduction activity. For homeownership assistance activities (those involving rehabilitation to target housing), it is recommended that all interior rehabilitation and lead hazard reduction activity be accomplished prior to allowing the assisted homebuyer to occupy the purchased unit.
- Temporary relocation of the occupants to a suitable, decent, safe and similarly accessible dwelling unit free of lead-based paint hazards shall be provided unless:
 - Treatment will not disturb lead-based paint, lead-dust hazards, or lead-soil hazards; or
 - Only the exterior of the unit is being treated and: a) all windows, doors and ventilation intakes or other openings in or near the workspace are sealed during the lead hazard reduction activity; b) the treatment is followed by necessary cleaning and clearance testing; and c) there are provisions for entry to the unit that is free of lead-dust hazards, lead-soil hazards and debris; or
 - Treatment of the interior (or interior space) will be completed within one period of 8-daytime hours (this includes workspace preparation, completion of the work, cleaning and successful clearance testing).

Worker Protection

Worker protection is required. This requires contractor adherence / compliance to OSHA's Lead in Construction worker safety and protection standards. There are worksite preparation requirements to prevent the release of leaded dust and to contain lead-based paint chips and/or debris to within the workspace(s) until it can be safely removed. Worksite preparation might include covering of floors and furnishings (if not removed from the workspace) or covering exterior areas adjacent to the lead hazard reduction or abatement activity, sealing off all workspaces and securing access to those areas, and turning off HVAC systems during the reduction or abatement activity. Workers may not use any of the prohibited methods of paint removal. Workers will need to use appropriate respiratory protection (APRs) and wear appropriate protective clothing and gear during lead hazard reduction or abatement activity.

Cleaning and Clearance Testing

Directly related to occupant and worker protection is the thorough cleaning procedures necessary to pass the required clearance testing at the conclusion of any rehabilitation that disturbs painted surfaces (known or presumed to be lead-based paint) and/or any lead hazard reduction or abatement activity. This will entail vacuuming the work areas (ceilings, walls, floors, window troughs and sills, etc.) with a HEPA vacuum, wet washing (first with a detergent solution, and twice with rinse cycles), and re-vacuuming those areas with a HEPA vacuum. All waste and debris to be removed from the worksite must be removed in sealed containers or wrapped and taped so as not to contaminate areas of the unit that were not treated.

Clearance testing is required following any lead hazard reduction or abatement activity accomplished on federally assisted target housing (paint stabilization, interim controls, standard treatments, on-going maintenance, rehabilitation activity that disturbs known or presumed lead based paint, or lead hazard or lead paint abatement). Clearance testing (rehabilitation under \$25,000) entails a final visual risk assessment, dust-wipe sampling and laboratory analysis and the preparation of a report, as well as notification to the property owner. Clearance testing must be performed in accordance with the Iowa Department of Public Health's State Environmental Protection Agency program requirements and can only be performed by certain certified lead professionals. Clearance testing results must conform to the EPA clearance standards found in the Iowa Department of Public Health's Chapter 70 of the Iowa Administrative Code. There are specific procedures for clearance testing following lead based paint or lead based paint hazard abatement. There are specific procedures for lead-free inspections following lead based paint abatement.

The preceding information is only a brief summary of the requirements. You should become familiar with the HUD Lead Safe Housing regulations (particularly Subparts B and R, and any other subpart applicable to the type of activity you are conducting if your project or activity involves target housing). The HUD "Guidelines for the Control of Lead-Based Paint in Housing" (made available to all individuals that have taken any of the IDPH's lead professional training and certification courses) is another valuable reference tool, particularly for procedural issues.

Remember there are varying requirements depending on the activity type you are doing. Where one activity is subject to more than one subpart of the regulations, the more restrictive requirements apply. As you conduct your activities that are subject to HUD's Lead Safe Housing regulations, feel free to contact your IEDA Project Manager with questions.

Procurement

CDBG recipients must comply with federal procurement requirements of 2 CFR Part 200. These regulations direct that all supplies, equipment, construction and services be acquired efficiently and economically, through open and fair competition. Refer to Chapter 2 and Appendix 2 of the Management Guide for procurement information.

Reporting

Recipients of Residential Sustainability grants are required to report on their expenditure of funds and activity status. These reports help keep IEDA and your IEDA Project Manager informed about the progress of your activity and also provide the state with information needed for reports submitted to HUD.

Monitoring Your Project

Your CDBG program will be monitored by your project manager from IEDA during the life of the program. This includes both desk monitoring and on-site monitoring. The IEDA has a formally established/written process for conducting oversight and on-site monitoring. IEDA staff will set-up an on-site monitoring date with the CEO and grant administrator. For more information on what this monitoring will entail, you may go to the IEDA website at:

<http://www.iowaeconomicdevelopment.com/userdocs/documents/ieda/CDBG-MonitoringPolicy4-11.pdf>

For review of the Monitoring Checklists, you may visit our website at:

<http://www.iowaeconomicdevelopment.com/userdocs/documents/ieda/cdbgmonitoring.pdf>

In the Appendix to Chapter 5

- IEDA Housing Quality Standards (I-HQS)
- Best Practices for I-HQS
- IEDA radon testing and mitigation guidance
- Income verification guidance for recipients
- Sample income verification form
- Sample Forgivable Mortgage
- Title I of the Housing and Community Development Act of 1974 – Section 105
- Record-Keeping Checklist
- Owner occupied housing rehabilitation administrative plan template
- Lead Safe Housing Regulations and Forms
- 2017 Housing pilot programs descriptions

Your Notes

Chapter 6

Iowa Green Streets Criteria

Overview

This chapter describes the Iowa Green Streets Criteria requirements that apply to the CDBG program. Recipients should review the chapter carefully and the full Iowa Green Streets Criteria in Appendix 6 or online at <http://iowaeconomicdevelopment.com/CommunityDevelopment/Green> and refer to it as necessary to ensure compliance.

The Iowa Green Streets Criteria promote public health, energy efficiency, water conservation, smart locations, operational savings and sustainable building practices. The Iowa Green Streets Criteria apply to CDBG Community Facilities and Services Fund, some CDBG Opportunities and Threats projects and CDBG Disaster Recovery Multifamily projects. A separate version, Iowa Green Streets Criteria for Downtown Revitalization Projects applies to CDBG funded downtown revitalization projects and can be found at <http://iowaeconomicdevelopment.com/CDBG/DowntownFund>.

In addition to increasing resource efficiency and reducing environmental impacts, green building strategies can yield cost savings through long-term reduction in operating expenses. The benefits include improved energy performance and comfort, a healthier indoor environment, increased durability of building components, and simplified maintenance requirements that can lead to financial efficiencies for property managers and owners. Green building practices improve the economics of managing affordable housing and community facilities while enhancing quality of life for residents, visitors and employees.

Guiding principles behind the Iowa Green Streets Criteria ensure that buildings must be cost effective to build, and durable and practical to maintain. In addition, the principles work together to help produce green buildings that:

- Result in a high-quality, healthy living and working environment
- Lower utility costs
- Enhance connections to nature
- Protect the environment by conserving energy, water, materials and other resources
- Advance the health of local and regional ecosystems

How to Use This Document

The Iowa Green Streets Criteria is based on the national Green Communities Criteria available online at www.enterprisecommunity.com/solutions-and-innovation/enterprise-green-communities/criteria. The Iowa Economic Development Authority thanks Enterprise and its partners for development of the national Green Communities Criteria and the use of those criteria in development of the Iowa Green Streets Criteria.

All of the mandatory Iowa Green Streets Criteria are required for both residential and non-residential applications. However, there are certain criteria that are not applicable to or are different for non-residential applications. Therefore, certain criterion include different requirements for residential versus non-residential projects.

Please be aware that this Iowa Green Streets Criteria document is subject to periodic revision and update. Refer to the Iowa Economic Development Authority's Community Development Division Web site, <http://iowaeconomicdevelopment.com/UserDocs/documents/IEDA/Iowa-Green-Streets-Criteria.pdf> for the most current version.

Activities and Projects Covered by the Iowa Green Streets Criteria

The Iowa Green Streets Criteria include mandatory and optional components in the criteria for the following types of activities or projects.

- Community Facilities
- Downtown Revitalization (See specific criteria for downtown revitalization projects)
- Sustainable Community Demonstration
- Multifamily
- Any other projects involving new construction or rehabilitation of an existing building

Getting Started

Remember that in submitting the Iowa Green Streets Criteria Green Development Plan and Checklist with your project proposal that your project committed to and is contractually required to meet the performance requirements of the Iowa Green Streets Criteria.

To ensure compliance with the Iowa Green Streets Criteria in a manner that will result in the highest performing project within your project budget here are eight steps you should take.

- 1) When procuring technical services, architectural and/or engineering services, remember to also procure the applicable third-party energy system design and rating expertise for your project.
- 2) Host an integrated design workshop with your design professionals and energy expertise contractor and as many other people involved with your project as possible. An integrative design process facilitates the design and development team's achievement of green objectives throughout the project life cycle. The outcomes of an integrative design process can include substantially lower development costs and greater health, economic, and environmental benefits for residents, property owners, and communities. Contact the IEDA to identify design expertise IEDA can make available to assist your project's design team in identifying best practices in design and construction for your project.
- 3) Develop construction documents that include Appendix G, Project Plan and Spec Book Checklist, and language notifying potential bidders that the project is following the Iowa Green Streets Criteria and that construction performance meeting the criteria is required. Do not forget this includes language requiring a construction waste management plan that will result in 25 percent or more of construction and demolition materials being diverted from the landfill via reduction, reuse or recycling.
- 4) Submit through www.iowagrants.gov construction plans/specifications and a completed Appendix C, Certification of Construction Contract Document Compliance, prior to issuing construction bids.
- 5) Following award of the construction contract, work with IEDA CDBG Design Technical Assistance consulting team to arrange a meeting with the general contractor and

subcontractors to review the Iowa Green Streets Criteria and the sustainable design practices integrated into the construction documents, the intent of those practices and best practices for installation.

- 6) Prior to drywall installation, notify the third-party energy professional to complete a thermal bypass checklist inspection to ensure proper construction techniques were utilized in constructing the building's thermal envelope.
- 7) Upon project completion work with the third-party energy professional to conduct any final testing protocols to verify attainment of the Iowa Green Streets Criteria energy performance requirements.
- 8) Upon project completion, submit through www.iowagrants.gov a completed Iowa Green Streets Criteria Appendix D, Certification of Compliance at End of Construction, and a completed Iowa Green Streets Criteria Appendix E, Energy Performance Certification, for new construction and gut rehabilitation projects or an Appendix F, Energy Performance Certification – Rehabilitation, for projects involving less than gut rehabilitation.

The appendix to this chapter includes the complete Iowa Green Streets Criteria. It is very important to fully understand the Iowa Green Streets Criteria early on in the project design process.

If you have any questions, please contact your project manager or Jeff Geerts, jeff.geerts@iowa.gov or 515-725-3069.

In the Appendix to Chapter 6

- Green Streets Criteria
- Appendices A – G

Your Notes

Downtown Revitalization Program

Overview

This chapter describes the Downtown Revitalization (DTR) program component of the Iowa CDBG program. Recipients should review this chapter carefully, as well as the sample documents in Appendix 7 to ensure program compliance.

The CDBG Downtown Revitalization Fund provides grants to communities for activities contributing to comprehensive preservation/revitalization in historic city centers. To date, the program has funded building façade improvements to privately owned buildings that are often part of a larger downtown revitalization initiative

All projects must:

- Meet a CDBG national objective;
- Be eligible under the CDBG program;
- Positively impact the community;
- Be ready to proceed and be completed in a timely fashion;
- Include community support for a downtown revitalization effort;
- Include other funding sources and documentation of applicant efforts to secure the maximum amount of local support for the activity;
- Meet or exceed the minimum building and site design criteria established by IEDA including Green Streets;
- Achieve a level of planning for comprehensive downtown revitalization efforts.

The national objective most applicable to Downtown Revitalization Fund projects is the slum and blight national objective. To address the slum and blight national objective, the applicant must address the documented deterioration in the area to be assisted, illustrating that the proposed activity will alleviate or eliminate the conditions causing the deterioration.

Administrative Plan

A program administrative plan needs to be submitted and approved by IEDA prior to the first program draw. An administrative plan is an outline that describes what person or organization is responsible for all key management functions associated with the operations of a Downtown Revitalization Fund. General operational policies and procedures should also be included in the plan. A model administrative plan outline can be found in Appendix 7. All items cited in the outline must be addressed. The specifics of how the outline headings are addressed are, however, generally up to the recipient.

Grant Administration / Project Management

Recipients must work with a grant administrator with experience in the CDBG program. DTR recipients should plan to contact for grant administration services. Grant administrators should select an administrator in accordance with federal law requiring that professional services be procured. Refer to Appendix 2 for Procurement requirements (2 CFR Part 200.320). Please note that there is no competitive procurement process required if the recipient chooses to contract for general administrative services with their Regional Planning Commission/Council of Government.

It is common for Downtown Revitalization Fund recipients to contract with a third party to handle a portion of the day-to-day management of their project. Recipients must follow federal procurement requirements when selecting a project manager. The only exception to this requirement is when the management position is filled by someone in an existing position who is assigned the DTR management task without receiving any corresponding increase in salary or wages.

Lead Based Paint

Buildings participating in a CDBG funded Downtown Revitalization that include a residential component must comply with the Lead Safe Housing regulations (24 CFR 35). A copy of the full regulations can be found in Appendix 5 of this guide. This includes any occupied or currently unoccupied residential space. For currently unoccupied residential space, it will be considered residential, if the residential unit is ready, or nearly ready for occupancy (it has an operable kitchen, functioning bath, code required egress, etc.). For more information on these regulations and the use of interim controls please reference Chapter 5, pages 55-62 of this guide and Appendix 5.

In order to document lead compliance, asses each property on the following question:

Does the building have a residential use?

If no – this is a non-residential building and is exempt from the lead safe housing regs.

If yes, lead safe work practices (interim controls) are required for all areas where painted surfaces will be disturbed. Projects will be capped at \$24,999 per residential unit, **for all construction hard costs** attributed to the residential component of the building, unless the building has been determined eligible for or is listed in the National Register of Historic Places either individually or contributing to an historic district. If historic, the property is still required to comply with lead safe work practices and interim controls, but is not limited to the \$24,999 per unit cap.

For Example: a non-historic 2-story mixed-use building is participating in a façade project. The first floor is a commercial retail space and the upper story has two occupied residential units. The scope of work calls for replacement of the commercial storefront and entrance \$20,000, commercial awning \$2,000, tuck-pointing the upper story brick \$15,000, parapet repair \$8,000 and repair of the upper-story windows \$10,000 for a total building rehab of \$55,000. If the commercial storefront and awning along with ½ the cost of the parapet repair are removed, the Residential rehabilitation costs is \$29,000 divided by 2 units = \$14,500 and therefore under \$24,999 and in compliance with the use of interim controls. All necessary testing, treatment and cleaning will be conducted in accordance with 24CFR35.900.

It is acceptable to subtract out costs that are specifically for commercial improvements such as storefronts and awning, and a proportionate amount of roof/parapet, however, any entryways, doors, common spaces, stairwells that are shared use or for the residential use must be included in the calculation of hard costs.

Easement Agreement

An easement agreement between the recipient and the respective property owners is a required document in the DTR Program. The agreement provides the legal means for city officials or parties authorized by the city to enter the property and to perform work. Furthermore, it may spell out the process involved in the owner making changes to the facade following project completion. Finally, it requires the owner to maintain the property improvements funded through the DTR Program. The agreement must be signed by both the city and the owner with both signatures notarized. The easement must then be recorded at the county. A sample easement agreement document can be found in Appendix 7. The recipient's legal counsel should review the document and may edit or add provisions to suit local preferences. An easement agreement needs to be submitted and approved as a grant condition by IEDA prior to the first program construction draw.

Construction Terms

IEDA believes it is crucial that there be complete understanding and disclosure between the recipient and the property owner. Accordingly, the relationship between the two parties during construction should be clearly defined to prevent problems from arising during the project. The recipient will enter into a construction terms agreement with each property owner participating in the DTR program. The construction terms agreement can also provide for a lien to be placed against the improved property by the recipient if necessary to recover costs. A sample Construction Terms Agreement form can be found in Appendix 7.

A construction terms agreement needs to be submitted and approved by IEDA prior to the first construction draw. Please note- **The contract between the recipient and IEDA stipulates that projects must be out for public bid within one year of the contract effective date.**

Reporting

DTR recipients are required to periodically report on their expenditure of funds and activity status. These reports help keep IEDA and your IEDA Project Manager informed about the progress of your activity and provide the state with information needed for reports submitted to HUD.

Project Monitoring

Your CDBG program will be monitored by your IEDA project manager during the life of the project. This includes both desk monitoring and on-site monitoring. The IEDA has a formally established/written process for conducting oversight and on-site monitoring. IEDA staff will set-up an on-site monitoring date with the recipient's CEO and grant administrator.

For more information on what this monitoring will entail, you may go to the IEDA website at: <http://www.iowaeconomicdevelopment.com/userdocs/documents/ieda/CDBG-MonitoringPolicy4-11.pdf>

For review of the Monitoring Checklists, you may visit our website at: <http://www.iowaeconomicdevelopment.com/userdocs/documents/ieda/cdbgmonitoring.pdf>.

In the Appendix to Chapter 7

- Sample Downtown Revitalization Administration Plan
- Sample Easement Agreement
- Sample Construction Terms Agreement
- Green Streets Criteria for Downtown Revitalization Projects (Appendices A-E apply)

Your Notes

Section 3 Requirements

Overview

This chapter describes Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 135] and its applicability to CDBG projects.

Section 3 is HUD's legislative directive for providing preference to public housing residents and low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training and contracting opportunities resulting from HUD-funded projects. The regulations seek to ensure that public housing residents and low- and very low- income persons, and the businesses that employ these individuals, are notified about the expenditure of HUD funds in their community and encouraged to seek opportunities, if created.

A Section 3 resident is:

- 1) a public housing resident OR
- 2) a low- or very low income person residing in the metropolitan area or non-metropolitan county where the Section 3 covered assistance is expended.

A Section 3 business is defined as a business that is:

- (1) That is 51 percent or more owned by section 3 residents; or
- (2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the [business concern](#) were section 3 residents; or
- (3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to [business concerns](#) that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 [business concern](#)."

The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods. However, recipients are not required to hire or enter into contracts with Section 3 residents or businesses simply to meet the Section 3 goals—anyone selected for contracting or employment opportunities must meet the qualifications for the job/contract being sought.

When Section 3 Applies

Section 3 applies to projects/activities involving housing (construction, demolition, rehabilitation) or other public construction—i.e. roads, sewers, community centers, etc. Section 3 applies to CDBG projects when:

- The recipient's CDBG contract with the State of Iowa exceeds \$200,000, and involves housing and/or public construction.
- The recipient has contracted with subcontractors for services and the contract amount is over \$100,000.

If no individual subcontract for activities exceeds \$100,000, responsibility for complying with Section 3 only applies to the recipient (City/County and the State).

Please note that while Section 3 applies to projects and contracts described above, the Section 3 requirements are only triggered when the normal completion of construction and rehabilitation projects creates the need for **new** employment, contracting or training opportunities. Section 3 regulations should not be construed to mean that recipients are required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete covered projects/activities.

Compliance with Section 3

Each recipient has the responsibility to comply with Section 3 in its own operations, and ensure compliance in the operations of its contractors/ subcontractors. This responsibility includes but may not be necessarily limited to:

- (a) Implementing procedures designed to notify section 3 residents about training and employment opportunities
- (b) Notifying potential contractors for section 3 covered projects of the requirements of this part, and incorporating the section 3 clause set forth in § 135.38 in all solicitations and contracts.
- (c) Facilitating the training and employment of section 3 residents and the award of contracts to section 3 businesses
- (d) Assisting and actively cooperating with HUD in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR part 135.
- (e) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.

Procurement & Bid Documents

CDBG recipients must include Section 3 language in all procurement and bid documents. The required language to be included in these documents can be found in the appendix to this chapter of the CDBG Management Guide. In addition to the required language, recipients must include the "Intent to Comply with Section 3" form with all RFPs.

Contractors responding to bids must submit with their bid documents a signed copy of the “Intent to Comply with Section 3” form. This form will be used to collect information that recipients should use when reviewing responses to ensure compliance with Section 3 requirements.

Selecting Contractors with Section 3

In addition to certifying new employees’ level of income, Section 3 requires recipients make an effort to the “greatest extent feasible” to facilitate contracts to Section 3 businesses. By “greatest extent feasible,” HUD means that recipients of Section 3 covered financial assistance should make every effort within their disposal to meet the regulatory requirements. This may mean going a step beyond normal notification procedures for employment and contracting procedures by developing strategies that will specifically target Section 3 residents and businesses for these types of economic opportunities. Suggestions on strategies for reaching Section 3 businesses is provided later in this section of the CDBG Management Guide.

While Iowa procurement procedures require recipients select the lowest responsible bidder when under a competitive sealed bid process, recipients may give preference to Section 3 businesses as a means of evaluation criteria for professional services contracts where proposals are solicited.

In order to give preference to Section 3 businesses during the contract awarding process, recipients must ask the contractor to certify whether or not they are a Section 3 business when soliciting for proposals. The “Intent to Comply With Section 3” form that will be provided with procurement documents and submitted by bidders will capture this information.

Remember, to be considered a Section 3 business the business must meet the definition by satisfying one of the following requirements:

- (1) That is 51 percent or more owned by section 3 residents; or
- (2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
- (3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of “section 3 business concern.”

Section 3 businesses must be given priority in contracting for work, to the greatest extent feasible. Recipients should use the following order of priority:

- 1st: Section 3 business concerns that provide economic opportunities for section 3 residents in the service area or neighborhood in which the section 3 covered project is located (category 1 businesses); and
- 2nd: Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);
- 3rd: Other section 3 business concerns.

It is important to note that Section 3 requirements at 24 CFR 135, provides only preference for contracts and subcontracts to Section 3 businesses; Eligible businesses must demonstrate that they are responsible and have the ability to perform successfully under the terms and conditions of proposed contracts.

Hiring & Training with Section 3

Recipients and their contractors/subcontractors are required to give hiring and training preference to Section 3 residents, to the greatest extent feasible, when new employment opportunities result from a CDBG funded project.

When a recipient or contractor/subcontractor has identified that new employment or training opportunity will result from the normal completion of the CDBG construction and/or rehabilitation projects, the CDBG grant administrator should work with that entity to assist with advertising the opportunity to Section 3 residents.

Notices of employment/training opportunities must be sent to the Iowa Chapter of the National Association of Housing and Redevelopment Officials (NAHRO). Notices should be sent to the NAHRO Chapter President. Contact information can be found here: <http://www.ianahro.org/contactus.cfm> NAHRO will share the notice with public housing authorities, in an effort to help reach Section 3 businesses. A sample notice for employment/training opportunities is provided in the attachments to this section of the Management Guide.

Additional suggestions on strategies for reaching Section 3 residents is provided later in this section of the CDBG Management Guide. Remember, recipients are required to document affirmative steps made to meet Section 3 goals when Section 3 requirements are triggered.

When giving hiring and training preference to Section 3 residents, recipients and contractor/subcontractors should use the following order of priority:

- 1st: Section 3 residents residing in the service area or neighborhood in which the section 3 covered project is located (collectively, referred to as category 1 residents).
- 2nd: Participants in HUD Youthbuild programs (category 2 residents).
- 3rd: Where the section 3 project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.), homeless persons residing in the service area or neighborhood in which the section 3 covered project is located shall be given the highest priority.
- 4th: Other section 3 residents.

Goals under Section 3

Federal regulations establish numerical goals for employment/training for Section 3 residents and contracts to Section 3 businesses.

Recipients, their contractors and subcontractors may show compliance with Section 3 requirements by:

1. Employing Section 3 residents as 30 percent of the new hires each year (24 CFR 153.30(b)(3).
2. Awarding 10 percent of the total dollar amount of all covered construction contracts to Section 3 businesses; and
3. At least 3% of the amount of all other Section 3 covered contracts (non-construction or professional services contracts)

A recipient that has not met the numerical goals must explain why it was not feasible to meet the established numerical goals set forth in this section. Please refer to “Reporting requirements/ reporting forms” for more information.

Note: It is important to document efforts made to comply with Section 3. Recipient files should contain any memos, correspondence, advertisements, etc. illustrating attempts to meet Section 3 goals (e.g., to reach out to eligible persons regarding employment or training and/or business concerns). IEDA staff will review this documentation during the project on-site monitoring visit.

Penalties for Non-Compliance

Recipients of CDBG funding have the responsibility of complying with Section 3 regulations and ensuring compliance among its contractors and subcontractors. Federal code established penalties for Section 3 violations and non-compliance. (See 135.38(f))

Communities and contractors found in violation of Section 3 requirements may result in:

- Sanctions from HUD
- Termination of contract for CDBG funds
- Debarment or suspension from future HUD assisted (CDBG) contracts

Non-compliance with Section 3 can impact a community’s ability to receive CDBG funding in the future. Under federal code, the state of Iowa may not enter into a contract with any entity when the state has knowledge that the entity has been found in violation of the Section 3 regulations. (See 24 CFR 135.32(d) and 24 CFR 135.72(b)).

Reporting Requirements & Forms

To report Section 3 data, recipients must analyze whether or not the Section 3 covered contract hired any new employees (temporary or permanent) to complete the activity/project. If the expenditure of CDBG funds does not result in new employment, contracting, or training opportunities, the requirements of Section 3 have not been triggered. However, even if the CDBG-funded/ Section 3 covered project did not create new employment opportunities, this information must be reported to IEDA.

If the contract is covered by Section 3, based on the criteria above, and the recipient/contractor did hire new employees (temporary or permanent), it is required that they report the new employees’ level of income. If the new employee’s household income is less than 80% of area median income prior to their hiring, they are considered a new hire that is Section 3 eligible. If they are above the 80% level of area median income, they are considered a new hire that is not Section 3 eligible. Income limits by County are available on IEDA’s website:

<https://www.iowaeconomicdevelopment.com/Community/downloads>

To certify if the contractor hired any new employees for the project, please use the “Section 3 New Hire Compliance Report”, found in the appendix to this chapter. Please note this form will also have the employer certify whether or not the new employee is a Section 3 resident.

To report Section 3 data to IEDA, recipients will report annually to IEDA. This report will be submitted through lowagrants.gov and will be due by December 31st of each year. As part of this report, recipients will need to report Section 3 accomplishments and/or provide a detailed explanation of why Section 3 goals were not met. Such an explanation should discuss efforts taken to comply with Section 3 and any impediments the recipient experienced in meeting Section 3 goals.

Section 3 Business Registry

The Section 3 Business Registry is a registry of firms that have self-certified their status as Section 3 Businesses. Businesses who self-certify that they meet one of the regulatory definitions of a Section 3 business will be included in a searchable online database. The database can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the award of covered construction and non-construction contracts to Section 3 businesses. Section 3 residents are also encouraged to use the registry to identify businesses that may have HUD-funded employment opportunities.

CDBG recipients should utilize HUD's Section 3 Business Registry to find Section 3 businesses that may be able to participate in the CDBG project. Recipients can search through HUD's Section 3 registry here:

<https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>

Businesses may register as a Section 3 Business through HUD's website here:

<https://portalapps.hud.gov/Sec3BusReg/BRegistry/RegisterBusiness>

It is important to note that Section 3 businesses are not entitled to receive contracts simply by being listed in HUD's Section 3 Business Registry database.

Additional Section 3 Resources

More information and resources on Section 3 can be found on HUD's Section 3 website here:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3

In the Appendix to Chapter 8

- Section 3 regulations (24 CFR Part 135)
- Appendix to Part 135: Examples of Efforts to Offer Training and Employment Opportunities to Section 3 Residents
- Appendix to Part 135: Examples of Efforts to Award Contract to Section 3 Business Concerns
- Appendix to Part 135: Examples of Procurement Procedures that Provide for Preference for Section 3 Business Concerns
- Steps for Section 3 Compliance
- Section 3 Clause (to be included in all CDBG related contracts)
- Sample Section 3 Employment Notice
- Intent to Comply with Section 3 Requirements Form (to be included with all procurement materials)
- Section 3 Business Certification form
- Section 3 New Hire Compliance report form
- Sample format for Section 3 Employee Interview form
- Frequently Asked Questions on Section 3 (from HUD Section 3 website)