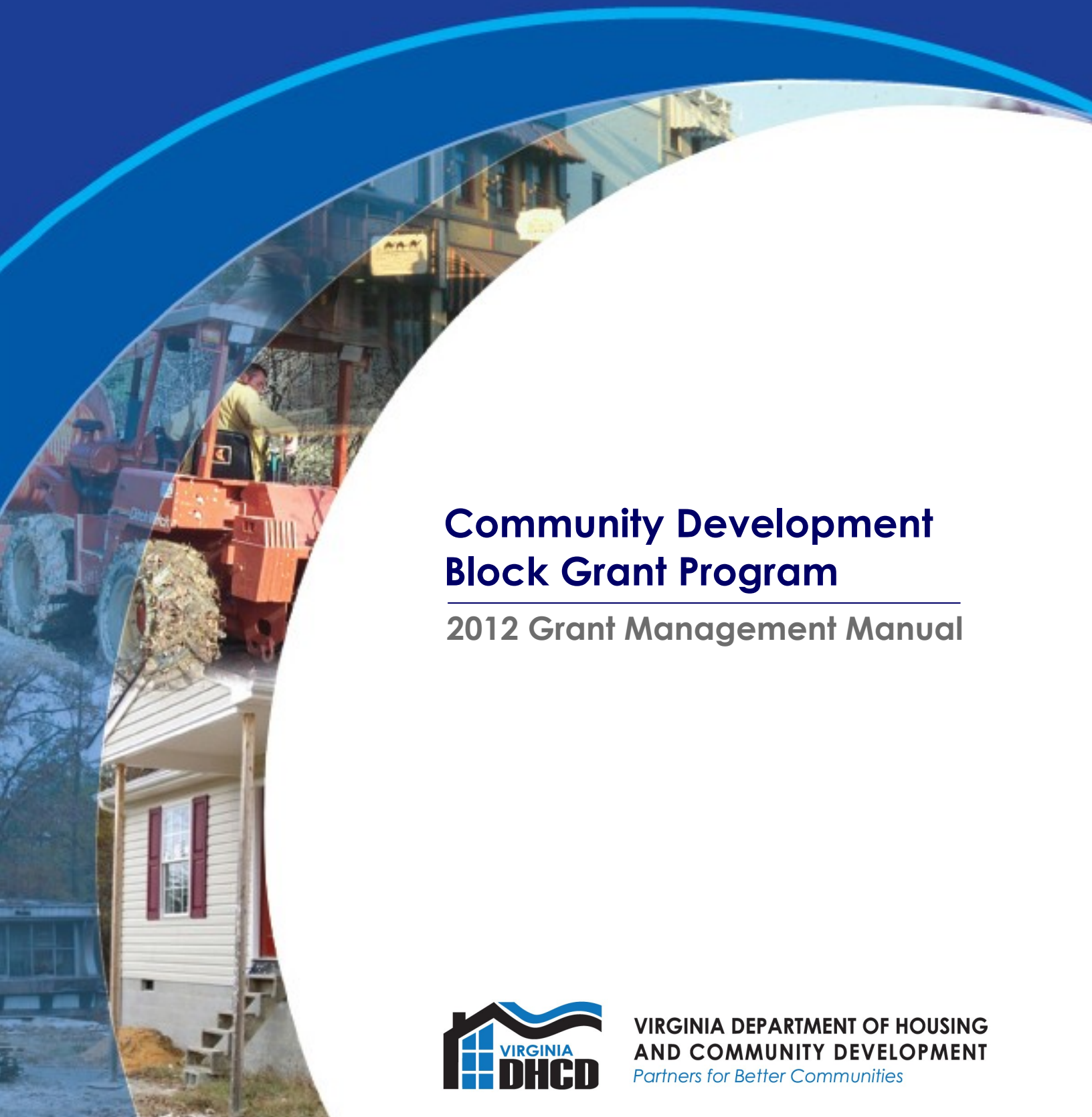
Program Administration and Assistance Office



# Community Development Block Grant Program

## 2012 Grant Management Manual

VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

*Partners for Better Communities*

# DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

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# SUMMARY OF CHANGES TO THE 2012 GRANT MANAGEMENT MANUAL

## Not all inclusive

**General:**

References of CIG changed to CDBG. References of Grant Administrator changed to Grant Manager.

**Chapter 2: Pre-Contract Activities**

p. 12: Administrative Bonuses- inserted language to reflect policy in CDBG Program Design. Also see Appendix 3.

**Chapter 3: Benefits**

p. 21: Updated definition to reflect HUD regulations.

p. 24: Microenterprise Loans- updated definition. Also see Chapter 10, p. 170.

**Chapter 4: Grant Management**

p. 33: Annual Contract and Subcontract Activity Report (HUD 2526)- inserted language explaining the requirement to submit this. Also see Chapter 12, p. 180.

**Chapter 6: Design and Construction Management**

p. 64: Contract Bidding- inserted statement that all CDBG projects must be procured via a sealed competitive bidding process unless Grantee receives written approval otherwise.

p. 65: Contract Bidding- inserted statement that no CDBG project can be advertised for construction buds until the environmental review process is complete.

p. 65: Contract Bidding- inserted language that all construction bids received on time must be opened and read aloud immediately.

p. 72: Change Orders- inserted language clarifying DHCD's expectations regarding the process of review and approval.

**Chapter 8: Federal Labor Standards and Equal Opportunity Requirements**

p. 104: Construction Contract Award- deleted requirement to contract DOL.

**Chapter 9: Housing**

p. 117, 118: Housing Rehab- inserted section entitled Implementation regarding the purpose of Housing Rehab Program Design and the role of the Housing Rehab oversight Board.

p. 127: Housing Rehab- inserted language regarding definition of demolition and the responsibility for seeing that it is done properly.

p. 129: Housing Rehab- inserted language clarifying beneficiaries' obligation to make monthly loan payments based on their ability-to-pay, forgiveness and deferral of payment obligations.

P. 133: Housing Rehab- inserted language that Deeds-of-Trust must be in place for a period of 10 years.

P. 143: Housing Rehab- inserted conditions to qualify for a green building incentive of $4,000.

P. 147: Housing Rehab- inserted language that no rehab construction bid may be awarded until confirmation is obtained that contractor is not debarred.

**Appendices: The following appendices have been modified.**

**Appendix 2**

p. 1-2: Environmental Review- inserted definition of Responsible Entity and

Certifying Officer taken directly from the HUD regulations.

p. 3: Environmental Review- inserted language regarding the Responsible Entity's responsibility to conduct research to determine if project will have an adverse effect on the environment.

p. 6: Environmental Review- inserted language clarifying steps to follow for Categorically Excluded projects.

p. 7: Environmental Review- revised resource and contact information relative to determining if projects are located within a floodplain.

p. 9: Environmental Review- inserted federal requirement that structures located in the floodplain that are improved with CDBG funds must be insured with federal flood insurance for as long as the structure remains.

p. 13: Environmental Review- Public notice of the FONSI. Inserted language regarding the publication or posting of the FONSI.

p. 3: Environmental Review Calendar Tracker- inserted calendar trackers for Grantees who post the FONSI in lieu of publishing it in the paper and who email the RROF to DHCD. Footnoted the alert that if comment of objection periods end on a weekend or holiday they are to be extended through the next work day thereafter.

**Appendix 2.C**

p. 29: Environmental Review- inserted language encouraging Grantees to contact resource agencies via email in lieu of mailing letters via the US Postal Service.

**Appendix 3**

p. 1: Administrative Cost Limits- Updated maximum allowable CDBG amounts for administrative costs to be consistent with the DHCD Program Design.

p. 3: Performance Based Budget policies- inserted language clarifying parameters for determining DHCD allowable costs by major thresholds.

p. 3: Performance Based Budget policies related to Project Closeout- inserted language advising Grantees that payment for the administrative closeout threshold is subject to forfeiture if forms are not returned to DHCD within 30 days.

p. 4: Administrative Bonus- inserted conditions under which Grantees can qualify for administrative bonuses.

p. 5: Housing Rehab Exceptions- inserted language updating allowable exceptions.

p. 6: Project Budget- Clarified how construction related soft costs are determined.

**Appendix 4.F**

p. 11: Revised Section 3 Business Certification.

**Appendix 4.H, 4.I**

Deleted Appendix 4.H and replaced with 4.I.

**Appendix 10**

Procurement- Small purchase requirement minimum threshold increased from $30,000 to $60,000 "shall require the informal written solicitation of a minimum of four bidders or offerors."

**Appendix 10**

p. 6: inserted language regarding using engineers on retainer for CDBG projects.

# TABLE OF CONTENTS

Table of Contents ..... 1
Chapter 1: Introduction ..... 5
Applicable Regulation Summary ..... 5
Definitions ..... 5
Manual Design and Usage ..... 6
Chapter 2: Pre-contract Activities ..... 9
Contract Negotiations ..... 9
Prior Authorized Costs ..... 9
General Requirements ..... 10
Contract Execution ..... 17
Chapter 3: Benefits ..... 19
CDBG National Objectives ..... 19
General Benefit Requirements ..... 20
Definitions ..... 20
Community Facilities ..... 21
Housing ..... 22
Economic Development ..... 23
Community Service Facilities ..... 25
Comprehensive Projects ..... 26
Disaster Relief Projects ..... 26
Recordkeeping ..... 26
Chapter 4: Grant Management ..... 29
Project Management ..... 29
Recordkeeping ..... 32
Reporting Requirements ..... 33
Fair Housing Requirements ..... 34
Complaints and Appeals ..... 36
Real and Personal Property Management ..... 37
Contract Amendments ..... 39
Compliance Reviews ..... 40
Chapter 5: Financial Management ..... 43
Definitions ..... 43
Financial Management Requirements ..... 44
Elements of Financial Management Systems ..... 45
Requesting Funds from DHCD ..... 50
Project Budget ..... 53
Program Income ..... 54
Audit Requirements ..... 57
Chapter 6: Design and ..... 61
Construction Management ..... 61
Final Design ..... 61
Contract Bidding and Award for Construction Projects ..... 64

Construction Management ... 71
Construction Completion ... 74
Chapter 7: Acquisition and Relocation ... 77
Regulations ... 77
Acquisition ... 78
Relocation Assistance and Anti-Displacement ... 89
Chapter 8: Federal Labor Standards and Equal Opportunity Requirements ... 103
Federal Labor Standards ... 103
Contract Compliance Officer ... 104
Securing the Wage Decision ... 104
Verifying the Low Bidder's Eligibility ... 106
Monitoring the Use of Job Classifications ... 106
Monitoring Compliance ... 109
Equal Opportunity Requirements ... 114
Chapter 9: Housing ... 117
Housing Rehabilitation ... 117
Application Process ... 118
Alternatives to Rehab ... 126
Rehabilitation Loan Packaging ... 129
Contracts and Agreements ... 131
Selecting and Qualifying Contractors ... 136
Initial Inspections ... 139
Temporary Relocation ... 142
Preparation of Specifications and Bids ... 142
Project Sign ... 145
Bidding and Construction Process ... 145
Housing Production ... 151
Upper-Story Housing ... 153
Recordkeeping ... 153
Chapter 10: Economic Development ... 156
Job Creation and Retention ... 156
Development Readiness ... 149
Site Redevelopment ... 149
Downtown (Business District) Revitalization ... 149
Telecom Infrastructure ... 166
Microenterprise Projects and Other Financing Projects ... 166
Chapter 11: Community Service Facilities ... 173
Types of Services Eligible ... 173
Facility Ownership ... 174
Facility Operation ... 174
Ownership or Operation by Faith-based Organizations ... 175
Recordkeeping ... 175
Chapter 12: Grant Closeout Procedures ... 177
Letter of Conditions ... 177
Final Closeout Reports ... 177
Administrative Closeout ... 180

Conditional Closeout ..... 181
Final Closeout ..... 181
Final Audit Requirements ..... 181
Index for 2012 CDBG Manual ..... 183

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# CHAPTER 1: INTRODUCTION

Congratulations on being awarded a Community Development Block Grant (CDBG). This Grant Management Manual is designed to assist Grantees in two important ways:

First, the manual is a technical assistance tool, outlining the minimum requirements that Grantees must follow as they undertake their project. Through careful reading and adherence to the manual's contents, Grantees should have the knowledge needed to achieve a successful project from contract negotiations to final closeout.

Second, the manual is a legal document as referenced in CDBG contracts with the Virginia Department of Housing and Community Development (DHCD). Therefore, whenever the word "must" is used, the stated action is required unless it is superseded by written notice from DHCD or it is found to be in conflict with State or Federal laws or regulations.

## Applicable Regulation Summary

Most of the federal regulations governing CDBG projects can be found within Part 570 (Community Development Block Grants) of Title 24 of the *Housing and Urban Development Act of 1974*, however, there are other regulations that also apply. They are referenced in the chapter to which they pertain.

## Definitions

The following are definitions of words and phrases used throughout this manual:

- "Grant" refers to a Community Development Block Grant (CDBG);
- "Grantee" refers to the unit of local government awarded a grant;
- "Project" refers to all of the activities undertaken that result in meeting the terms and conditions of the Grant Agreement;
- "CDBG Agreement" refers to the DHCD contract offered to the Grantee for CDBG funds;
- "Beneficiaries" refers to those LMI individuals or households who choose to participate in, or are directly affected by, a CDBG-funded project and, as a result, receive direct or indirect assistance;
- "Grant Administrator" refers to the chief executive officer of the local government under contract with DHCD. As signatory of the CDBG contract, the Grant Administrator has broad oversight responsibility to see that the project is implemented

pursuant to the terms of the Grantee/DHCD contract.

- "Grant Manager" refers to the individual designated by the Grantee to undertake the daily grant management functions to include (but not limited to) assuring compliance with DHCD policies and procedure including tracking of project funds, maintaining and monitoring the Project Management Plan, and serving as the labor standards compliance officer;

- "Project Manager" refers to an individual with a higher level of expertise that is sometimes required for more complex projects. Project Managers are often private consultants with the experience and skill set necessary to manage projects with multiple activities and/or multiple sources of financing.

- "IPR" refers to Indoor Plumbing/Rehabilitation set-aside funds offered to the Grantee as part of the CDBG Agreement;

- "Leverage funds" are all non-CDBG funds that have been committed to the project by the Grantee;

- "Local Governing Body" refers to the Grantee's Town Council, City Council or Board of Supervisors;

- "LMI" refers to low- and moderate-income;

- "LMI persons" refers to persons who are members of a household whose cumulative household annual income is at or below 80% of the median income of the County or City or the non-metropolitan area of the Commonwealth (whichever is greater) in which a CDBG project is located;

- "Program year" refers to the twelve-month period following the effective date of the CDBG Agreement;

- "HQS" refers to the DHCD Housing Quality Standards;

- "HUD" refers to the U. S. Department of Housing and Urban Development;

- "DOL" refers to the U. S. Department of Labor;

- "VDOT" refers to the Virginia Department of Transportation;

- "DHR" refers to the Virginia Department of Historic Resources; and

- "PAAO" refers to the Program Administration and Assistance Office of DHCD, which oversees the CDBG program.

# Manual Design and Usage

DHCD has attempted to make this manual as *user friendly* as possible. Each chapter begins with an overview of the chapter's contents. Afterwards, the responsibilities of the Grantee and

associated parties are outlined. Samples, models and forms are located in the appendices at the end of the narrative. Additional copies of the manual, as well as many of the required forms, can be downloaded at www.dhcd.virginia.gov. Click on "Reports/Statistics/Forms/ Publications" and look under "Community Development Block Grant."

Several icons have been created to enhance your ability to use the manual.

These icons and their meanings are listed below:

☎ Call your DHCD Community Development Specialist (Community Rep) for clarification or further assistance.

🕐 A timing concern.

☑ A Best Practices suggestion.

✱ **Critical information to be noted.**

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# CHAPTER 2: PRE-CONTRACT ACTIVITIES

For purposes of clarity, this chapter is divided into the following sections:

- Contract Negotiations;
- Prior Authorized Costs;
- General Requirements; and
- Contract Execution.

## Contract Negotiations

The grant implementation process begins with the Governor's letter offering a grant to the local governing body. After the Grantee has been officially notified, the Program Administration and Assistance Office's Associate Director will set up a contract negotiations meeting. This is the first step in getting a CDBG Agreement.

The Contract Negotiations Meeting marks the beginning of the ninety-day (90) period known as the Pre-contract Activities Phase. During this phase, the Grantee *must* complete all of the requirements outlined at the contract negotiations meeting and any other conditions subsequently determined to be necessary to assure the successful implementation of the project. Shortly after the meeting, DHCD will send a follow-up letter to the Grantee, summarizing what these activities are and the expected completion date.

In the letter, the need for a Facilitated Management Session (FMS) will be identified. This is an on-site visit conducted by a facilitator and your Community Development Specialist. At the FMS, responsibility for completing the Pre-contract Activities will be assigned. These Pre-contract Activities are discussed in greater detail in this chapter.

❋ **Failure to complete the Pre-contract Activities within ninety (90) days puts the grant offer in jeopardy.**

## Prior Authorized Costs

Most Grantees will incur administrative costs related to the Pre-contract Activities before the CDBG Agreement is executed. These costs are eligible for reimbursement with CDBG funds if the Grantee makes a written request to DHCD. The request must outline the activities and associated costs to be undertaken and when these costs will start to be incurred. In addition, the request must acknowledge that, if a CDBG Agreement is not issued, the Grantee is responsible for the costs.

DHCD will review the request and, if it concurs, approve it. DHCD will identify the approved effective date for incurring prior authorized costs and the total amount that will be eligible for grant reimbursement. Authorization is conditioned on the CDBG Agreement being signed within the ninety- (90) day Pre-contract Activities Phase, unless specifically extended by DHCD in writing.

In rare cases, the Grantee may wish to incur implementation costs, including design and/or construction costs, before the issuance of the CDBG Agreement. As with Pre-contract administrative costs, implementation costs cannot be incurred without prior written authorization from DHCD. The Grantee's written request for prior authorization must identify the nature and estimated amount of costs to be incurred and why they are being requested.

No request for prior authorization of implementation costs will be considered until after the Environmental Review of the project is completed. See Appendix 1 for a sample Request letter.

✱ **If prior authorization is not received, all costs incurred during the Pre-contract Activities Phase must be paid for with leverage funds.**

# General Requirements

All Grantees are required to complete the general Pre-contract requirements. Each must be reviewed and approved by the assigned Community Development Specialist before the end of the Pre-contract Activities Phase. A summary of each requirement follows.

## *Project Management Teams and Oversight Boards*

DHCD requires the formation of a Project Management Team to oversee the project. The Team is made up of stakeholders who have direct responsibility or oversight of specific activities necessary for the successful completion of the project. Typically, the Team consists of the Chief Executive Officer (who serves as the chair), Grant Administrator, management consultant, rehabilitation specialist, engineer or architect, county sanitarian, county building official, fire department inspector (downtown projects), DHR, and agency funding representatives (VDOT, Rural Development, RCAP, etc.).

In addition, DHCD requires that project area representatives, known as community sparkplugs, be on the Team. DHCD believes these sparkplugs are absolutely essential to the success of the project. Community sparkplugs are neighborhood residents who lead by example, collaborate with others, and communicate effectively with everyone who will be affected by the project. Sparkplugs are to work on behalf of the community to ensure that its voice is heard so that the project is completed to the community's satisfaction.

Sparkplugs are expected to take an active, voluntary role in the project. Often working behind the scenes, they typically do the following:

- Acts as a liaison between the community and key project decision makers;
- Keeps the community informed on the project's progress;
- Serve on Management Team and/or Oversight Boards;
- Go door-to-door in the neighborhood to discuss the project; and

- Assist in conducting neighborhood surveys or obtaining user agreements.

The characteristics of a good sparkplug are:

- Enthusiastic and energetic;
- Problem solver who can work within a team structure;
- Results oriented;
- Loyal to the project area or stakeholders and not to a personal agenda; and
- Trusted by the beneficiaries but not a beneficiary him or herself.

✱ **There may be more than one sparkplug, but all successful projects will have at least one.**

Finally, projects with a housing component are required to form a Housing Rehabilitation Oversight Board (Rehab Board). The composition and duties of the Board are dictated by DHCD's Housing Program Design Policies. See Appendix 17 for more details.

✱ **The purpose of Project Management Team and Oversight Boards is to monitor the project's progress and to assure the project's success. To accomplish this purpose, the team members must be committed to doing the following:**

- Attend meetings regularly;
- Carry out assignments between meetings;
- Come prepared to report back on the progress of assigned tasks;
- Fully participate in discussions; and
- Be committed to the project being completed on time, questioning any delays and identifying corrective action.

## *Environmental Review Record (ERR)*

The *National Environmental Policy Act* and related acts require an environmental review assessment of the proposed project's impact on the environment. See Appendix 2 for more details on how to do so.

🕐 The ERR process can take over sixty- (60) days to complete as it involves review and comment periods, publication of an ad and preparation of the record. Therefore, it is imperative that the Grantee starts this process immediately after the contract negotiation meeting, if it has not already been done as part of a planning grant process.

## *Performance-based Project Budget*

Grantees must prepare a project budget using the required format. This budget must reflect current budget activities and funding sources (both CDBG and leverage funds). Typically, the project budget will be similar to the budget

proposed in the Grant Proposal but includes any DHCD-related or other adjustments made during contract negotiations.

The most significant adjustment is that all CDBG administrative costs are *performance-based*, i.e., costs are paid only after the attainment of pre-determined thresholds. These are negotiated between DHCD and the Grantee after the completion of the Project Management Plan. The payment thresholds will outline the respective tasks and how much DHCD will pay upon the completion of each task.

Administrative bonuses are available in limited circumstances and are addressed in more detail in Appendix 3. Conversely, administrative compensation for project closeout is conditioned on the return of closeout forms within the 30-day deadline.

Also see Appendix 3 for more details in preparing the budget and the required budget form.

## *Section 3 Requirements*

- Section 3 of the Housing and Urban Development Act of 1968 requires that to the extent feasible, opportunities for job training, employment and contracting generated by HUD housing and community development financial assistance be directed to low-income persons residing in the project area. For Section 3 purposes only, "project area" is defined as the County in which the project is located. A project in a City would include the City and the surrounding County as the project area.

"Section 3 Resident" is defined as any individual who resides within the project area in which the Section 3 covered assistance is expended and whose family income does not exceed 80% of the median income of the County or the Metropolitan Statistical Area, whichever applies.

"Section 3 Business concern" means a business that meets one or more of the following criteria: (1) that is 51 percent or more owned by Section 3 residents; (2) has 30% or more permanent full-time employees that are certified Section 3 Residents (classified as low- to moderate-income <u>and</u> whose permanent residence is located within the Section 3 county.). At any time either of those thresholds are no longer met, the business ceases to be a Section 3 business; 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 in items 1 and 2 above.

These guidelines apply to Grantees receiving $200,000 or more in federal assistance and to contractors/ subcontractors whose construction contract amounts on this CDBG funded project have a dollar value of $100,000 or greater. Grantees and contractors who are subject to Section 3 requirements must demonstrate compliance with the requirements of Section 3 by making a good faith effort to meet the numerical goals identified in the federal statue for employment and contracting opportunities to Section 3

residents and Section 3 business concerns.

The numerical goal for Section 3 employment is 30 percent of new hires for the project should be Section 3 resident(s). The goals for contracting are 10 percent of the total dollar amount of construction contracts and 3 percent of the total dollar amount of non-construction contracts should be with Section 3 business concerns.

For contractors to attain satisfactory compliance with Section 3 employment goals they will be required to have all new hires from the Section 3 area complete a household income survey to determine LMI income status. Use of local business and employment Section 3 goals will be determined by requiring each contractor/supplier from the Section 3 area fill out a form stating whether or not that contractor or supplier is a designated Section 3 firm for that Section 3 area. Contractors who fail to meet the Section 3 goals will be asked to provide a description of the efforts taken to attain the Section 3 goals and explanation as to why they were not successful.

For Grantees to attain satisfactory compliance with Section 3 requirements the following steps must be undertaken by the Grantee:

1. Adoption of a Section 3 Business and Employment Plan by the local governing body;

2. Publication of a Notice in the local newspaper to solicit Section 3 businesses and residents as a display advertisement;

3. Place proof of adoption and advertisement publication in the project file;

4. Collect and certify the names of all responding businesses and job seekers and provide them to all potential bidders; use the pre-bid meeting to highlight Section 3 requirements;

5. Retain proof of providing names of all advertisement respondents to contractors in project files;

6. Award contracts to Section 3 businesses by establishing and publicizing the local preference within the procurement process;

7. Facilitate compliance among contractors;

8. Provide evidence of a good faith effort to attain the annual numerical goals (30/10/3) and document other actions taken to facilitate and achieve compliance (i.e. designate a Section 3 Coordinator for the project to monitor compliance and/or develop a directory of Section 3 businesses in your County for future use); and

9. Submit annual report to DCHD on form HUD 60002.

See Appendix 4 for sample Plans, Notice and Certifications.

## *Minority- and Female-owned Businesses, Contractors and Suppliers*

Part 85 of the *Housing and Community Development Act* requires Grantees to use, to the greatest extent feasible, minority- and female-owned businesses, contractors and suppliers.

The following steps must be undertaken to meet this requirement:

1. Publish a legal advertisement to solicit minority- and female-owned businesses, contractors and suppliers in a regional paper (two-county daily with a circulation of 15,000 that serves the project area);

2. Place proof of publication in the project file; and

3. Retain proof of providing names of all respondents to all potential bidders for CDBG-funded construction contracts.

See Appendix 5 for a sample advertisement.

## *Non-Discrimination Policy*

Grantees must have an adopted policy stating that they will not discriminate in hiring and employment practices against any individual on the ground of race, age, handicap, creed, religion, color, sex, or national origin.

The following steps must be undertaken to accomplish this task:

1. Adoption of the non-discrimination policy by the local governing body;

2. Post a large, legible copy of the policy where job applicants and employees can see it; and

3. Include in all advertisements for employees a Telecommunication Device for Deaf persons (TDD) number or a Teletypewriter (TTY) number, and that the Grantee is an "Equal Opportunity Employer."

See Appendix 6 for a sample policy.

## *Section 504 Requirements*

Section 504 of the *Rehabilitation Act of 1973* requires Grantees to take actions to assure nondiscrimination based on disability. The following steps must be undertaken to meet this requirement:

1. Designate a 504 Coordinator by the local governing body;

2. Publish "Public Notice of Non-discrimination Based on Handicap" as a display advertisement in the local newspaper;

3. Place proof of adoption and publication in the project file;

4. Implement effective communication, including the listing of a TDD number on all required notices and advertisements;

5. Conduct a Self-Evaluation; and

6. Adoption of the Grievance Procedure by the local governing body.

See Appendix 7 for Section 504 Requirements and samples.

## *Anti-Displacement Plan*

Grantees must commit to minimizing project-related displacement and the hardships it imposes even if the project does not currently involve housing activities. This includes direct displacement resulting from real property acquisition, rehabilitation, demolition, conversion and any indirect displacement. DHCD requires that this commitment assure that:

- Individuals who are displaced or relocated because of a project activity are fairly and fully compensated; and

- LMI dwelling units demolished or converted to non-LMI dwelling uses are replaced.

The following steps must be undertaken to meet this requirement:

1. Adoption of the Residential Anti-displacement and Relocation Assistance Plan Certification by the local governing body;

2. Place proof of adoption in the project file; and

3. If displacement or conversion is planned as part of the project, preparation of the Anti-displacement Plan, submission of the Plan to DHCD for review and concurrence, and adoption of the Plan by the local governing body.

See Appendix 8 for a model plan.

☏ The model plan commitment is geared solely towards residential displacement and relocation. Comparable requirements exist for businesses that are displaced. If it appears that your project may displace one or more businesses, contact your Community Development Specialist immediately.

## *Fair Housing Certification*

For each program year in which the CDBG Agreement is active, the Grantee must take affirmative steps to further Fair Housing. To meet this requirement, the Grantee must certify that it will undertake at least one fair housing activity in each project year. A list of activities can be found in Chapter 4: Grant Management.

See Appendix 9 for a copy of the Fair Housing Certification.

## *Public Hearing Documentation*

As part of the Grant Proposal, the Grantee has assured DHCD that it has met all of the citizen participation and public hearings requirements. The Grantee must make available documentation that verifies that this requirement was met.

## *Leverage Funds*

They *must* be in hand and ready to be used for the purposes stated in the Grant Proposal before the CDBG Agreement can be issued. The Grantee must

document the availability of all leverage funding identified in the Grant Proposal e.g., firm letters of commitment from other funding sources.

✱ **Lacking all required project funds calls into question the Grantee's ability to deliver the necessary benefits. DHCD reserves the right to alter the terms of the grant offer until either the leverage funds are committed or replacement funds are secured.**

## *Procurement of Services*

The Grantee is required to publish a request for qualifications for necessary professional and non-professional services in a regional newspaper and to select the consultant(s) during this time. The Grantee must submit the proposed contracts to DHCD for review and concurrence.

✱ **No agreement for services may be signed until after the effective date of the CDBG Agreement unless prior written authorization to do otherwise is granted by DHCD. The exception is those contracts that DHCD authorized to be executed during a planning grant.**

## *Contracts and Agreements*

The successful completion of the project may require the Grantee to enter into various contracts and agreements. Examples include:

- Professional and non-professional services contracts;
- Interagency agreements with other public entities that will be involved in the implementation of the project;
- User agreements with beneficiaries;
- All necessary easements;
- Investor-Owner Rental Commitments; and
- Industry Agreements.

The necessary contracts and agreements will be identified at the contract negotiations meeting. The Grantee must prepare drafts of the documents and submit them to DHCD for review and concurrence. This review is in addition to the review and concurrence of the Grantee's Attorney.

See Appendices 10 through 12 for more details on the contracting process and samples of user agreements and industry agreements.

## *Plans and Program Designs*

Depending upon the project type, various plans and/or program designs will be required. Examples of them include:

- Project Management Plan;
- Staffing and Operations Plan;
- Blight Identification and Removal or Remediation Plan;
- Program Income Plan;
- Residential Anti-Displacement and Relocation Assistance Plan;

- Housing Program Design;
- Façade Renovations Program Design; and
- Microenterprise Program Design.

These documents outline the policies and procedures that the Grantee will observe during the project's implementation. The proposed plans and/or program designs must be submitted to DHCD for review and concurrence. As each is specific to the Grantee and project type, no representative models are provided. See Appendices 13 through 19 for more details on plans and program designs.

### *Resolution of Prior Grant Conditions*

Any outstanding issues related to previous CDBG projects must be resolved during the Pre-contract Activities Phase. Examples would include late or delinquent audit reports, unresolved compliance review findings, failure to achieve the appropriate level of project close-out and failure to submit required information and documentation.

## Contract Execution

As previously noted, upon the completion of the Pre-contract Activities, your Community Development Specialist will conduct a review to ensure everything was done properly. Once the review is done and any identified issues are resolved, a CDBG Agreement will be prepared by DHCD and two (2) copies will be forwarded to the Grantee for execution.

The Chief Executive Officer, as designated by the local governing body, must sign the CDBG Agreement and return one (1) original to PAAO. The CDBG Agreement specifies the outcomes and benefits the Grantee is expected to provide and the timeframe involved. The Grantee may not alter the scope of the project or reduce the level of LMI benefit once the CDBG Agreement is executed. Should the need arise, the CDBG Agreement may be amended as outlined in Chapter 4: Grant Management.

❋ **In order to avoid any necessary delays, Grantees should have their attorney review the CDBG Agreement during the Pre-contract Activities Phase. See Appendix 20 for a copy of the CDBG Agreement Sample.**

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# CHAPTER 3: BENEFITS

This chapter outlines DHCD's benefit policies for projects awarded through the competitive rounds. These policies support the objectives of the CDBG program, which are providing benefits to LMI persons, eliminating slum and blight, and/or meeting a particular urgent need.

For purposes of clarity, this chapter is divided into the following sections:

- CDBG National Objectives;
- General Benefit Responsibilities;
- Definitions;
- Requirements by Project Type; and
- Recordkeeping.

## CDBG National Objectives

All CDBG-funded projects must meet one of three National Objectives:

- Elimination of Slums and Blight;
- Meeting an Urgent Need; and
- Providing Low- and Moderate-Income Benefit.

Seventy percent of all CDBG funds must be spent for objectives which meet the National Objective of benefiting primarily LMI persons. The bulk of the Chapter sets forth the policies and procedures for meeting LMI benefit. The requirements regarding the other two National Objectives is discussed below.

### *Elimination of Slums and Blight*

Projects or activities funded under this objective include Downtown Revitalization, Site Redevelopment or Brownfields, and most demolition. Any project funded under this National Objective must designate a geographic area, identify all blighting influences within that area and eliminate those influences by their removal or improvement during the course of the project.

### *Meeting an Urgent Need*

Projects or activities funded under this objective are generally the result of natural disasters such as floods, hurricanes, tornadoes or drought which directly affect the health or safety of a community or its residents. A declaration of emergency must be issued by the Governor or an imminent threat must be declared by the State Health Commissioner. The Grantee must document that it is unable to finance the project on its own and all other sources of funding must be utilized prior to CDBG funds.

### *Providing Low- and Moderate-Income Benefit*

There are two ways in which persons may benefit from the CDBG Program: Area or Direct Benefit. In either case, Grantees must document that at least 51% of the persons benefiting are low- and moderate-income.

**Direct Benefits**

Most CDBG projects are funded with the objective of providing direct benefits to primarily LMI persons. Direct LMI beneficiaries are those persons identifiable by name and income status who receive direct, permanent and measurable benefit from project activities such as employment, health care or rehabilitated housing.

**Area Benefits**

CDBG improvements which benefit a geographic area, but may or may not have a measurable impact on a given person constitute an area benefit. Examples would include a water tank for a community center which does not have special enrollment programs limiting access to primarily LMI persons.

Area benefits are not focused on specific people or populations and can only be funded through CDBG if the census tract or political jurisdiction in which they are located is 51% LMI by census documentation. Generally, the only area benefit activities funded through CDBG are incidental to a larger neighborhood project which has a high level of direct LMI impact.

## General Benefit Requirements

By executing the CDBG Agreement, the Grantee commits to provide specific outcomes and benefits to LMI persons.

✱ **As noted in Chapter 1: Introduction, altering the scope of the project and reducing the level of LMI benefits is not permitted once the CDBG Agreement has been executed. Failure to achieve the required benefits could result in repayment of the grant in part or in whole.**

Benefit restrictions also apply to the provision of direct benefits to non-LMI persons.

## Definitions

Unless otherwise noted, the Grantee is expected to use the following definitions pertaining to LMI persons.

### *LMI Households*

For all CDBG-funded projects, except those involving job creation or retention, LMI persons are those persons living within an LMI household. Household is defined as all persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any group of related or unrelated persons who share living arrangements.

### *LMI Persons*

LMI persons are defined as persons who are members of a household whose cumulative household annual income is at or below 80% of the median income

of the County or City or the non-metropolitan area of the Commonwealth (whichever is greater) in which the project is located. LMI status is determined from HUD's Section 8 Income Guidelines. These guidelines are updated and published annually. They are available at www.huduser.org click on "Data Sets." Or go to www.dhcd.virginia.gov and click on "Reports/Statistics/Forms/ Publications" and look under "Community Development Block Grant."

### *Total Annual Income*

Total annual income includes wages, salaries, tips, commissions, self-employment income from own non-farm business, including proprietorships and partnerships, farm self-employment income, interest dividends, net rental income, or income from estates or trust, Social Security or railroad retirement, Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs, retirement, survivor, or disability pensions, and unemployment compensation, and alimony.

Total annual income does not include employment income of children under the age of 18 years, foster childcare payments, foster care payments, hostile fire pay, inheritance income, medical cost reimbursements, lump-sum asset payments, educational scholarships or the income of a live-in aide.

### *Fairness and Equitable Distribution of Benefits*

- The program may not benefit moderate-income households to the exclusion of low-income households. Low-income households are defined as those whose aggregate income by household size is below 50% of the locality's median household income;

- The program may not act to deny reasonable benefit to minority, elderly or female-headed households through its guidelines and loan structuring; and

- The program must state that it may not set aside funds or specify goals that adversely affect the benefit of low-income, minority, elderly or female-headed households.

☏ Contact your Community Development Specialist for specific questions or definitions regarding income, self-employed business income or asset limitations.

### *Direct LMI Beneficiaries*

Direct LMI beneficiaries are those persons identifiable by name who receive direct, permanent benefit from project activities such as new or retained jobs, indoor plumbing or rehabilitated housing.

## Community Facilities

To be eligible for funding, community facility projects must provide benefits to LMI households, usually in the form of public infrastructure improvements. The following benefit requirements apply:

- At least 51% of the households who benefit by the project must be LMI;

- All LMI households who want to be served by CDBG-funded water or sewer improvements project and who reside on property within 200' of the ROW for the line must be physically connected to the system at no cost to the LMI household. This is conditioned by the premise that a household's request occurs within a reasonable time to do so during construction of the project and the estimated cost of completing the physical connection is less than or equal to $3,500;

- All public improvements provided must be of equal quality and extent as those services generally in existence throughout the rest of the locality;

- The Grantee must waive access or connection fees as required by Section 104(b)(5) of the *Housing and Community Development Act*;

☎ Special rules apply when USDA Rural Development (RD) funds are involved. In the event RD funds are involved, call your Community Development Specialist for guidance.

- If a property owned by a LMI household cannot utilize the installation of sewer services because it is not connected to an approved water source, the Grantee must provide one to the house as a CDBG-eligible expense. If a property is owned by a investor-owner, the above applies plus the owner must agree to maintain an affordable rent and not to increase the rent due to CDBG investment for a minimum of ten (10) years; and

- If a property owned by a LMI household cannot utilize the water or sewer services because the house lacks indoor plumbing, indoor plumbing must be installed and the house must be brought up to DHCD HQS, using standard rehabilitation procedures as outlined in Chapter 9: Housing. If a property is owned by an investor-owner, the above applies plus the owner must agree to maintain an affordable rent and not to increase the rent due to CDBG investment. This is generally in effect for a minimum of ten (10) years.

This type of project is discussed in detail in Chapter 6: Design and Construction Management.

# Housing

To be eligible for funding, housing projects must provide or improve *permanent year-round housing* for LMI households. The following benefit requirements apply to all housing projects and must be reflected in the project's Program Design:

- 100% of single-family structures and multi-family units that are rehabilitated with CDBG funds must be inhabited by LMI households verified to meet

Section 8 income limits for the project area;

- When CDBG funds are for site development for single family subdivisions, 51% of the housing units in that development must be occupied by LMI households as identified in the CDBG Agreement;

- When CDBG funds are used to bring multi-family housing units up to DHCD HQS, said units must be occupied by 100% LMI households;

- In instances when CDBG funds are used to improve building-wide components e.g.; roof and HVAC improvements 51% or more of the units in said building must be occupied by LMI households as identified in the CDBG Agreement;

- Unless prior approval is obtained from DHCD, 100% of all beneficiaries must have been project residents at the time of the grant application's submission;

- Moderate-income households may not benefit to the exclusion of low-income households. Low-income households are defined as those whose cumulative income by household size is below 50% of the locality's median household income;

- The program may not act to deny reasonable benefit to low-income minority, elderly or female-headed households through its guidelines and loan structuring;

- The program may not set aside funds or specific goals that adversely affects the benefit of low-income, minority, elderly or female-headed households;

- Rent charged to the current and subsequent LMI tenants may not be raised for ten (10) years unless the costs to the owner have increased and these costs are directly attributable to the rehabilitation work i.e., monthly payments on a rehabilitation loan, increased insurance costs, or increased property taxes; and

- Regardless of direct costs incurred by the landlord, rent may not exceed or be raised to exceed 35% of gross income of the LMI tenant household.

This type of project is discussed in detail in Chapter 9: Housing.

# Economic Development

To be eligible for funding, economic development projects assist Grantees in creating job and business opportunities for LMI persons and eliminating economic and physical blighting conditions in deteriorated areas as a means for creating better environments for future economic activities.

## *Job Creation and Retention*

To be eligible for funding, job creation and retention projects must create or retain jobs and business opportunities for LMI persons. CDBG funds are typically

used to expand or improve public infrastructure that is serving the Industry at the time that an Industry is locating or expanding.

The following benefit requirements apply to job creation and retention projects:

- At least 51% of the *permanent, full-time equivalent jobs* created or retained must be made available to or held by LMI persons. This is non-negotiable and must be met within two (2) years of the date of the completion of private investment. Private investment must occur within two (2) years of the commencement date of the CDBG Agreement;

- The jobs created for or retained by LMI persons must require no more than a high school degree and no special skills or training as a requirement for employment. Specialized training may, of course, be provided as part of the hiring process as long as it is accessible to untrained persons; and

- The industry must provide a post-probationary wage of at least 1.5 time the minimum wage for 90% of all new employees and provide an employment benefits package that includes, at a minimum, basic medical coverage and insurance (of which at least 50 percent is employer-paid), to all employees. The post-probationary period must not exceed six months.

If additional industries move into an industrial park during the construction phase of CDBG-funded activities and they will benefit from the CDBG activities, these industries are also subject to the above benefit requirements.

Depending on the specific circumstances of your project, there may be additional contractual requirements.

❋ **Regardless of any good faith language in the Industry Agreement, DHCD cannot waive the 51% benefit requirement!**

## *Downtown (Business District) Revitalization*

To be eligible for funding, downtown revitalization projects primarily improve the economic environment of the Grantee by eliminating slums and blight or providing direct benefits to LMI persons. Therefore, the level and type of benefits is specific for each project, as outlined in the CDBG Agreement. See the above sections on Housing, Economic Development and Entrepreneurship Development benefit requirements as applicable to your project.

## *Microenterprise Projects*

Microenterprise loans are loans that are: typically targeted to businesses with 5 or fewer employees; average loan amount is $8,000-$10,000 and never exceed $50,000.

To be eligible for funding, entrepreneurship development projects primarily provide benefits to LMI persons through job creation. CDBG

funds are typically used to provide microenterprise assistance but can also involve technical and managerial assistance, workforce education and training, technology transfer and network opportunities.

The following benefit requirements apply:

- At least 51% of the individuals who receive the training and capital must be LMI; or
- At least 51% of the individuals who receive the training and capital must commit to creating jobs that can be legitimately held by LMI persons; and
- The jobs created for or retained by LMI persons must require no more than a high school degree and no special skills or training as a requirement for employment. Training may, of course, be provided by the industry after employees are hired.

All three types of economic development projects are discussed in detail in Chapter 10: Economic Development.

## Community Service Facilities

To be eligible for funding, community service facility projects must provide benefits to LMI households, usually by providing an appropriate physical environment to deliver community services such as medical, dental, day care, or telemedicine services. Grantees are awarded funding based upon the proportion, directness, equitability and sustainability of benefits to LMI persons.

For these projects, the following classes of people are generally presumed to be principally LMI persons:

- Abused children;
- Battered spouses;
- Elderly persons;
- Severely disabled persons meeting the Bureau of Census' definition;
- Homeless persons;
- Illiterate adults;
- Persons with AIDS; and
- Migrant farm workers.

The following benefit requirements apply and must be reflected in the Staffing and Operations Plan:

- At least 51% of the persons who receive services must be LMI;
- Access fees (fees not related to actual services) cannot be charged to LMI persons and service fees must be affordable to LMI households; and
- How services must be provided for twenty (20) years.

This type of project is discussed in detail in Chapter 11: Community Service Facilities.

## Comprehensive Projects

Comprehensive projects involve at least two (2) types of project activities. Benefit requirements for each type of project activity involved apply to a comprehensive project.

## Disaster Relief Projects

Disaster relief or urgent need projects can involve eliminating slums and blight or providing direct benefits to LMI persons. Benefit requirements for each type of project activity involved apply to these projects. Disaster relief eliminates the cause of the urgent need for future and/or repairs damage caused by the enumerated event. In the case of LMI households, it provides direct benefit through bringing the house up to DHCD HQS. Non-LMI households are eligible for flood mitigation and reimbursement of documented material cost for repair.

## Recordkeeping

Cumulative documentation must be kept regarding the outcomes and benefits to applicants, proposed beneficiaries and actual beneficiaries by state fiscal year (July 1 – June 30) and reported annually to PAAO.

Persons must be tracked by their LMI and non-LMI status. In addition to the general LMI status, Grantees must track LMI households by extremely low- (0-30%) and very low- (31-50%) income categories when beneficiaries receive a direct benefit such as housing or job creation. For all other projects, households are tracked by the LMI (80% or below) income category.

For all projects, persons must also be tracked by race and ethnicity as categorized by HUD, as well as by owner-occupied or tenant status, female-head of household (occupied by one or more children under the age of 18), elderly household (62 years of age or older), and disabled household.

☑ If beneficiaries do not want to identify their ethnicity, inform them that it is a requirement and that you will identify them based upon your observation.

All of the above demographic data must be further broken down by project activity e.g., job creation, job retention, rehabilitation, substantial reconstruction, housing production, water or sewer.

Job creation projects must retain a listing by job title of the specific jobs created, a listing by job title of the jobs filled, the name and income status of the persons who filled each position and the full-time equivalency status of each job. See Appendix 21 for the required form.

Microenterprise loan projects must track the number of loans made to small businesses, the number of defaults, and the number of hours of business training provided.

Disaster relief projects can involve benefits to non-LMI households. In these cases, financial assistance to non-LMI households with CDBG funds must be tracked and reported separately from assistance to LMI households.

This information must be reported to DHCD through the *Annual Activity and Beneficiary Report* and the *Final Evaluation Reports*. See Appendices 22

and 74 respectively for samples of these reporting forms.

Finally, for water and sewer projects, Grantees must also keep records that verify that all LMI households have been physically connected and a map that indicates the location of each LMI and non-LMI households connected.

☑ At the outset of the project, Grantees should work with their Community Development Specialists to assure that the recordkeeping system set up will provide PAAO with the information that will be required.

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# CHAPTER 4: GRANT MANAGEMENT

This chapter outlines the Grant Manager's key responsibilities during the life of the project. The main responsibility is the successful achievement of the project outcomes as outlined in the CDBG Agreement. Proper grant administration also entails that the project is completed on time and in budget.

For purposes of clarity, this chapter is divided into the following sections:

- Project Management;
- Reporting Requirements;
- Fair Housing Requirements;
- Complaint and Appeals;
- Real and Personal Property Management;
- Contract Amendments;
- Compliance Reviews; and
- Recordkeeping.

## Project Management

The Grant Manager's key role is to make sure the activities outlined in the CDBG Agreement are achieved, completed on time, within budget and in compliance with the program requirements. It is the job of the Grant Manager to oversee the project in such a way to help ensure this happens and there are as many ways to achieve this outcome as there are Grant Managers and projects. However, the key is developing and using an on-going system to verify that Management Team members are achieving their assigned tasks according to the project timeline and the capacity to intervene so problems, like non-performance, are addressed in a timely manner.

The Grant Manager has several tools to assist in overseeing a project:

### *Grant Management Manual*

This manual outlines the steps and procedures that need to be followed for successful project completion. The manual also includes directions for actions to be taken. It includes specific language and instructions that must be inserted verbatim in various documents as well as models and samples of documents to be prepared. *It is considered a contract document which is part of the CDBG Agreement.*

Additional copies of the manual, as well as many of the required forms, can be downloaded at www.dhcd.virginia.gov. Click on "Reports/Statistics/Forms/ Publications" and look under "Community Development Block Grant."

### *DHCD Personnel*

☏ Contact your Community Development Specialist at any time if you perceive a need for technical assistance (TA) to help ensure compliance with program requirements. Depending upon the circumstances, TA can take place by phone or letter, on site,

at workshops, or at the PAAO offices in Richmond and Abingdon.

Technical assistance is provided through four principal individuals:

- The Associate Director who is responsible for contract negotiations, program management design, policy and overall administration;

- The Program Manager who is responsible for uniform policy implementation and program management by the staff of Community Development Specialists;

- The Community Development Specialist who is responsible for direct technical assistance and for assuring that each assigned Grantee achieves stated performance and compliance requirements; and

- The Fiscal Analyst who is responsible for assuring accountability of funds, technical assistance in financial management, audit control and management.

If your Community Development Specialist is unavailable and an answer is needed expeditiously, you should speak to the Program Manager or, if necessary, the Associate Director, but not to another Community Development Specialist. *Questions that require a written response must be put in writing!*

## *DHCD Workshops*

DHCD offers specialized training workshops for Grantees. The intent of these workshops is to increase the knowledge and skills of project staff thereby improving the Grantee's abilities to successfully complete its project. While all are welcome to attend any DHCD-sponsored workshop, Grantees are required to send all responsible staff, including consultants and non-profits, to all mandatory workshops. These workshops are announced in advance, including being posted at www.dhcd.virginia.gov. Click on "About DHCD" then "Agency Calendar."

## *Project Management Teams and Project Management Plans*

One of the Pre-contract requirements is the development of the Project Management Plan (PMP). It is a great management tool that enables the Grantee and its partners to know where the project is going and how it will get there. As part of the regularly scheduled Project Management Team meetings, the PMP should be reviewed and compared with actual progress. If the review determines something is "amiss" in the project i.e., timeline and budget, then the Project Management Team can use the meeting to identify the necessary corrective action.

❋ **Unforeseen problems will almost certainly arise, requiring the PMP to be modified. As an official contract document, substantive changes to the PMP must be approved by DHCD in writing, but the Grantee will always keep DHCD updated on any changes to the PMP.**

☑ At the first Management Team meeting, some Grantees find it useful to give every member a three-ring binder with tabs for minutes, plans, program designs, etc. to help them stay organized and focused.

## *Conflict of Interest*

DHCD observes a very strict conflict of interest position. No work can be done on the property of any person, or his/her immediate family, who has or had decision-making power in the CDBG program from the time the application was planned, developed and submitted to DHCD to the grant's execution and implementation without DHCD's prior written approval regardless of any prior approval of a Program Design. This includes any elected and appointed officials, employees of the grantee, or Housing or Façade Board Member, in accordance with Virginia and federal conflict of interest requirements.

In order to obtain DHCD's consent, a Grantee must contact DHCD before providing any benefit to an individual in any of the above-listed categories, outlining the nature of the potential conflict. Relevant information would include whether or not the individual is a low- to moderate person and whether or not he or she has waived his or her responsibilities with respect to the specific assisted activity in question throughout the grant process.
The Grantee may request a waiver to DHCD's decision. In such a case, the Grantee must submit documentation of the nature of the conflict, including an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made. An opinion of the Grantee's attorney must be included; stating the exception from 570.611 (d)(2)(i)-(vii), "Factors to be considered for exceptions," is sought and that it would not be a violation of State or local law.

Please note that the CDBG Agreement addresses conflict of interest in the following sections of the "General Conditions:" "19: Subsequent Contracts," "21: Interest of Member of Agency and Others," and "23: Certifications," as well as the following section of the "Assurances/ Certifications:" "13: Conflict of Interest."

Specifically, Title 24 CFR Part 570.611 states in pertinent part:

> (b) ". . . no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in position to participate in a decision making process or to gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity . . . either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. . . ."

(c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or subrecipients which are receiving funds under this part.

No person may bid on or be awarded a contract to perform work on property which they own or in which they have financial interest.

### *Project Sign*

DHCD requires that a project sign be installed within thirty (30) days of the execution of the CDBG Agreement, regardless what the first activity is. See Appendix 23 for the project sign specifications.

☎ Call your DHCD Community Development Specialist if you need an electronic copy e.g., JPEG, of the DHCD logo for your printer.

## Recordkeeping

Key to the successful completion of a compliance review is the availability and organization of all required documents. Therefore, the Grant Manager must set up an effective filing system at the Grantee's office. All documents pertaining to use of CDBG funds and program compliance must be physically located at the Grantee's office. ***These records must be maintained by the Grantee for a minimum of five (5) years after Final Closeout or for any longer period as required by any other applicable laws and/or regulations.*** See Chapter 12: Grant Closeout Procedures for more information about Final Closeout.

The criteria for an effective filing system include:

- Coded: The files must be coded for easy identification as to grant, program year, and category of file. Each invoice should show the ledger code and proof of review and approval by the appropriate staff;

- Complete and Accurate: Files must be well maintained. The information contained in each file should be current and in the proper file folder;

- Accessible and Easy To Use: The filing system must be simple enough that any individual can easily locate and file information;

- Timely: All project files must be up to date. This means that consultants must provide the Grantee with copies of their working papers on a monthly basis and just prior to a compliance review; and

- Secured: All project files must be properly protected through the use of locks, safes and other measures to ensure security;

Based on the criteria above, the preferred model for organizing and labeling files for the Grant can be found in Appendix 24. The model filing system separates the files into two

categories: grant files and project files. Grant files contain all the information relating to administration, financial management, compliance and all related general matters. Project files contain information related to the specific project activities.

✱ **The expenditure of leverage funds must be documented in the same manner as those activities funded with CDBG funds and, likewise, must be kept current.**

☑ If the Grant Manager delegates file maintenance to another person, the administrator must provide that person with a copy of the model filing system so they know what goes into each file.

If the project includes housing activities, the individual household rehabilitation files must be organized as outlined in Appendix 25.

# Reporting Requirements

Throughout the life of the project, the Grant Manager is required to submit various reports to DHCD. These reports help DHCD to monitor the project's progress and to identify when technical assistance might be needed.

## *Progress Reports*

Progress reports are required at a specific time and are intended to provide necessary information regarding the progress, obligations and expenditures that have occurred to date. Their main purpose is to ensure that the Grantee and DHCD are aware of the programmatic and financial status of the project and that sufficient financial resources are on hand to complete the project's activities.

A progress report does not entail any action or response on the part of DHCD unless it indicates actual or potential problems in the implementation of the project in accordance with the contract documents.

There are three types of progress reports: monthly updates, annual activity and beneficiary reports, and annual expenditure reports.

**Monthly Updates**

Monthly updates must be provided to the Grantee's Community Development Specialist. Updates describe the status of the implementation of the project activities. Progress toward achievement of outcomes, benefits and budget are included as well as timely implementation of key administrative activities.

The Community Development Specialist and the Grants Administrator will agree on the format to be used. The Grantee and the Community Development Specialist will negotiate on the date on which the update will be submitted and whether it will be transmitted via phone, e-mail or other means.

**Annual Activity and Beneficiary Report**

The *Annual Activity and Beneficiary Report* is a preprinted report sent to Grantees by DHCD and must be completed and returned by the date stated on the form. Report forms are project specific for the previous fiscal year. See Appendix 22 for a sample.

**Annual Expenditure Report**

The *Annual Expenditure Report* is another preprinted form, which requires financial data specific to the project. This report is usually sent out prior to a Compliance Review or in lieu of a financial review. Failure to properly complete this report can lead to a Financial Finding.

**Annual Contract and Subcontract Activity (HUD 2516) Report**

The Annual Contract and Subcontract Activity Report is another preprinted form sent to Grantees by DHCD and must be completed and returned by the date specified. This report requests information on all contracts and subcontracts awarded during the previous federal fiscal year (October 1 through September 30) that exceeds $10,000. A final report must also be submitted with the *Final Closeout Reports.*

☎ Call your DHCD Community Development Specialist if you would like an electronic version of the report form.

## *Final Closeout Reports*

Once all CDBG funds but the last 5% of the administrative costs are drawn down and the Final Compliance Review has taken place, the project is ready to be administratively closed out. DHCD will send to the Grantee a Letter of Conditions, which identifies what has to be done to achieve final closeout. Along with the letter, DHCD will send the Final Closeout Reports or "the blue forms." They usually consist of the following five reports: a *Final Financial Report*, a *Final Construction Report*, a *Final Evaluation Report*, a *Program Income Report*, and a *Leverage Report*. The Final Closeout Reports are further discussed in Chapter 12: Grant Closeout Procedures.

☑ Ask your Community Development Specialist for samples of the blue forms now so you will know from the beginning what data you will need to report to DHCD at the end of the project.

# Fair Housing Requirements

Title VI of the *Civil Rights Act of 1968* makes it illegal to discriminate in housing based on the following factors:

- Race;
- Color;
- National origin;
- Religion;
- Sex;
- Age;
- Familial status (families with children under the age of 18 or who are expecting a child); and
- Disability.

The Grantee's Fair Housing Certification commits the Grantee to take affirmative steps to further fair housing during each program year in which the CDBG Agreement is active.

The Grant Administer must ensure that at least one of the following actions (additional actions may be approved by DHCD) is completed during each program year. Examples of acceptable activities include:

- Adopt a resolution endorsing the concept of fair housing, including the specific rights included in the law, and advertise its wording in a display advertisement in a local newspaper;

- Attendance by a member of the local governing body or Chief Administrative Official and a second appropriate representative (realtor, banker, etc.) at a fair housing workshop approved by DHCD;

- Provide all program beneficiaries with a copy of DHCD's fair housing brochures;

- Distribute copies of the fair housing brochures at local public events;

- Enlist the participation of local realtors, lenders and homebuilders in an agreement, and promotion of affirmative marketing, open housing and review of underwriting/credit criteria, etc. Publish such agreements in a local paper;

- Conduct public educational programs for local housing consumers, providers, and/or financial institutions, regarding fair housing issues;

- Develop a public information program using local newspapers, radio stations, bulletin board, churches, utility bill mailings, or local government TV channels to ensure that all segments of the community are aware of fair housing requirements, especially realtors, landlords, financial institutions, and the minority community;

- Sponsor a fair housing poster contest at local schools in conjunction with informational session;

- Develop a fair housing assistance program to make housing opportunities available in non-minority areas, monitor compliance and submit discrimination complaints to the State or Federal government;

- Conduct a formal Assessment of Impediments (AI) study of local zoning, real estate and/or financing practices which affect housing choices of minorities and other protected classes; and

- Survey the special housing problems of minorities and women, determining any effects of discrimination and developing a plan to assist them in overcoming these effects.

✱ **The fair housing activity selected by the Grantee must be a different one each program year. Furthermore, all fair housing activities must be properly documented so their completion can be verified during the compliance**

**review. If the Grantee has more than one active CDBG project, only one fair housing activity is required but all project files must be documented.**

# Complaints and Appeals

During the course of the project, it is possible that applicants, beneficiaries and contractors will make complaints. All complaints must be handled in an even-minded, diplomatic manner designed to identify and resolve the real problem. All complaints are to be brought to the attention of Project Management Teams or Oversight Boards.

Many complaints are the result of not clearly communicating what the project entails and what is required and expected of applicants, beneficiaries and contractors. There are numerous opportunities when the program can be explained, including community, management team and Oversight Board meetings, initial housing inspections, pre-construction conferences, and home maintenance education classes. It is especially important in housing and façade projects that homeowners and business owners understand that work items are not negotiable and side agreements with contractors are not permitted.

The Grant Manager must investigate any written complaint and respond to it. Appeals of the Grant Manager's decision should be addressed, in writing, to the Housing or Façade Rehab Oversight Board. (However, contractor complaints, disputes or appeals may involve use of local building code review committees, as outlined in the Invitation to Bid.)

Appeals of the Oversight Board's decision should be addressed to the local Chief Administrative Official. Appeals of that decision should be addressed to the local governing body.

All written complaints and appeals *must* be addressed within fifteen (15) days of receipt and resolved within thirty (30) days. A response to all written complaints and appeals must be in writing and must include an explanation of the reason(s) for the decision reached, information on the next step in the appeals process and how many days from receipt of notice the complainant has to appeal any decision.

Final appeals should be addressed, in writing, to DHCD. The appeal should include a copy of all correspondence that has taken place to date. The appeal should identify the problem and the desired solution. DHCD will investigate the complaint and respond, in writing, in a timely manner. All involved parties will be copied.

If the complainant requires assistance in putting his or her complaint in writing, staff will make assistance available. The same is true for appeals.

As a part of the intake process, applicants will be informed that if their application is denied, they will be notified, in writing, of this decision and that they have fifteen (15) days from receipt of the notice to make a written appeal to the Grant Manager.

Throughout the construction process (prior to final job close-out) homeowners are encouraged to discuss with the Rehabilitation Specialist or Grant Manager any concerns or

problems regarding workmanship or construction activities. The Rehabilitation Specialist will facilitate problem resolution between the parties to the contract. If a solution cannot be achieved informally, the parties will be advised to submit their complaint, in writing, to the Grant Manager within fifteen (15) days.

Once a rehabilitation job is officially closed out and the one-year warranty period is in effect, the homeowner should address complaints, in writing, directly to the responsible general contractor.

A record of all written complaints, appeals and decisions must be kept in the contract files at the office of the Grant Manager. Complaints related to permanent relocation have additional consideration. See Chapter 7: Acquisition and Relocation for more details.

☑ Attach the complaint and appeals policy to the housing rehabilitation application, along with the name, address, and phone number to whom complaints should be addressed.

# Real and Personal Property Management

Grantees may need to use real or personal property during the project. Although the property can be purchased, Grantees may wish to consider the relative advantages of renting or leasing property, particularly when the expected useful life of the property extends beyond the term of the program.

There are specific requirements pertaining to the use and disposition of real property and nonexpendable personal property acquired with federal funds. The Grant Manager must ensure these requirements are observed.

## *Real Property*

Real property means land, including land improvements, structures and appurtenances; it does not include moveable machinery and equipment. The title to real property acquired in whole or in part with CDBG funds shall be vested with the Grantee as long as that property remains in use for the purpose authorized under the Grant or a minimum of twenty (20) years. If it is determined that the real property is no longer needed for the authorized purpose, the Grantee may either keep the property for use in other community development projects approved by DHCD, or return the property to DHCD. If it is decided to dispose of real property, the proceeds must be treated as program income and used in accordance with a *Program Income Plan* approved by DHCD. See Appendix 16 for a copy of the plan.

## *Personal Property*

Personal property includes all property that is not real property. It may be tangible (such as desks, chairs, typewriters, lumber, tools, and drainage pipes) or intangible. Property having no physical existence is considered intangible. Patents, inventions, and copyrights are examples of intangible property. Personal property is further classified as expendable or nonexpendable.

## *Nonexpendable Personal Property*

Nonexpendable personal property is defined as all property other than land and improvements having a useful life of more than one year and an acquisition cost of $1,000 or more per unit, such as computers. The acquisition cost of purchased, nonexpendable personal property is the net invoice unit price of the property plus the cost of modifications, attachments, accessories, or auxiliary apparatus' necessary to make the property useful to the community development effort. Other costs such as installation, transportation, taxes, duty, or in-transit insurance shall be treated in accordance with the Grantee's regular accounting practices.

If the Grantee acquires tangible nonexpendable personal property with Grant funds and title is not taken by DHCD, the title shall be vested with the Grantee subject to two primary sets of conditions that restrict your right to transfer title and the uses to which the property is put.

These two sets of conditions are addressed in the following two sections.

**Right of DHCD to Transfer Title**

DHCD may reserve the right to transfer title from the Grantee to eligible federal agencies or third parties at the conclusion of the project. If such a reservation is made, it shall be subject to the following standards:

- Property subject to the reservation shall have been identified in the grant or designated in a written communication from DHCD;

- Grantee may pay DHCD such an amount determined by DHCD to be the depreciated value of the property times the percent of CDBG funds used in the original acquisition; and

- DHCD must issue disposition instructions within 120 calendar days after the end of the federal support of the project for which the property was acquired. If the DHCD fails to do so, the Grantee may continue to use the property in the program for which it was acquired as long as is needed. When no longer needed for the original community development program, the Grantee may use the property with DHCD concurrence in connection with other federally sponsored activities in the following order of priority:

    - Activities sponsored by DHCD; and

    - Activities sponsored by other federal agencies.

**Disposition of Nonexpendable Personal Property**

When the Grantee no longer needs the property, it may be used for other activities in accordance with the following standards:

- Property with an acquisition cost less than $1,000 may be used for other activities without reimbursement to the Federal

Government or may be sold on the open market;

- Property with an acquisition cost of $1,000 or more may be used or sold provided that the Grantee receives approval from DHCD and compensation is made to DHCD. The amount of compensation shall be computed by applying the percentage of federal participation in the cost and use of the original purchase to the under depreciated value of the property as set forth above; or

- If a Grantee has no need for the property and yet it continues to be useful, then a request for disposition instructions must be sent to DHCD. In response to this request, DHCD may instruct a Grantee to transfer or sell the property.

### *Expendable Personal Property*

Expendable personal property refers to all tangible personal property other than nonexpendable. Examples of expendable personal property are office supplies and lumber.

## Contract Amendments

The Grant Manager is expected to manage the project according to the activities set forth in the CDBG Agreement. However, in rare cases, changes must be made. This requires an official contract amendment to the CDBG Agreement that has been signed and executed by the Grantee and DHCD.

No amendment that significantly alters the scope or objectives of the project as set forth in the approved Grant Proposal and CDBG Agreement will be allowed, except as indicated below. No modification of project activities is allowed which will decrease the scope of the project.

If a project changes in such a manner as to significantly affect the project activities but not decrease the intended benefit of the LMI persons for whom the project was funded, an amendment to the CDBG Agreement may be in order. The following steps are required in amending the CDBG Agreement:

1. The Chief Executive Officer must submit a letter to the Associate Director of DHCD, outlining the requested changes and an explanation as to why they are necessary. This letter might need to be accompanied by appropriate support documentation, including a revised Management Plan, Performance-based Project Budget or project area map;

2. Upon receipt of the request, DHCD will review the substance and contributing conditions involved in the change to determine whether the change is justified. No contract amendment will be approved which results in a project which would not have been approved for funding in the selection competition in which the initial proposal was rated; and

3. A formal acknowledgment of the amendment will be transmitted by DHCD and must be executed by both the Grantee's authorized

official and the Deputy Director of DHCD.

If an amendment request is approved by DHCD, the Grantee must not obligate any funds for affected activities until the following steps have been taken:

- An Environmental Assessment must be undertaken and an Environmental Review completed if the amendment would affect the type or scope of the project activities; and

- A properly advertised public hearing must be held if the proposed change in scope results in a change in the proposed beneficiaries.

☎ Consult with your Community Development Specialist as soon as you perceive a need for a contract amendment to ensure you know what support documentation will be required.

# Compliance Reviews

To ensure the project complies with DHCD's program requirements, the Community Development Specialist will conduct on-site compliance reviews. The Grant Manager is expected to assist the Community Development Specialist with the scheduling of the review by making sure that all key staff and consultants are available to answer the Community Development Specialist's questions.

When the review is conducted will be determined by the degree or amount of progress on the project. An interim compliance review is generally done around forty-five (45) days after construction begins but not later than 14 months after the CDBG Agreement's execution. A final compliance review will be scheduled when approximately 85% of the CDBG funds have been drawn down.

Prior to the compliance review, the Grantee will receive a letter that will announce the date, time, and place of the review, and identify the program areas to be reviewed. Each applicable area is reviewed through source documentation so it is imperative that the Grant Manager makes sure the program files are complete and up to date.

The letter may include an *Annual Expenditure Report*, which the Grantee must complete prior to the Community Development Specialist's arrival. The necessary support documentation for all CDBG and leverage expenditures to date must be available.

The Grant Manager must arrange for an office space where the Community Development Specialist can review the files.

In addition to reviewing the project files, the Community Development Specialist will inspect at least 25% of all houses rehabilitated or substantially reconstructed and/or of all units in which displaced persons were relocated. The Rehab Specialist should be present for housing inspections and the Finance Manager should be present for the financial review during a compliance review.

At the completion of the review, the Community Development Specialist will conduct a brief exit conference with the Chief Elected and/or Chief

Administrative Official and the Grant Manager. At the exit conference, the Community Development Specialist will outline the preliminary results of the compliance review.

Because compliance reviews are formal and have official status, after the review, a letter will be sent to the Grantee that contains:

1. An assessment of the program management; and

2. Any findings, concerns, or recommendations about the program implementation;

    a. A finding is a statement of fact that the program is not operating according to the contract, this manual, and the Program Management Plan. A finding stipulates what has occurred, why it is not in compliance, and what must be done to bring the program into compliance.

    b. If an action will result in noncompliance, if not corrected, a concern will be noted to request the implementation of corrective action. If corrective action is not taken, a finding will be made during a subsequent review.

    c. If the Community Development Specialist determines that there is not a finding or concern, but there is a need for improvement in the Grantee's performance, a recommendation may be made.

    d. A response to a recommendation is not always required, but careful consideration should be given to the issues addressed.

3. Questioned costs about financial management: If the review indicates that funds may have been obligated or spent in a manner not in compliance with this manual or the CDBG Agreement, the use of a portion or all affected funds can be questioned. The Grantee will be asked to justify the propriety of all questioned costs. Costs which cannot be justified will be disallowed by DHCD and must be repaid by the Grantee.

4. Unresolved Issues: Occasionally, there are outstanding issues that the Grantee is committed to completing. We may ask that a certification of completion is provided to DHCD.

5. Corrective actions: The last section of the compliance review letter specifies what corrective action, if any, needs to be taken to resolve any findings or concerns. This section will also indicate how and by when a response to DHCD is required.

If the compliance review letter requires a response, the Grantee must provide documentation within thirty (30) days that any findings or concerns have been resolved or addressed.

☑ The Community Development Specialist will use standardized checklists during the compliance review.

A great way to ensure that you are ready for the compliance review is to request copies of the checklists and go through them beforehand.

# CHAPTER 5: FINANCIAL MANAGEMENT

DHCD requires that all projects be implemented in a cost effective manner and in compliance with all federal and state statutes. As such, it is extremely important that appropriate financial controls are established by the Grantee to minimize waste and prevent audit findings, which may result in the Grantee repaying project costs that are deemed unallowable.

For clarity purposes, this chapter is divided into the following sections:

- Definitions;
- Financial Management Requirements;
- Elements of Financial Management Systems;
- Requesting Funds from DHCD;
- Budget Revisions;
- Program Income; and
- Audit Requirements.

It is the responsibility of the Grant Manager to ensure that the Finance Manager has a copy of all necessary financial requirements, including a copy of this chapter, the Project Management Plan, the Program Income Plan and the Performance-based Project Budget.

## Definitions

The following definitions are applicable to Financial Management:

### *Accounting*

This includes the recording, summarizing, and reporting of all fiscal transactions by such formats as type of appropriations, programs, organizations, activities, and object classes of expenditures.

### *Budgeting*

This includes the annual presentation, classification, monitoring, and control of funds.

### *Procurement*

This includes the method of contracting for, receiving, and paying for supplies, services, and property required by the agency to perform its mission.

### *Property Management*

Includes control over receipts, records, inventory, and disposal of property in possession of the agency, other government agencies, contractors, and Grantees.

### *Internal Controls and Audits*

This includes the policies and procedures for monitoring, preserving, reviewing, and otherwise safeguarding

the agency's funds, property, and other assets.

## Financial Management Requirements

Financial management systems must provide for:

- Advanced CDBG funds must be placed in a non-interest bearing checking account;
- CDBG funds must not be co-mingled with other funds utilized in the project;
- All grant expenditures must be in adherence with a DHCD approved budget;
- All source documents must be coded, signed, or initialed and dated;
- Copies of all source documents related to the grant must be maintained separately and be available for review by DHCD;
- Use of Fidelity Bonds (a form of insurance in which a bonding company agrees to reimburse an employer, within policy limits, for losses attributable to theft or embezzlement by bonded employees);
- Accurate, current, and complete reporting of the use of all grant funds in accordance with state accounting and reporting requirements;
- Records that identify the source and application of funds for all grant supported activities. These records contain information pertaining to awards and authorizations, obligations, and obligated balances, assets, liabilities, outlays, and income;
- Effective control over and accountability for all funds, property, and other assets;
- Comparison of actual outlays with the approved grant budget;
- Procedures to minimize the time elapsing between the transfer of funds from the Commonwealth of Virginia and the disbursement by the Grantee;
- Procedures for determining the reasonableness, allowability and allocability of costs in accordance with stated federal guidelines;
- Accounting records supported by source documentation;
- Examinations in the form of audits;
- A systematic method to assure timely and appropriate resolution of audit findings and recommendations;
- Accounting records and source documentation *must* keep CDBG funds separate from other accounts; and
- All leverage funds utilized as leveraging *must* be clearly and

separately accounted for with source documents and accounting records.

✱ **All employees with direct access to grant funds must be bonded for an amount equal to the largest anticipated drawdown request. Any resultant increase in the Grantee's bonding cost is grant eligible.**

✱ **Expenditures of CDBG funds must be made subsequent to or in proportion to the funds within the budget for the activity. Failure to adhere to proportional spending requirements may lead to DHCD imposing an interest penalty on the amount which exceeds the proportional spending requirement.**

# Elements of Financial Management Systems

This section details the financial management systems required of all Grantees.

## *Internal Control*

Internal Control comprises the plan of a Grantee to:

- Safeguard assets;
- Prevent waste, fraud, and mismanagement;
- Promote efficiency of operations. Effective Internal Control must include the following procedures:
- Segregation of duties among employees to prevent one person from having complete control over all phases of any transaction. In all cases, at least three (3) persons must be involved in a cash transaction. One person *must* approve payment of invoices by signature. Two other persons *must* sign the check for payment;
- Workflow procedures for processing all transactions from one employee to another. This *must* provide for a cross-check of work, but not a duplication of effort;
- Rotation of duties among employees to allow for control over any one given phase and ensure that other employees can fill in when a position becomes vacant;
- The procedures used should be clearly detailed and documented for all individuals to follow and as an aid in training new employees; and
- All assets, records, and checks *must* be properly protected through the use of locks, safes, and other measures to ensure security.

## *Accounting*

All Virginia localities are required to comply with Generally Accepted Accounting Principles (GAAP), which mandate that government resources shall be organized and accounted for on a fund basis. Established principles for fund accounting shall be followed when accounting for the Grant.

Grantees are encouraged to use a Special Revenue fund to account for the grant. All revenues and expenditures and general ledger transactions should be recorded in this fund. This would include grant revenue, local contribution, project revenue, administrative expenditure, as well as project expenditure and would require a complete set of accounts to record these transactions.

**Books**

Localities with populations less than 3,500 may use a declining balance spreadsheet system or the system described below for larger communities. Any format used by the local government will be acceptable as long as the overall system produces the information necessary to account for Grant funds and all other funds budgeted for the project.

In localities with a population of 3,500 or more, the accounting system itself must be double entry with a general ledger supported by a cash receipts journal, a cash disbursements journal, a general journal, and a fixed assets ledger. Other ledgers that the Grantee must keep include accounts receivable and accounts payable ledgers as well as budget/expenditures control and cash control subsidiary ledgers. Each one of these is discussed briefly below:

- General Ledger: A book of final entry used to summarize all transactions for each account in the Grant;

- Cash Receipts Journal: A book of original entry which records all cash receipts by source and amount;

- Cash Disbursements Journal: A book of original entry to record the actual payment of obligations incurred by the Grantee;

- General Journal: A book of original entry used to record all other transactions other than receipts and disbursements;

- Accounts Receivable and Accounts Payable Subsidiary Ledgers: These record the amount the Grantee owes to or is owed from various vendors;

- Cash Control Subsidiary Ledger: Posted on a daily basis for all receipts and disbursements as a control for all the cash in the fund;

- Budget/Expenditure Control Subsidiary Ledger: A ledger for recording all expenditures and encumbrances for each budget item against the amount appropriated for that item; and

- Fixed Assets Ledger: A record of assets acquired using grant funds. Assets would include such items as equipment and machinery. This is the accounting record used to support the items booked in the general ledger for fixed assets, and is part of the property management standards discussed in Chapter 4: Grant Management.

✱ **With the exception of the Accounts Receivable and Accounts Payable Subsidiary Ledgers and the Cash Control Subsidiary Ledger, all of these books are required for localities with populations in excess of 3,500 for transactions involving CDBG funds.**

**Basis of Accounting**

DHCD recommends that localities use a modified accrual basis of accounting. The Grantee is required by the Uniform Reporting Requirements to adjust the books at year-end to reflect accruals.

The modified accrual basis of accounting requires that transactions be recorded when they occur, regardless of when the cash is received or disbursed.

**Project Budgets**

All Grantees are required to adhere to a DHCD approved Performance-based Project Budget.

✱ **All obligation or use of funds not in accordance with the approved budget may be disallowed for grant assistance, thus requiring payment from the Grantee's general funds.**

Comparison of actual expenditures to the budget must be done on a regular basis as part of sound financial management and grant administration systems. The use of a subsidiary budget/expenditure ledger is recommended as the way to control the budget. Posting of expenditures and encumbrances must reflect the unencumbered balance available for expenditure. Budget revisions must be recorded on the subsidiary ledger to provide continuing budget control.

✱ **DHCD approval of a Performance-based Project Budget does not eliminate the requirement for separate DHCD approvals for specific items such as additional engineering costs, change orders and other items as required in this manual.**

## *Transactions*

This section details the typical accounting transactions that will occur in a CDBG Special Revenue fund. The transactions described here include:

- Recording of budget appropriations;
- Cash receipts, encumbrances and expenditures;
- Payroll; and
- Fixed assets.

All the entries explained here are on the modified accrual basis. Modified accrual basis accounting is discussed later in this chapter.

**Appropriations**

The first transaction usually posted in a Special Revenue fund records the action taken by the local governing body in appropriating the anticipated revenue for the project and the approved budget. This entry begins with a resolution passed by the governing body or the official acceptance of the grant offer. The anticipated amount of revenue is recorded as appropriated in the general ledger and the approved budget is

entered on the Budget/Expenditure Control Subsidiary Ledger. A copy of the resolution should be attached to the journal voucher as supporting documentation.

✱ **Virginia localities must annually appropriate CDBG funds through formal action by the governing body in accordance with the Code of Virginia.**

**Cash Receipts**

Cash receipts are received in the form of revenue, program income, refunds, collections or miscellaneous. Cash receipts are usually in the form of a check, though some program income can be received as cash. All cash should be recorded on a pre-numbered cash receipt form. This form should include the amount of money received, who it was received from, the purpose of the funds, the proper account code, the date of receipt, and the name of the individual preparing the receipt. Any supporting documentation should be attached and the receipt should be filed numerically after it is posted.

**Encumbrances and Expenditures**

Encumbrances are a record of an obligation to incur some future expenditure for goods or services. Expenditures are entered, under the modified accrual system, when a good or service is received. This does not always correspond with a cash disbursement. Encumbrances should be recorded when incurred and offset with a contra account for payables until such time as the cash is actually disbursed. Both expenditures and encumbrances should be posted to control the budget and ensure that grant amounts are not overspent.

**Payroll**

If force account work is approved, payroll is entered in the General Ledger as Expense – Salaries. All employees should be paid through the normal payroll procedure. Payroll is usually recorded in the general fund. The general fund should therefore, be reimbursed from the Project Budget. Each employee *must* keep a time sheet reflecting total hours worked, including time spent on Grant related activities. This will be the basis for preparing the charges to be made to the grant fund for payroll reimbursement. At least two (2) signatures must appear on the time sheet: the employee's and the supervisor's.

The Payroll Transfer Voucher is prepared showing each individual, the amount of salary and fringe benefits to be recorded to the grant fund, and the General Ledger entry recording the cash transfer.

**Fixed Assets**

Fixed Assets are entered in General Ledger as Asset. Any items of nonexpendable personal property purchased with Grant funds should be "booked" at purchase value to the General Ledger. A supporting record should be maintained showing the Date of Acquisition, Description, the Cost, the Location, Condition and Disposition for each item.

## *Monthly Reports*

Each month, after the books are posted to the Book of Final Entry, a report of

the condition of the fund should be prepared to advise all interested parties of the status of the account. Three statements should be prepared for this report:

**Cash Report**

The cash report can be prepared from the Cash Control Subsidiary Ledger. All receipts are reported in Summary and added to the beginning balance to determine the amount of cash available for disbursement. The disbursements are subtracted from this figure to show ending cash balances. This amount should agree with the General Ledger cash balance.

**Trial Balance**

The balances from the General Ledger are reflected as an asset, liability, fund balance, or budget account. The total of the debit balances and credit balances should be equal.

**Budget/Expenditure Report**

This report compares the year to date expenditure to the budget by object and activity. The information for this report comes from the Budget/Expenditure Control Subsidiary Ledger. The total expenditures reflected on this report should agree with the total expenditure in the General Ledger. Additional reports that may be prepared would include an open contract report and accounts receivable report.

## *Chart of Accounts*

If the Grantee is creating a special revenue fund to account for grant funds and does not have a Chart of Accounts, DHCD will be glad to assist in the development of an appropriate system, if requested.

All Special Revenue Fund transactions should be coded to identify:

- Funds;
- General Ledger account;
- Activity; and
- Expenditure Object or Revenue Source.

This coding will allow all posting to be quickly traced to the source documentation and will assist DHCD's Community Development Specialist or Fiscal Analyst and the Grantee's auditor in reviewing the fund's activities.

The coding used to identify the fund should be two digits and should not be any number currently used for a fund within the existing structure.

The General Ledger accounts include the accounts used for the balance sheet as well as the Budget, Expenditure, and Revenue accounts. The Grantee should review the discussion below on Administrative Costs, before establishing General Ledger accounts for CDBG funds to determine the types of costs eligible for reimbursement.

## *Cash Management*

Procedures *must* be implemented that will ensure timely receipt and disbursement of advanced funds. It is important when requesting funds to remember:

- Funds must be requested to meet only immediate (short term) cash needs;

- Requests for payment must be for at least $5,000 (except for the final request), or the request will be returned to the Grantee;

- Any amounts in excess of $5,000 held for more than five (5) work days will be subject to an interest charge to be paid to DHCD; and

- Interest may not be earned on any grant funds held by the Grantee, regardless of amount. If interest is earned, it must be returned to DHCD.

The above procedures apply to advanced funds (funds required by the Grantee in order to pay grant-related vendors and/or contractors). If cash flow is not a critical consideration, some localities may wish to operate on a reimbursement basis.

# Requesting Funds from DHCD

Grant funds will be available to Grantees after the effective date of CDBG Agreement. Payments to Grantees will be made by the Treasurer of Virginia on receipt of a CDBG Drawdown Request and a *Drawdown Support Form* approved and processed by PAAO. These forms, including samples, and instructions, are available at www.dhcd.virginia.gov or in Appendix 26.

In order to process the request, DHCD *must* receive from the Grantee an acceptable *Certification of Signatures and Address* as found in Appendix 27 or at www.dhcd.viginia.gov. Only individuals duly certified by the Grantee as authorized to draw funds will be allowed to sign CDBG Drawdown Requests. Likewise, payments will be sent only to the address certified by the Grantee. All CDBG Drawdown Requests will be checked against the certified signatures, payee and address, and the listed Federal Identification Number (FIN).

✱ **Drawdown requests cannot be processed if they are missing the FIN or deviate from the DHCD-approved Project Budget.**

✱ **The Drawdown Request form must be printed on blue paper with the information typed or printed in black ink. The signature must be in blue ink. The form must be complete and correct before it will be accepted. Inform those persons preparing these forms, including typists, of the format requirements to avoid non-payment or delay in receipt of payment.**

## *Administrative Costs*

Grantees are only paid for administrative costs on a pay-for-performance basis. Allowable costs will be negotiated and become part of the CDBG Agreement. See Chapter 9: Housing for a discussion on construction and other cost limits that must be observed.

## *Minimum Balance*

Grantees may maintain a cash balance at all times that does not exceed $5,000. Any grant funds on hand in excess of $5,000 *must* be spent within five (5) working days of receipt of said funds

from DHCD. The exception is within ten (10) days for funds escrowed for housing rehabilitation construction.

## *Payment of Invoices*

In order to have adequate cash management the Grantee must first establish a regular schedule for the payment of vouchers. Once this is done, a deadline for receiving invoices should be established which allows for enough time to process the request for payment and to receive the cash in time to meet the disbursement date.

✱ **The processing time for a CDBG Drawdown Request is approximately three (3) weeks from the date it is received at DHCD. The three (3) weeks includes approval and processing by the PAAO, processing by the DHCD Accounting Office, up to ten (10) days processing by the Virginia Department of Accounts and the Treasury of Virginia, and postal time. This time may be less for electronic transfers.**

With the processing time being so long, several points become extremely important:

- The recipient may retain a balance of $5,000 maximum cash on hand to meet any payroll, small invoices or emergency payments that may arise during the month;

- Contractors need to be aware of the length of time that may be required to receive payment; and

- Planning and forecasting cash needs becomes extremely important.

A typical thirty (30) day schedule for disbursing payments might be as follows:

| | |
|---|---|
| Deadline for receipt of invoices | 2nd of the month |
| Phone calls to contractors to establish estimates for payments during the month | 4th of the month |
| Prepare Drawdown Request and mail to DHCD | 5th of the month |
| Payments to contractors and vendors | 30th of the month |

Some localities require all payments be approved by the local governing body prior to being disbursed, which will add to the payment schedule, while other localities may be operating on an annual appropriation and will be able to avoid this delay. If cash flow is not a critical consideration, some localities may wish to operate on a reimbursement basis.

Requests for Payment may be submitted as often as necessary to meet needs of the Grantee. Please note that as local governments are added to the state's electronic transfer system, all funds requested will be received via electronic transfer from the Department of the Treasury. You will need to advise your Treasurer of all incoming grant requests.

## *Alternative Payment Option for Housing Rehab Invoices*

Some Grantees may find the above-described process a problem when working with small housing rehabilitation contractors. Another option available is the establishment of an escrow account.

Grantees may use a separate account to escrow payments to be made to the housing rehabilitation contractor provided the following limitations are met:

- The account is used solely for the escrow of funds for the rehabilitation of residential properties;
- Contains only funds to be paid to the rehabilitation contractor. Other items, such as recording fees, legal fees, title searches, etc., cannot be escrowed;
- Escrowed funds *must* be disbursed within ten (10) working days from the date of receipt; and
- Escrowed funds must be deposited into a non-interest-bearing account.

A typical sixty (60) day schedule for disbursing payments to housing rehabilitation contractors using this option might be as follows:

| | |
|---|---|
| Day 1 | Rehab contract signed; request for the first half of the rehab contract sent to DHCD |
| Day 4 | Request received by DHCD for the first half of rehab contract |
| Day 25 | Grantee receives funds from DHCD |
| Day 30 | Request second half of rehab contract |
| Day 31 | Rehabilitation Specialist approves invoice from contractor for first half of work |
| Day 32 | Invoice received and approved by Grant Manager |
| Day 33 | Check written to contractor for first half of work |
| Day 34 | Request received by DHCD for the second half of rehab contract |
| Day 55 | Grantee receives funds from DHCD |
| Day 61 | Rehabilitation Specialist approves invoice from contractor for second half of work |
| Day 62 | Invoice received and approved by Grant Manager |
| Day 63 | Check written to contractor for second half of work |

## *Electronic Transfers of CDBG Funds*

To expedite receipt of payment, it is recommended that Grantees contact the Virginia Department of Accounts (DOA) to arrange for electronic transfer of

CDBG funds. The forms to establish electronic payment with DOA are available at www.doa.virginia.gov. At the home page, click on the Electronic Data Interchange (EDI) link button on the right. Scroll down to the *Trading Partner Agreement and Enrollment* form for Localities and Grantees. Print the form, fill it out and submit it. Instructions on filling out the form are on the third page of the document.

For questions regarding the form and process, contact the Department of Accounts, at 804-225-3164. Allow approximately five (5) working days for DOA to set up your locality for electronic transfer of funds.

✱ **Be sure to check the DOA website regularly for updated EDI-related forms and information. Remember to refresh your screen to get the most recent version. Resubmit the *Trading Partner EDI Notification of Change* form if your banking information changes. This form must be submitted fifteen (15) days in advance of any changes.**

Once your locality is set up for an electronic transfer of funds, use the suffix assigned by DOA on the CDBG Drawdown Request. This two-digit number should be entered in the "Suffix" block on the CDBG Drawdown Request form.

✱ **If you fail to list the suffix on the Drawdown Request form, you could cause your CDBG payment to be deposited to the wrong bank account.**

### *Mailed Checks*

If Grantees do not arrange for electronic transfer of CDBG funds, then they will automatically receive a check in the mail from the Virginia Department of Treasury. This process is much more lengthy and inconvenient than electronic funds transfer.

## Project Budget

In order for a Grantee's CDBG Agreement to be executed, the Grantee had to submit a Performance-based Project Budget as described in Chapter 2: Pre-contract Activities. All activities must be carried out in accordance with this budget.

### *Performance-based Project Budget*

Grantees are only allowed to deviate from the approved Performance-based Project Budget with prior written approval from DHCD. Due to this restriction, it is essential that the Grantee develop accounting and grant management procedures which maintain tight control over obligations and expenditures to assure conformance with the Project Budget. The Project Budget should be consulted and tracked on a continual basis. The amount of administrative funds approved by DHCD in the Project Budget is performance based and cannot be increased.

DHCD will utilize the Grantee's Project Budget as a basis for monitoring project implementation particularly in assessing the Grantee's monthly progress reports. See "Monthly Updates," as found on page 33, for more details. Adherence to

the Project Budget will also be assessed during compliance reviews and audits.

Failure to adhere to the Project Budget is a violation of the CDBG Agreement and could result in a requirement for repayment of ineligible expenses from the Grantee's own financial resources.

### *Budget Revisions*

During the course of the project, revisions to the Project Budget may be necessitated by unforeseen or unpredictable factors. All such revisions require DHCD's prior written approval.

A budget revision must include the following:

- A letter signed by the Chief Administrative Official, who executed the CDBG Agreement, requesting the Budget Revision and explaining why it is necessary and how it impacts the contract's benefits and products;

- The proposed revised Project Budget that reflects the desired changes and is signed by the Official. See Appendix 3 for a copy of the budget form; and

- A completed *Budget Revision Worksheet*. See Appendix 28 for a copy of the worksheet.

✱ **Budget Revisions must not significantly affect the benefits, scope or objectives of the project. The "scope" of the project is the nature, location or magnitude of the work described in the CDBG Agreement. The "objectives" of the project are the measurable performances involved in the CDBG Agreement including the impact and degree of benefit to the identified population and environment that the project is proposed to provide.**

## Program Income

All Grantees with projects that may earn program income *must* adopt a Program Income Plan (PIP), showing how program income will be expended. The PIP must be approved by DHCD prior to its adoption by the Grantee and the receipt of program income. See Appendix 16 for a copy of the plan.

### *What is Program Income?*

Program income is defined as funds received as a result of the use of CDBG investment. Program income includes, but is not limited to, the following:

- Payments of principal and interest received by the Grantee on loans made using CDBG funds;

- Proceeds from the disposition by sale or long term lease of real property purchased or improved with CDBG funds. See also below "Use and Disposition of Real Property Acquired with CDBG Funds;"

- Proceeds from the disposition of equipment purchased with CDBG funds;

- Gross income from the use or rental of real property acquired with CDBG funds, less the costs

incidental to the generation of the income;

- Gross income from the use or rental of real property owned by the Grantee, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

- Interest earned on funds held in a revolving fund account;

- Interest earned on program income pending disposition of the income; and

- Funds collected through special assessments made against properties owned and occupied by households not of low- and moderate-income, where the special assessments are used to recover all or part of the CDBG portion of a public improvement.

✱ **Interest earned on CDBG funds before disbursement of the funds for activities is NOT program income and MUST be returned to DHCD for return to the U.S. Treasury.**

## *How Can Program Income Be Used?*

Program Income Plans typically will only be approved when the Plan proposes to continue the same activity in the same location that originally produced the program income. However, with prior approval, other activities will be considered and allowed.

Examples of acceptable uses of program income are:

- Housing Rehabilitation: If housing rehabilitation of substandard residential units generates Program Income, then the Program Income can be used for housing rehabilitation activity within an approved geographic project area. In addition, Grantees may charge up to ten (10) percent of inactive program income for actual administrative costs, at the time that Program Income is expended, and up to $5.00 per loan for a monthly service fee to offset the cost of loan collection;

- Community Service Facilities: If the sale of a CDBG-funded facility generates Program Income, then the Program Income can be used to provide DHCD-approved services that offer similar or greater benefits than the original services;

- Job Creation and Retention: If Program Income is generated from industrial site development or financing activities, it can only be retained to continue the same activity for the same company at the same location. That is, the same company originally assisted would be committing to expansion and to creating additional jobs at the same facility; or

- Downtown (Business District) Revitalization: If facade improvements of substandard downtown building generates

Program Income, then Program Income can be used to reinvest in a DHCD-approved commercial project area.

## *Use and Disposition of Real Property Acquired with CDBG Funds*

Real property means land, including land improvements, structures and appurtenances; it does not include moveable machinery and equipment.

The title to real property acquired in whole or in part with CDBG funds shall be vested with the Grantee as long as that property remains in use for the purpose authorized under the Grant or a minimum of twenty (20) years. If it is determined that the real property is no longer needed for the authorized purpose, the Grantee may either keep the property for use in other community development projects approved by DHCD, or return the property to DHCD. If it is decided to dispose of real property, the proceeds must be treated as program income and used in accordance with a *Program Income Plan* approved by DHCD. See Appendix 16 for a copy of the plan.

## *Types of Program Income*

Program income can be earned while a CDBG Agreement is active (prior to the effective date of Administrative Closeout) or after it becomes inactive (after the effective date of Administrative Closeout). Depending on the point in time that Program Income is earned, different rules apply. For purposes of distinguishing between the points in time that Program Income is earned, we refer to income earned prior to the effective date of Administrative closeout as Active Program Income and after the effective date of Administrative closeout as Inactive Program Income.

## *Active Program Income*

Active Program Income must be tracked by contract year. A contract year begins on the effective date of the CDBG Agreement and concludes 364 days later (for example, if the effective date of the CDBG Agreement is September 1, then September 1, through August 31, of the following year would be year one and the next day, again September 1, would begin year two and so on). Grantees shall track all Program Income based on the date that it is earned and report said amounts to DHCD when requested.

❋ **When Active Program Income exceeds $25,000 in any given project year, 100% of that income earned must be spent immediately for eligible project expenses of the active CDBG project in lieu of drawing down CDBG funds to pay for said expenses.**

In such cases, the Grantee may be able to access the total amount of CDBG funds in the CDBG Agreement provided the Grantee has an approved Program Income Plan, the project is completed in a timely manner, and there are eligible project expenses that can be incurred in delivering products consistent with the CDBG Agreement.

When Active Program Income is less than $25,000 in a given project year, it does not have to be expended immediately. It may be held in an interest bearing account. However, the Active Program Income and interest

earned from it must be tracked by the Grantee.

If it is accumulated until the end of the project, the cumulative amount of these funds shall be used on eligible CDBG project activities at the end of the project. In these cases, the Grantee may use the program income in addition to the total amount of CDBG funds in the Grant Agreement provided the Grantee has an approved Program Income Plan, the project is completed in a timely manner, and there are eligible project expenses that can be incurred in delivering products consistent with the CDBG Agreement.

✱ **Funds remaining at administrative closeout must be returned to DHCD, by sending a check made out to the "Treasurer of Virginia" to Division of Community Development's Fiscal Analyst .**

### *Inactive Program Income*

Inactive Program Income must be returned to DHCD, unless DHCD has approved a Program Income Plan. Inactive Program Income may be accumulated indefinitely until such time that the balance has reached a level to undertake CDBG eligible activities designed in the approved Program Income Plan that governs the expenditures of Inactive Program Income. Program Income Plans must be revised when the Grantee wants to change the activities approved. The revised plan must be submitted to DHCD for review and approval.

✱ **Projects assisted with tax credits or other equity investment type projects MUST return all of its inactive program income to DHCD. Contact Division of Community Development's Fiscal Analyst for instructions on how to do so.**

✱ **If a Grantee receives more than $25,000 cumulatively in CDBG and/or IPR funds in any given project year, a letter must be sent to Division of Community Development's Fiscal Analyst, reporting program expenditures and receipts. A reference in the required audit is not sufficient.**

### *Tracking Program Income*

Program income funds must be accounted for separately on the balance sheet. It must be tracked by the amounts due and received monthly by client's name, separated by active/inactive status and by contract number, project year and by amount expended annually. Copies of supporting documents must be placed in the grant project files.

## Audit Requirements

The CDBG audit requirements are set forth in OMB Circular A-133, also known as the Single Audit, "*Audits of Institutions of States, Local Governments and Nonprofit Institutions.*" This Circular establishes audit requirements for state and local governments, colleges and universities, hospitals, and other and non-profit entities that receive Federal assistance. It requires that audits be performed on an organization-wide basis and not on a grant-by-grant basis. These audits are conducted in order to determine, for the entire organization, whether:

- Financial operations are conducted properly and presented fairly;

- The organization has complied with laws and regulations affecting the expenditure of federal funds;

- Internal procedures have been established to meet the objectives of federally assisted programs; and

- Financial reports contain accurate and reliable information.

Auditors procured to conduct the local audit must be familiar with the requirements of OMB Circular A-133. A copy of the regulations can be requested from the Auditor of Public Accounts.

In general, audits of federal funds received by a locality will be conducted as part of the regular audit cycle. Localities are not subject to the annual audit requirements established by OMB Circular A-133 if they receive $300,000 or less in total federal funds from all sources in a fiscal year before June 30, 2004 or $500,000 or less afterwards.

If a Grantee is not subject to the federal annual audit requirement, the Grantee should be aware that all funds must still be audited annually, as part of the Code of Virginia audit requirements, for localities with populations of 3,500 or more and towns operating a separate school division.

✱ **Localities not subject to the federal annual audit requirement must submit a letter to Division of Community Development's Fiscal Analyst stating so.**

Localities having an annual audit requirement may have as many as three audits conducted on the grant funds depending on the date of grant award in relation to the fiscal year. For example, if a grant was awarded on September 1, 2008 with a termination date of August 31, 2010, the audit requirements would be as follows:

| End of Fiscal Year | Audit Period |
|---|---|
| 6/30/09 | 7/1/07 – 6/30/08 |
| 6/30/10 | 7/1/08 – 6/30/09 |
| 6/30/11 | 7/1/09 – 6/30/10 |

Grantees should be aware of this requirement when budgeting administrative costs.

The OMB Circular A-133 audit is an extension of the traditional financial audit that most governments are receiving now. OMB Circular A-133 enlarges this traditional audit to include:

- A supplemental schedule of federal grant activity;

- An auditor's report on the supplemental schedule, internal control, compliance matters, details of questioned costs and practices, noncompliance and other audit findings; and

- A data collection form provides information about the auditee, its federal programs and the results of the audit.

Though the "single audit" concept increases the scope of the traditional

audit, it should not cause a large increase in the time required to complete the audit or the cost incurred to produce the audit.

Audits of Federal funds should be conducted in accordance with:

- Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States. GAGAS incorporates the typical Generally Accepted Auditing Standards (GAAS) but involve additional auditor responsibilities including special reporting on internal controls and on compliance with applicable laws and regulations;

- The GAO "Guidelines for Financial and Compliance Audits of Federally Assisted Programs;" and

- State required compliance features. DHCD is responsible for audit compliance for recipients of CDBG funds and clearing any questions related to the overall financial management.

All localities receiving grant funds *must* send a copy of their audit to Division of Community Development's Fiscal Analyst within thirty (30) days after acceptance by the local governing body or six (6) months after the end of the audit period, unless DHCD agrees to a longer period. These audits will be reviewed for content and compliance with OMB Circular A-133. Written notification of approval or the need for additional information will be provided to the Grantee.

## *Recordkeeping*

In addition to establishing a system of accounting sufficient to accurately record and report transactions, adequate source documentation *must* be maintained as support for these transactions. Source documents include:

- Purchase Requisitions;

- Purchase Orders;

- Contracts;

- Contract Invoices;

- Bank Statements;

- Cancelled Checks;

- Drawdowns;

- Payment Vouchers;

- Employee Time Sheets;

- Travel Advance Requests;

- Travel Reimbursement Vouchers;

- Vendor Invoices;

- Journal Voucher Entries; and

- Cash Receipts.

All source documents must be coded by a reference number so that a clear trail exists between the books and these documents. Coding could include the check number used to make the

payment, the journal entry in which transaction was recorded or the page number from the cash receipt journal. Purchase order numbers and payment voucher numbers may also be used to provide the necessary audit trail.

✱ **Supporting documents can be copies, carbons, or originals, but must be sufficient in detail to support the transaction and to justify it as a grant expense and its allowability. The file must speak for itself!**

The Finance Manager *must* give copies of the source documents to the Grant Manager for filing in the project files:

- Copies of invoice, voucher, and pre-numbered check;

- Each piece of paper *must* show client's name, ledger code and proof of review and approval by the appropriate staff (at least initialed and dated); e.g. Rehabilitation Specialist and Grant Manager for contractor's rehab work and date of approval; and

- Proof of cancellation; e.g. copy of check's backside, bank statement, or CD photocopy of check's cancellation (other proofs must receive Division of Community Development's Fiscal Analyst 's prior review and concurrence).

☑ The Grant Manager should file the documents behind the drawdown request they support or store them in a binder set up by project activity. This will help to ensure a speedy financial compliance review by the Community Development Specialist or Fiscal Analyst.

The expenditure of leverage funds must be documented in the same manner as those activities funded with CDBG funds and, likewise, must be kept current.

All private monies expended as leverage *must* be documented with an Independent Public Accountant's Certification or with copies of invoices and cancelled checks.

The Grantee *must* maintain all financial records and any other records pertinent to the grant for a minimum of five (5) years from the date of the grant's Final Closeout letter from DHCD, unless:

- Any litigation or unresolved audit is started prior to the end of the five-year period; in which case, all records shall then be retained until completion of all audits or resolution of any litigation; or

- Any disposition of nonexpendable property occurs; in which case, records for any nonexpendable property must be retained for three (3) years after its final disposition.

See Chapter 12: Grant Closeout Procedures for more information about Final Closeout.

# CHAPTER 6: DESIGN AND CONSTRUCTION MANAGEMENT

This chapter outlines the requirements specific to all design and construction projects for which the *Davis-Bacon Act* applies; including community facilities, community service facilities, telecommunications and housing rehabilitation projects involving eight (8) or more units per construction contract. All other housing rehabilitation projects must follow the procedures outlined in Chapter 9: Housing.

Common tasks in which the Grantee should be involved in a construction project include:

- Final Design;
- Contract Bidding and Award;
- Construction Management; and
- Construction Completion.

## Final Design

Once a design professional (hereafter referred to as Engineer) has been hired and is under contract, several tasks must be performed before the project can be advertised for bids. These tasks include:

- Preparation of Plans and Specifications;
- Federal Requirements; and
- Real Property Acquisition.

The Engineer should submit all plans and specifications to each of the appropriate regulatory agencies for approval as soon as practicable. DHCD expects the project to be under construction within one (1) year of the commencement date of the CDBG Agreement.

### *Preparation of Plans and Specifications*

The Engineer's plans and specifications are the Contractor's instructions on what to construct. They must be consistent with the improvements outlined in the CDBG Agreement. Deviations from the CDBG Agreement which reduce the scope of the project may result in disallowed costs.

In an effort to ensure clear communication, a pre-design conference should be held at the start of the project. In attendance should be the Engineer, the Grant Manager, the Owner (if different from the Grantee), and all other appropriate local and state regulatory officials. The purpose of this meeting is to convey to all key parties the stated project activities, benefits, project boundaries and project scope as approved by DHCD. The parties, within this context, should also discuss the development of plans, specifications, any special design considerations, and criteria deadlines and milestones.

The Engineer should also be involved in the development of the Project Management Plan and be a part of a Project Management Team that meets at least monthly to assess the progress of the project. See "Management Teams and Housing Rehabilitation Oversight Boards," as found on page 10, for more details.

The following are actions that should be undertaken during the design process:

1. Identification of all parcels of real property that need to be acquired;

2. Acquisition of properties necessary for construction to occur;

3. Notification to residents, businesses and property owners to be affected by the construction process;

4. Preparation of Erosion and Sediment Control Plans and all other local, state, and federal permits required to carry out the project;

5. Completion and regulatory approval of plans and specifications; and

6. Estimate of the Engineer's opinion of final construction cost before the project is bid. This estimate should be compared to the original scope of work to determine cost feasibility or scope change compared to the approved proposal.

## *Federal Requirements*

The Engineer is also responsible for ensuring that all federal requirements that must be passed on to the Contractor are inserted into the Bid Documents. These federal requirements include:

- Wage Decision;
- Federal Contract Language; and
- Responses to Advertisements for Minority- and Female-owned Businesses and for Local (Section 3) County Businesses and Workers.

☑ After the Bid Documents have been finalized and before the project is bid, it is recommended that the Grantee send a copy of the documents to its Community Development Specialist so that it can be determined that all necessary items have been included in the final Bid Documents.

**Wage Decision**

As final design draws close to completion and the Bid Documents are being prepared, the Wage Decision must be obtained for inclusion in the Bid Documents no later than fourteen (14) days prior to publishing the Invitation to Bid. See "Securing the Wage Decision," as found on page 104, for more details.

**Federal Construction Contract Language**

At the time that the Wage Decision is requested, the Community Development Specialist will send to the Grantee the Federal Contract Inserts or "goldenrod inserts." With DHCD approval, the

Grantee may use substitute contract language for "General Conditions, Part I," provided that all key provisions are covered by the substitute language. However, "General Conditions, Part II," of the Federal Contract Inserts *must* always be included in the Bid Documents.

The remaining items (CD-8.1 through CD-8.3) must be placed in the Bid Documents as they apply to all non-housing CDBG funded contracts in excess of $2,000. This language explains to the Contractors that are bidding on the project what federal requirements must be followed. Failure to place these items in the Bid Documents could jeopardize the use of CDBG funds for this contract. Please note that CD-8.1 may be replaced with substantially similar language from another federal funding agency.

✱ **All of the above items are federal requirements and are covered in Chapter 8: Federal Labor Standards and Equal Opportunity Requirements. Failure to complete any of these actions could jeopardize the grant funds.**

**Responses to Advertisements**

The Engineer must also place into the Bid Documents the responses to the required advertisements for Minority- and Female-owned Businesses, Contractors and Suppliers and for Local (Section 3) County Businesses and Workers. See "Local (Section 3) County Business and Employment Plan" and "Minority- and Female-owned Businesses, Contractors and Suppliers," as found on page 14 for more details.

## *Real Property Acquisition*

Throughout the final design phase the Engineer should identify parcels of property that the Grantee must acquire in order to construct the CDBG funded improvement. While it is up to the Grantee and its Attorney to determine the type of descriptions needed to acquire property, DHCD strongly recommends the following policy:

- Water, Sewer and Drainage Line Easements: For all facilities to be publicly owned and maintained, temporary construction and permanent utility easements should be obtained based on a set number of linear feet from the centerline of the pipe or ditch. Therefore, if the pipe or ditch has to be adjusted slightly during construction due to field conditions, the width of the easement adjusts accordingly. The Grantee only needs to acquire temporary construction easements for required service lines as they will be owned and maintained by the private property owner, not the utility company.

- Fee Simple Acquisition: In instances where sites for treatment plants, pump stations or water storage tanks have to be purchased, these are usually bought in fee simple i.e., the Grantee owns 100% of the property rights. In these cases, a surveyed metes and bounds description of the property in question is recommended.

To expedite the securing of easements, the following process should be followed:

1. Engineer informs the Grantee of the needed easements as determined in the design process;

2. The easements are denoted on the plan sheets; and

3. The Engineer provides plan sheets to the Grantee as they are completed rather than all at one time. This enables the Grantee to expedite the acquisition process by beginning to acquire easements before the design is totally complete.

✱ **Unless otherwise approved in writing by DHCD, publication and advertisement for the solicitation of sealed construction bids shall not be issued until all acquisition is complete and all necessary documentation is recorded in the Clerk of Circuit Court Office. All real property acquired with CDBG monies must conform to the procedures set forth by the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*. These procedures are outlined in Chapter 7: Acquisition and Relocation.**

✱ **The Grantee must retain legal responsibility for shared or community drainfields developed with CDBG funds.**

# Contract Bidding and Award for Construction Projects

Once the final design is completed and approved, the Invitation to Bid must be released. All contracts that will use CDBG funds must abide by the *Virginia Public Procurement Act*. Pursuant to section 2-2-4303(D) construction must be procured only by competitive sealed bidding. There are some limited exceptions, however if a Grantee desires to use an exception to competitive sealed bidding it must get written concurrence from DHCD.

A public notice of the Invitation to Bid must occur at least ten (10) days prior to the date set for receipt of bids, however **it is recommended that the period be no less than thirty (30) days.**

- The public notice should be posted in a designated public area and shall be advertised in a newspaper of regional circulation;

- Bids may also be solicited directly from potential contractors, including Local (Section 3) County firms; and

- Any additional solicitations shall include pre-qualified businesses selected from a list made available by the Virginia Department of Minority Enterprise at www.dmbe.virginia.gov.

Grantees need to ensure that all other requirements of the Procurement Act are known and followed.

✱ **No CDBG funded project shall be advertised for construction bids until after the environmental review process is complete.**

## *Pre-Bid Conference*

DHCD *highly* recommends that a pre-bid conference be conducted. The purpose of the pre-bid conference is to allow bidders to ask questions and comment upon the Bid Documents and for the Grantee to issue instructions or clarifications to them.

The pre-bid conference should be held at a time approximately midway between the publication of the Invitation to Bid and the Bid Opening. The time, date, and place of this conference should be included in the Invitation to Bid and the Instructions to Bidders. The purpose of the conference is to clarify particular nuances of the project that may be unclear in the bid document.

The Engineer may entertain questions and comments on the project design from prospective bidders, but should not respond to any technical issues at the pre-bid conference. If the bidders have no questions, this part of the conference should be ended. All questions are to be taken under advisement. Any alterations to the plans and specifications deemed necessary to clarify questions or comments must be formally promulgated into written addenda to the Bid Documents. Substantive verbal instructions or changes must not take place at the pre-bid conference.

## *Addenda*

Changes to the Bid Documents that take place after the publication of the Invitation to Bid are called addenda and become a binding provision. All addenda must be issued in writing. Verbal addenda are strictly prohibited. Addenda can derive from:

- Comments or questions received at the pre-bid conference;
- Changes in the Wage Decision made prior to opening of bids;
- Phone inquiries from prospective bidders; or
- Clarifications of technical issues discovered after formal advertising.

When an addendum is necessary, it must be provided to every prospective bidder who procured a copy of the Bid Documents. Addenda should be transmitted to all bidders at the same time and at such a date as to allow sufficient time for bidders to accommodate the changes in their bids.

## *Bid Opening*

Everyone with a vested interest in the construction project should attend the bid opening. At a minimum, the Grant Administrator, the Grant Manager, the Engineer, the Attorney, and the Owner (if different from the Grantee) must attend. All bids must be opened publicly and read aloud at the time stated in the advertisement. For CDBG funded construction projects DHCD requires that all sealed bids be received on time, be publically opened and read aloud

*immediately* following the deadline for receipt of bid.

After the bids have been opened and read, interested parties should be informed that the bids shall be taken under advisement and the parties will be notified of the award at a stated time and in a stated manner.

A bid tabulation shall be prepared comparing line item prices of each bidder and the Engineer's estimate and a copy shall be provided to the project's Community Development Specialist.

❋ **Bids may not be accepted past the stated time for close of receipt of bids. No verbal modifications or clarifications of bids will be allowed after the bids are opened. Withdrawal of a bid by a contractor after it has been submitted is allowed only as described in section 2.2-4330 of the *Virginia Public Procurement Act*.**

☑ When responding to a *Freedom of Information Act* request, the Grantee must ensure that the confidentiality of trade secrets and proprietary information is maintained. Therefore, the Grantee should consult with its Attorney before making the bids available for public inspection.

## *Contract Award*

Once bids are opened and read aloud, the Grantee must do three (3) things in order to award the contract to the successful low bidder:

- Review the low bid;
- Verify that the apparent low bidder is not debarred, and
- Formally issue the *Notice of Award*, copying the Community Development Specialist.

**Verifying the Wage Decision**

If the local governing body does not award a construction contract within ninety (90) days of the date of the bid opening, the Grantee must contact DHCD, asking if the Wage Decision has been modified. If it has been, the modified Wage Decision must be incorporated into the contract. Therefore, the Grant Manager should monitor this carefully.

Conditionally awarding a contract is acceptable and will lock in the Wage Decision if such an award is required as a result of funding considerations of another agency.

**Review the Low Bid**

The following steps must be observed:

- The Grantee must retain all bids submitted and check the apparent low bidder's bid;
- The Engineer and Attorney should review the documents to make sure all required information was properly submitted;
- The Engineer should review the bids to ensure that the specifications were followed i.e., quantities and quality of materials, including that arithmetic calculations are

correct and no changes in quantities were made by the bidder;

- The Attorney should review all insurance and bond documents to verify that all are in order and in compliance with the Bid Documents; and

- Any bids submitted that do not strictly conform to the Instructions to Bidders should be rejected as a non-responsive bid.

**Verify That Low Bidder Is Not Debarred**

Prior to contract award, the Grantee must contact the Community Development Specialist and receive confirmation from DHCD that the apparent low bidder is not on a list of debarred contractors. See also "Verifying the Low Bidder's Eligibility" as found on page 106 for more details.

**Formally Issue the Notice of Award**

The final step is assembling the local governing body to vote on the issuance of the *Notice of Award*. Once authorized, the Grantee should issue a *Notice of Award* to the lowest bidder, copying the project's Community Development Specialist. This Notice should state a place and time for the pre-construction conference and the execution of the Contract and inform the contractor that the required Performance and Payment Bonds (or legal alternatives) must be presented at that time. See Appendix 30 for a sample notice.

Prior to signing the Contract, the Contractor and any proposed subcontractors must complete the *Bidder Compliance Statement Certification Regarding EEO*. See "Bidder Compliance Statement Certification Regarding EEO," as found on page 114, for more details.

## *Pre-Construction Conference*

After the Notice of Award is issued, the Grantee, Engineer, Contractor, all known subcontractors, representatives of funding agencies and all key local and state officials must attend the Pre-construction Conference.

The Pre-construction Conference is a critical event in implementing an effective, timely construction process and in meeting Labor Standards and Equal Opportunity compliance requirements. The conference should be a formally scheduled meeting attended by:

- Grant Administrator;

- Grant Manager (and the Contract Compliance Officer, if different);

- Engineer;

- Resident Project Representative (Inspector) of the Engineer;

- Contractor;

- All known subcontractors;

- All appropriate utility company representatives; and

- Any additional representatives of the Grantee who may have a responsibility or interest in the project.

☎ If requested by the Grantee, the assigned Community Development Specialist will attempt to attend the Pre-construction Conference.

The following should be completed at the Pre-construction Conference and filed:

- Minutes of the meeting must be taken either by someone present or through the use of a tape recorder;
- Attendee list; and
- The *Labor Standards Checklist* and the *Equal Opportunity Checklist* are reviewed and signed by the Contractor and any known subcontractors. See "*Labor Standards Checklist,"* as found on page 104, and "*Equal Opportunity Checklist,"* as found on page 115 for more details.

If construction work is extensive or will entail two (2) or more activities, it is recommended that a site visit be included in the conference.

The Pre-construction Conference should include a complete discussion of three areas:

- Construction Overview;
- Federal Labor Standards; and
- Equal Employment Opportunity.

**Construction Overview**

All participants in the Pre-construction Conference should reach a mutual understanding of how the construction work will be carried out, what the end product will be, and the roles of all parties in the process. The following issues should be resolved:

- Start Date: The effective starting date for construction activities needs to be set i.e., the date of the *Notice to Proceed with Construction*;
- Completion Dates: Once the start date is established, based on the time of construction outlined in the specifications, the dates of substantial and final inspection can be determined;
- Construction Milestones: The major stages in the construction process need to be established in relative order and estimated time spans. This should be discussed in relation to payment and inspection schedules;
- Monthly On-Site Meeting: A starting date must be set for on-site meetings to monitor construction projects. The frequency of the meetings must be at least monthly and should be more frequently if circumstances dictate;

☑ DHCD recommends that this meeting be scheduled on the same day, if not the same time, as the monthly Management Team Meetings.

- Reporting, Inspections and Payments: The timing and frequency of Contractor and Engineer progress reports needs to be established. The inspection process should be explained to

the Contractor. The relationship between inspection and payments should be explained. The probable elapsed time between requests for payment and actual payment should be explained in light of the State Treasury drawdown process. A monthly deadline for submission of Contractor pay requests should be mutually agreed upon;

- Change Orders: The process for contract amendments concerning cost and time changes, i.e. construction change orders, should be thoroughly discussed. The parties responsible for approval of construction change orders should be identified, as well as who may initiate change orders and who needs to approve and sign any change orders;

✱ **DHCD must approve and sign all change orders prior to their execution**.

- Coordination of Trades and Utilities: If the project will involve a number of trades or several activities, the timing and coordination of activities should be discussed. If utility lines will be required or crossed, these should be identified, as well as the party responsible for notification of the utility companies;

- Review of Plans and Specifications: The plans and specifications documents for the construction should be reviewed thoroughly to resolve questions and to create conformity of expectations. Preferably, this should take place in conjunction with a site visit;

- Review and Approval of Shop Drawings: The process, routing and timing of shop drawing submittal and review by the Engineer should be thoroughly discussed, understood and agreed to by all parties;

- Special Concerns or Problems: Any factors which could affect the timely completion of the construction activities should be identified;

- Project Sign: The installation of a project sign is required by DHCD. If the project sign has not yet been installed, the Contractor should be reminded that specifications for and installation of a project sign are set forth in the required Bid Documents. The placement of the sign should take place within two (2) weeks of the issuance of the *Notice to Proceed with Construction*. See Appendix 23 for the project sign requirements. They are also included in the Federal Contract Inserts submitted with the Wage Decision and incorporated into the Bid Documents;

- Weather Delays: It is strongly recommended that contractor requests for time extensions based on inclement weather be claimed at the end of the month in which the inclement weather occurs. Failure of the Contractor to do so results in the forfeiture

of the Contractor's right to request said extension due to inclement weather; and

- Liquidated Damages: The amount of daily liquidated damages should be discussed along with the actions that would trigger them.

**Federal Labor Standards**

The Federal Labor Standards (FLS) portion of the Pre-construction Conference is required by CDBG regulations. The requirements for monitoring FLS are outlined in "Monitoring Compliance" as found on page 109.

☑ Consider handing out a copy of *Davis-Bacon Labor Standards: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects* at the pre-construction conference. It can serve as a valuable reference to the contractor's payroll clerk, resulting in a project in compliance with Federal Labor Standards requirements.

The required minutes must reflect the discussion on the following items of business concerning Federal Labor Standards include:

- Identification of wage rates and benefits by job classification for all workers on the project;
- Use of apprentices and trainees. See "Apprentices and Trainees," as found on page 108, for more details;
- Payroll reporting requirements;
- Allowable deductions from employees' paychecks (union dues, uniforms, payroll savings, etc.) must have written authorization. See "Deductions," as found on page 111, for more details;
- Work hours and overtime requirements;
- Grievance, complaint and compliance procedures;
- Provide Contractor with DOL posters and wage decision and instruction for their display on work sites. See "DOL Posters," as found on page 105, for more details;
- Access to site and employees for field inspections; and
- Identification of the Contract Compliance Officer to the Engineer and Contractor and explanation of employee interview procedures. See "Conducting Field Inspections, as found on page 111, for more details.

Upon review of these items and the *Labor Standards Checklist*, the Contractor and all subcontractors must sign the checklist.

**Equal Employment Opportunity**

The Contractor has certain Equal Opportunity requirements that vary according to the size of the company and the amount of the contract. *These requirements must be included in the construction contract.* During the Pre-

construction Conference, the following issues should be discussed:

- Nondiscrimination: The contractor cannot discriminate in employment of applicants by race, color, religion, national origin or sex;

- Employment Goals: The Contractor shall to strive to meet goals for employment of minority and female workers, as stated in the Bid Documents. The nature of the Contractor's efforts should be discussed and resolved;

- Use of Project Area Businesses and Lower Income Residents: The Contractor's efforts to meet his or her Local Business and Employment Plan requirements for employment, training and utilization of project area businesses and lower income residents should be discussed and identified; and

- Use of Segregated Facilities: With the exception of restrooms, project site facilities for workers cannot be segregated by sex.

Upon review of these items and the *Equal Employment Opportunities Checklist*, the Contractor and all subcontractors must sign the checklist.

### *Notice to Proceed with Construction*

After all Pre-construction Conference issues are resolved and the Contractor submits all required bonds and insurance certifications, the construction contract may be executed. Following that, the *Notice to Proceed with Construction* should be issued to the Contractor. A copy also needs to be sent to the project's Community Development Specialist. See Appendix 31 for a sample notice.

The effective date of the *Notice to Proceed with Construction* is the first day of the Contractor's time period to complete construction. Once the construction contract is executed, what was formerly referred to as Bid Documents become the Contract Documents.

## Construction Management

From the start of construction to the Final Inspection the construction process entails a number of tasks that must be undertaken by the Grant Manager, the Contract Compliance Officer (if different from the Grant Manager), the Engineer, and the Contractor. The Professional Services and Construction Contracts should delineate who is responsible for accomplishing which construction project tasks.

### *Monthly Progress Meetings*

DHCD requires that the Grantee conduct *monthly meetings on the project job-site* to review the Contractor's progress. These meetings must occur at least monthly regardless of perceived need. The attendees should include but are not limited to the Contractor's Job Site Superintendent; the Engineer; the Resident Project Representative (Inspector), the Engineer's Project Manager; the Grant Administrator, Grant Manager, the Contract Compliance

Officer (if different from the Grant Manager), and (if necessary) the Grantee's Chief Administrative Official.

At these meetings the Contractor's progress to date should be discussed along with any potential problems that may adversely affect completion within the deadline. The primary purpose of the meetings is to keep the project on schedule and avoid unnecessary delays.

## *Inspection of Construction Activities*

Depending on the type of project construction, one of two forms of inspection is appropriate.

- Resident Inspection: This method involves the utilization of a full-time, on-site Resident Project Representative of the Engineer (RPR) at all times the Contractor or subcontractors are working. The RPR is primarily responsible for serving as the liaison between the Contractor and Engineer. In this capacity the RPR observes the construction, records observations of the construction (including quantity of materials installed) and prepares various reports regarding construction activities. DHCD assumes that resident inspection will take place on all CDBG projects unless the Grantee requests in advance, and receives, DHCD permission to conduct periodic inspection; *or*

- Periodic Inspection: This method involves utilization of representatives of the Engineer for spot or milestone inspections. Visits to the construction site occur either on a set schedule or when critical construction elements must be approved before the project can proceed.

✱ **DHCD requires resident inspection on all non-housing rehabilitation, streetscaping or façade renovation activities unless the Grantee requests, in writing, and receives written approval from DHCD, to conduct periodic inspection**.

If full time resident inspection does not take place, the fee for inspection services must be prorated from the fee schedule.

## *Processing Requests for Payments*

The Contractor will submit requests for payments to the Engineer. Once the Engineer determines the request to be justified, it is submitted to the Grant Manager who reviews it and determines if the request is reasonable and in conformance with the CDBG budget. If the request is justified, the Grant Manager should recommend to the Grant Administrator that it should be approved and submitted for payment.

## *Change Orders*

Construction change orders should be initiated by the Engineer. The Engineer must present to the Grant Manager the construction change order with a written explanation of the need for the change, its cost, and its impact on the project who reviews it and determines if it is justifiable and in conformance with the budget. If it is, the Grant Manager should recommend to the Grant

Administrator that it be approved and signed.

✱ **DHCD must approve and sign all construction change orders prior to their execution.**

The amount of the change must be either supported by predetermined unit prices or be negotiated with the Contractor according to the terms of the Contract Documents and approved by DHCD.

Any change order that compromises the ability of the project to achieve the benefits stated in the CDBG Agreement will be denied by DHCD.

## *Coordination of Trades and Subcontractors*

It is the Contractor's responsibility to assure that all tradesmen and subcontractors employed by the Contractor work in an efficient, harmonious manner. If there is more than one Contractor on the work site the Grant Manager should make every effort to maximize the coordination of the work of the contractors in a manner that will not impede the work of each contractor.

## *Coordination with Utility Companies*

Utility companies are affected by many projects for two reasons:

- There is a need for a temporary or permanent connection to the work site and completed facility; and
- There are existing utility lines which must be relocated in order to avoid damaging them.

The existence and degree of the need for coordination with utility companies should be established during the project design. It is the responsibility of the Engineer to contact and inform the appropriate representatives of all affected utility companies of what will take place and where, and what coordinating actions will be necessary by the utility company and/or the Contractor.

## *Complaints*

Project-related complaints received from citizens or contractors generally involve traffic problems, access to the site, rights-of-way, storage of materials, dust, noise and construction methods. A uniform procedure for resolving complaints should be established and followed in order to avoid disruptive conflicts. It is recommended that the Grant Manager be the person to whom complaints are addressed and that he or she consult with the Engineer to determine if the complaint is justified and whether it is covered by the Contract Documents. If the complaint appears to be unjustified or clearly covered by the Contract, it should be resolved by the Grant Manager immediately and in a diplomatic manner. If it is justified and is not covered by the contract, the complaint should be taken to the Chief Administrative Official for resolution. See "Complaints and Appeals," as found on page 36, for additional guidance.

### *Contract Compliance*

As discussed previously, during the course of the Project, the Grantee and the Contractor must take action in compliance with the following federal contract requirements:

- Federal Labor Standards;
- Equal Employment Opportunity; and
- Local (Section 3) County Business and Employment opportunities for low income project area residents and businesses under Section 3 of the *Housing and Urban Development Act of 1968*.

It is the Contractor's responsibility to comply with the federal contract requirements that are part of his or her contract and any procedures and reports required by DHCD or the Grantee which support compliance with those provisions. It is also the Contractor's responsibility to include those provisions in subcontracts and make sure lower tier subcontractors comply with requirements. Grantees must report performance of Local (Section 3) County requirements which apply to all contracts of $10,000 or more. See Appendices 54 and 56.

The Grantee, through a Contract Compliance Officer, is responsible to monitor contractor compliance with federal contract requirements. Contract compliance monitoring activities should coincide with other construction process activities throughout the project and not interfere with other project activities.

### *Construction Responsibility*

The Grantee is responsible to DHCD for the completion of the project in a timely and effective manner.

Although through the provisions of their contracts with the Grantee, the Engineer (inspection, testing, etc.) and the Contractor (installation, coordination of work, etc.) have specific oversight responsibility, it is the Grantee that must ascertain that the contracts contain the necessary provisions, that they are carried out correctly, and that the construction project is completed in a successful manner. *The CDBG Agreement is between the Grantee and DHCD, therefore, DHCD holds the Grantee responsible for all project-related activities and requirements.*

## Construction Completion

When the Contractor has determined that the contracted project activities have been substantially completed, the Contractor should inform the Engineer who then informs the Grant Manager and Grantee. At this time the Engineer should begin the Substantial and Final Inspections process.

### *Substantial Completion Inspection*

When the system becomes operational is it is considered substantially complete. Upon notice that construction activities are substantially complete the Engineer, the Grant Manager, the Owner (if different from the Grantee), appropriate local and state regulatory agencies and other key parties shall conduct a thorough inspection. During this inspection, a "punch list" shall be put

into writing and forwarded to the Contractor. The punch list is a written list of deficiencies, including workmanship, materials or missing components.

The Engineer shall estimate the Contractor's cost to complete the punch list and the Grantee should withhold monies at least equal to that estimation. Hopefully, funds withheld through retainage will be of sufficient quantity to cover the punch list cost estimate. If not, additional funds from the next to last contractor pay request should be withheld to offset any deficiency between the punch list cost estimate and amount of retainage.

The Contract Documents should include a specified period of time for the Contractor to complete the punch list, which is usually thirty (30) days. This time period should be built into the overall project time period. Therefore, the Contractor should expect that his period to complete a project includes the pre-set number of days he has to complete punch list items. Any time required thereafter shall be subject to Liquidated Damages.

## *Final Completion Inspection*

After the Contractor has satisfactorily completed all punch list items, the Engineer shall so acknowledge in writing and issue a *Certification of Final Completion and Acceptance*. This Certification constitutes a release of all retainage via the final payment to the Contractor. Such payment should be made upon the Contractor's certification of release of liens, payment in full to subcontractors and material suppliers, and warranty of materials and workmanship.

At this time the Engineer should present "Record Drawings" to the Grantee. Such delivery should constitute a release of final payment to the Engineer’s firm for his or her services.

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# CHAPTER 7: ACQUISITION AND RELOCATION

This chapter outlines the federal requirements for real property acquisition and the relocation of displaced households, businesses, farms and non-profit organizations. The Grantee must develop procedures that comply with these requirements and ensure they are observed.

For purposes of clarity, this chapter is divided into the following sections:

- Regulations;
- Acquisition; and
- Relocation Assistance and Anti-Displacement.

## Regulations

Federal requirements for the acquisition and relocation can be found primarily in three places:

- The *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended 02-03-05* (42 USC 4601-4655);
- Section 104(d) of the *Housing and Community Development Act of 1974*;
- CDBG Program Regulations at 24 CFR 570.488 and 24 CFR 570.606 (Subpart K); and
- HUD Handbook 1378, *Tenant Assistance, Relocation and Real Property Acquisition.*

They require a Grantee to take all reasonable steps to minimize displacement caused by the CDBG Agreement's activities, to provide uniform and equitable treatment to those who are displaced, to replace housing available to LMI families, and to establish uniform and equitable land acquisition policies.

To implement the Uniform Act (URA) under the Commonwealth of Virginia's CDBG Program, DHCD adopted the regulations of HUD and the U.S. Department of Transportation (DOT).

Within the regulations or Handbook, where the term "HUD," "HUD Area Office," "Department of Housing and Urban Development," or other reference to the Federal Agency occurs, under the Virginia adopted program the term shall mean "DHCD," "Department of Housing and Community Development," the "Director of Housing and Community Development" or authorized employees of the State agency; EXCEPT, when reference is made to other HUD or DOT programs or requirements that are subject to the URA or apply under a State administered program.

# Acquisition

The Grantee must observe the acquisition requirements whenever it purchases real property with CDBG funds. The Grantee's compliance with the requirements will be closely monitored by DHCD. DHCD also expects the Grantee to observe the URA when acquiring property with leverage funds but will not monitor for compliance. CDBG funds will only pay up to the fair market value established by a formal appraisal and review appraisal.

## *DHCD's Land Control Policy*

DHCD requires that projects developed with CDBG assistance be on lands controlled by the Grantee or its agents. While fee simple title is not always necessary, the Grantee *must* have a degree of interest in the property that is sufficient to protect the investment.

In the case of less than fee simple title, the Grantee must control the property for a time period that is equal to or greater than the life expectancy of the facilities developed.

There are two exceptions:

- Housing rehabilitation projects may be undertaken on private property if a ten (10) year lien is recorded; and

- Economic development projects may be undertaken on property acquired by the Industry.

## *Types of Property Acquisition Subject to URA*

All types of acquisition using CDBG funds are covered by the URA, including purchase, donation, and partial donation. The only exclusions are temporary easements, acquisitions of real property from another public agency, and voluntary offers of real property in response to a public solicitation.

**Fee Simple Transfer of Real Estate**

In this type of acquisition, the buyer purchases 100% of the property rights associated with ownership subject to any restrictions outlined in the deed when purchased and all applicable local, state and federal laws, including any zoning restrictions.

**Less than Fee Simple Transfer of Real Estate**

In this type of acquisition, the buyer purchases less than 100% of the property rights noted above. The primary example of this is the acquisition of permanent easements. The buyer purchases the right to permanently construct and maintain a community improvement in this land, usually a water or sewer line, drainage way, or rights-of-way for ingress and egress. The seller retains the majority of property rights for daily use.

❋ **Call your DHCD Community Development Specialist immediately if you find it necessary to purchase less than 100% of property rights in a different situation.**

## *Types of Property Acquisition Not Subject to URA*

There are several types of property acquisition not subject to the URA. They include:

- Temporary Construction Easements for work solely benefiting the property owner;
- Voluntary acquisitions where the Grantee acquires the property from an owner who submitted a voluntary proposal in response to a public invitation or solicitation of offers;
- Property acquired by an Industry with private funds prior to submission of the Grant Proposal and if the property owner is advised, in writing, of the believed fair market value and that the purchase will not occur if negotiations fail; and
- Donations where the owner, in writing, waives his or her legal rights under the URA, including the rights to an appraisal and to receive just compensation, and donates the property to the Grantee. The Grantee must maintain a separate file for the donation, documenting the property owner's notification of the believed fair market value, the waiver of appraisal, the owner's receipt of the brochure *When a Public Agency Acquires Your Property*, and conveyance of the property to the local governing body.

## *Timing of Property Acquisition*

The timing of an acquisition can make it subject to the URA. If the Grantee acquires property on or after the date of the submission of the Grant Application the acquisition is related to the Grant Application activities, that acquisition is subject to the URA regulations.

## *Steps in the Acquisition Process*

For each step in the acquisition process, the URA and the implementing regulations requires the Grantee to follow specific procedures. Briefly, the steps to property acquisition include:

1. Identify property to be acquired and level of interest needed;
2. Issue a Preliminary Acquisition Notice to each affected property owner;
3. Obtain legal description and title search;
4. Issue letter to property owner, inviting him or her to accompany the appraiser;
5. Conduct appraisals and review appraisals;
6. Establish just compensation;
7. Issue a written offer to purchase and negotiate the purchase; and
8. Prepare a contract of sale and *Statement of Settlement Costs*, or initiate condemnation if negotiations

were unsuccessful. Condemnation is not permissible for economic development related activities.

In the case of easement acquisition, DHCD will work with the Grantee to decrease the costs and time associated with conducting many appraisals and review appraisals. See "Waiver of Appraisal," as found on page 87 and "Donations," as found on page 88.

✱ **The Grantee must carefully follow the acquisition process and thoroughly document its actions.**

## *Identify Properties to Be Acquired*

The first step of any project involving acquisition is to determine the property to be acquired. The Grantee's Engineer and Attorney are the primary parties responsible for this step.

In projects involving activities such as recreation parks, new building construction, and adaptive reuse, the Grantee may know from the outset the number and configuration of parcels to be purchased.

Activities such as street widening, relocation of utility lines, and sidewalk construction may not appear at first glance to require property acquisitions, but there is often a need to acquire easements and rights-of-way.

In projects involving water, sewer, and/or drainage ways the Grantee will not know the number and/or configuration of property to be acquired until the design process is underway.

✱ **Do not assume that property is in the public domain; be sure to verify it. For example: a road may be commonly referred to locally as a County road, but in fact, the rights-of-way could be privately owned or be for ingress and egress only and not inclusive of utility easements. In such cases, easements would have to be acquired.**

## *Issue Preliminary Acquisition Notices*

As soon as feasible after the decision to acquire is made, a written *Preliminary Acquisition Notice* must be issued to each property owner.

✱ **This notice, and all other such notices, must be sent by certified or registered mail, return receipt requested, or personally served and receipt documented.**

The HUD/DHCD brochure *When a Public Agency Acquires Your Property*, or a statement containing substantially the same information about the Grantee's land acquisition policies, must accompany the notice. See Appendix 32 for a sample Notice and Brochure. Copies of the English language version of the brochure can be obtained from your Community Development Specialist or go to www.hud.gov/offices/cpd/library/relocation/publications and download a copy of either the English or Spanish language version.

## *Obtain Legal Descriptions and Conduct Title Searches*

In instances involving fee simple acquisitions and easements, it may be necessary to have a legal metes and bounds description of the property to be acquired. The Grantee is strongly encouraged to have the Engineer designate on the plans each portion of line to be constructed outside of the VDOT right-of-way (ROW) i.e., the construction and permanent easements. Each such designation shall also reflect the ROW boundary, private property boundaries and names of property owners as reflected on current County or City tax maps. This information is referenced in the deed to identify visually and descriptively the section of real estate being purchased.

To obtain a metes and bounds description requires the property to be surveyed by a registered land surveyor. These services may be procured as part of the additional Engineering services to be provided. If not, a surveyor *must* be properly procured. Nevertheless, for any property requiring metes and bounds descriptions, the surveying should be conducted and plats prepared at this time.

In order to assure that property is being acquired from the rightful owners, it may be necessary to have the Grantee's Attorney render an opinion of title for each property to be acquired. This is of particular importance for properties involving fee simple acquisition.

## *Conduct Appraisals and Review Appraisals*

Appraisals are required for all voluntary and involuntary acquisitions so that the fair market value may be determined. Appraisals are required prior to all options and acquisitions of easements or fee simple purchases valued at more than $10,000. For acquisitions valued at $10,000 or less, a Grantee may use the standard acquisition process or, with DHCD approval, use a “waiver of appraisal” process. See the below discussion on waivers for more details.

Generally speaking, a written appraisal and a review appraisal are required for each parcel to be acquired. However, if the project is potentially controversial (as with an unwilling seller or a conflict of interest involving a public official) or where property values are high, it is recommended that two independent appraisals, plus a review appraisal, be conducted.

**Procure Appraisers**

Procurement of appraisers and review appraisers shall be done in accordance with the *Virginia Public Procurement Act* or the Grantee's written small procurement policies. If a property has an estimated fair market value of less than $10,000, a formal appraisal is not required. A “waiver valuation” can be written up by someone with knowledge of the local real estate market, such as the Commissioner of Revenue. DHCD must issue prior written approval of the waiver of appraisal process. See Appendix 39 for a sample request.

For properties with an estimated fair market value of $10,000 or more, the

Grantees must hire an independent appraiser. For residential properties of one (1) to four (4) units with an estimated value under $100,000, the Grantee must hire a Certified *Residential* Appraiser or a Certified General Appraiser, as licensed by DPOR. The Grantee must hire an independent Certified *General* Appraiser for all remaining written appraisals.

A contract must be executed and must specify appraisal report content and other requirements necessary to determine just compensation. The report will be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP), the Supplemental Standards Rule and the Jurisdictional Exception Rule of USPAP where applicable.

✱ **To find out if an appraiser has a DPOR license, call 804-367-8511 or go to www.dpor.virginia.gov and click on "License Lookup."**

**Fair Market Value**

The determination of fair market value should include an analysis of the highest and best use for which the property is clearly adapted at the time of the appraisal. The appraisal shall disregard any decrease or increase in fair market value of the real property caused by the project for which the property is to be acquired or by likelihood that the property would be acquired for the project. The fair market value is the basis of the just compensation offered to the owner.

**Invite Property Owner to Accompany Appraiser**

Prior to any appraisals being conducted, the Grantee *must* advise the property owner, in writing, as to the time the appraiser will visit the property and invite the property owner to accompany the appraiser during a site visit. The relocation file must be documented to show that the *Preliminary Acquisition Notice* and the *Invitation to Accompany* were issued. See Appendix 33 for a sample Invitation.

☑ DHCD encourages Grantees to issue the invitation separate to the *Preliminary Acquisition Notice.*

**Appraisal Reports**

The purpose of conducting an appraisal is to determine the fair market value of the property to be acquired so that the owner can be assured of being justly compensated. The end product produced by the appraiser is an Appraisal Report. This report must reflect nationally recognized appraisal standards, including the Uniform Appraisal Standards for Federal Land Acquisition. The appraisal *must* contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support the opinion of value.

At a minimum, a detailed appraisal shall contain the following items:

- The purpose of the appraisal, a statement of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal;

- A description of the physical characteristics of the property (and, in the case of a partial acquisition, a description of the remaining property), a statement of known encumbrances, if any, title information, zoning, an analysis of highest and best use, and at least a five (5) year sales history of the property;

- All relevant and reliable approaches to determine value consistent with commonly accepted professional appraisal practices;

- Multiple approaches shall be analyzed and reconciled so as to support the opinion of value;

- A description of comparable sales, including all relevant physical, legal and economic factors, and verification by a party involved in a transaction;

- A final statement of the real value of the property to be acquired and, for a partial acquisition, a statement of the damages and benefits, if any, to the remaining property; and

- The effective date of valuation, date of appraisal, signature and certification of the appraiser.

**Review Appraisals**

A review appraisal is always required unless approval is given to use the ‘waiver of appraisal” process for easements or fee simple purchases valued at less than $2,500. There are two types of review appraisals: a desk review and a field review. For routine, uncontested acquisitions, a desk review is adequate. A reviewer may compile relevant documents, conduct the review appraisal without visiting the site to be acquired, and corroborate or challenge the fair market value determination.

For controversial acquisitions or those of unusually high value, it may also be appropriate to conduct a site visit and review original legal documentation and records. DHCD reserves the right to require a field review. For both types of reviews, the review appraisal must be in writing.

If the review appraiser challenges the fair market value determination, the initial appraiser should then review and amend the original appraisal accordingly. A review appraisal should not provide a differing value of the property. If the review appraiser finds the Appraisal Report acceptable, a written report shall be given on the fair market value of the property. See Appendix 34 for a sample report.

## *Establish Just Compensation*

Once the initial appraiser and the review appraiser have prepared and submitted the Appraisal Report and the Review Appraisal to the Grantee, the Grantee must review both reports promptly so just compensation can be established. Just compensation is usually the same as the review appraiser's recommended fair market value; however it can never be less than the review appraiser's recommended fair market value. The Grantee may determine just compensation to be in excess of the fair market value and pay that amount to the property owner.

The Grantee *must* prepare a written *Statement of the Basis for the Determination of Just Compensation* and send it to the property owner with the *Written Offer to Purchase*. This statement *must* include:

- A statement of the amount offered as just compensation;
- A legal description of and location identification of the property;
- Interest to be acquired e.g., fee simple, less than fee simple, easement, etc.;
- An inventory identifying the building, structures, fixtures, etc., which are considered to be a part of the real property;
- The just compensation for any tenant-owned improvements as identified in the appraisal and review appraisal;
- Any purchase option agreement should be attached; and
- If only a part of a parcel is to be acquired, a statement apportioning the just compensation between the actual piece to be acquired and an amount representing damages and benefits to the remaining portion.

See Appendix 35 for a sample statement.

## *Provide Written Offer to Purchase and Negotiate the Purchase*

As soon as feasible after establishing just compensation, the Grantee issues to the owner a *Written Offer to Purchase* along with the written *Statement of the Basis of the Determination of Just Compensation*. See Appendix 36 for a sample offer. This offer *must* be sent by certified or registered mail, return receipt requested or hand delivered and receipt documented.

In addition to the amount of just compensation, the offer *must* specify the date on which negotiation for the sale of the property will begin, i.e., initiation of negotiations, which may or may not be the same date as the written offer.

If the property is tenant or owner-occupied, the Grantee *must* issue either a written *Notice of Relocation Eligibility*, or in the case of a tenant (not an owner-occupant) a *Notice of Right to Continue in Occupancy*, within thirty (30) days of the date specified for the initiation of negotiation.

✱ **For more detail on relocation procedures, see HUD Handbook 1378, which is available from DHCD or go to www.hud.gov/offices/cpd/library/relocation/policyandguidance and download a copy of it.**

Once the Grantee has submitted the Written Offer to Purchase to the property owner, the Grantee then negotiates the purchase of the property. The owner must be provided an opportunity to discuss the offer, propose a higher value and document the higher value. The

Grantee can consider the offer and either accept it, obtain a new appraisal (usually only if significant time has passed since the original appraisal), institute condemnation proceedings, or decide not to acquire the property.

✱ **Any amount of money paid to the owner over and above the fair market value is not grant eligible and must be covered by local funds or another source of funding included in the project. Should an acquisition case go to condemnation, "just compensation" is considered to be the amount that the court determines must be paid to the owner for the property, and that amount is grant eligible.**

If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Grantee *must* offer to acquire the uneconomic remnant along with the portion of the property needed for the project.

## *Complete the Purchase*

Depending upon whether the Grantee and the property owner can reach an agreement on an acquisition price, the Grantee completes the acquisition process, initiates condemnation proceedings or decides that it will not acquire the property.

☑ Grantees are encouraged to allow at least thirty (30) days before instituting eminent domain proceedings.

**Willing Seller**

Following successful negotiations, a Deed of Transfer or Contract of Sale *must* be prepared and executed and transfer of documents secured, prior to or at the time of closing. The Grantee *must* reimburse the owner to the extent it deems "fair and reasonable" for incidental costs associated with transfer of title including, but not limited to recording fees, transfer taxes, penalty cost or other charges for prepayment of any pre-existing recorded mortgages.

☑ Grantees are encouraged to pay these costs directly to the appropriate billing agent to assist the owner.

At the conclusion of settlement, the Grantee must provide the owner with a *Statement of Settlement Costs* which identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. If a title or escrow company is used, the standard Real Estate Settlement Procedures Act (RESPA) form is acceptable. The *Statement of Settlement Costs* must be dated and certified as true and correct by the closing attorney or other person handling the transaction. A receipt for purchase price must be secured by the Grantee. See Appendix 37 for a copy of the statement.

**Unwilling Seller (Condemnation)**

If the Grantee and Owner are unable to concur on just compensation, condemnation proceedings may be instituted. It should be remembered that juries may be very generous if they feel that the condemnation is unfair, inappropriate or takes advantage of the person whose property is being condemned. The Grantee is required to pay the amount established by the court.

Before filing a condemnation suit, the Grantee should send the Owner a letter that includes the Grantee's final offer, an invitation to discuss the acquisition and reasonable advance notification (at least seven days) of the date on which the Grantee intends to institute a condemnation proceeding if a voluntary agreement cannot be reached on the purchase price.

✱ **Saying you will not condemn property is not an option.**

## *Notice of Intent Not to Acquire*

If the Grantee decides not to acquire the property at any time after the *Preliminary Acquisition Notice* has been sent to the property owner, the Grantee must notify the owner and all tenants in residence in writing of its intention not to acquire property and that any person moving from the property thereafter will not be eligible for relocation payments and assistance. This notice must be sent within ten (10) days of the Grantee's determination not to acquire. See Appendix 38 for a sample notice.

✱ **If the Grantee should acquire property for a CDBG project and then decide not to use that property, any CDBG funds expended on that acquisition must be returned to DHCD.**

## *Voluntary Acquisition*

A voluntary acquisition occurs when the Grantee acquires real property from an owner who had submitted a voluntary proposal to the Grantee for purchase of property in response to a public invitation or solicitation of offers. The Grantee might undertake a voluntary acquisition when it needs a site within a general area that can be satisfied by a variety of properties. Rather than single out a specific site initially, the Grantee may wish to advertise to see if any owners are interested in selling their properties to the Grantee, thereby saving time and administrative burden. For example, the Grantee might be interested in acquiring housing units within a certain area of the locality to temporarily relocate families while their old units are being rehabilitated. The Grantee would then advertise to see if any owners were interested in leasing their properties to the Grantee for this purpose.

The real property acquisition regulations of the URA do not apply to voluntary acquisitions. However, the acquisition regulations do apply to properties that are part of a site previously designated or planned for public acquisition that would take place in the foreseeable future if the voluntary offer is not made. The seller *must* sign a waiver of rights to receive relocation assistance.

The Grantee *must* inform the owner of the fair market value of the property to be acquired and that the property will not be acquired if amicable negotiations fail. The fair market value must be established by an appraisal and a review appraisal prepared by licensed real estate appraisers.

✱ **While the acquisition requirements of the URA do not apply to voluntary acquisitions, the relocation requirements do apply to voluntary acquisitions (as described above) and when the seller is another Public Body.**

## *Utility Easements*

The majority of acquisitions through the CDBG program involve utility easements. To reduce the cost and time in the acquisition process, DHCD provides for two waiver processes. One waiver process applies to the property owner(s) i.e., donations and the other applies to the method of determining just compensation i.e., appraisals. Each of these waiver processes meets the intent of the URA.

✱ **Grantees may not use the waiver process to reduce a property owner's rights of due process or just compensation.**

**Waiver of Appraisal**

This waiver process may be used in lieu of individual appraisals of easements or fee simple purchases of small parcels with a value of $10,000 or less or right-of-way for each parcel with a value of $10,000 or less and the valuation of such parcels is not a complicated one. The steps in this process are as follows:

1. Determine Number and Size of Parcels (Easements) Needed: The Grantee should determine the number and size of parcels or construction and permanent easements needed. Footage may be measured in linear feet (for water/sewer projects) or in square feet (for large tracts or highway rights-of-way). The type of measurement must be consistent throughout the property description and the waiver request. The total footage is normally determined through a survey in conjunction with the engineer's design;

2. Obtain Estimate of Fair Market Value: The Grantee *must* obtain estimates or probable fair market value of the average parcel or easement. These estimates are to be attained from either the Grantee's Commission of Revenue's office, from a utility company which has recently acquired easements in the area, or it may establish the value by hiring a licensed appraiser to determine the market values for the different types of easements involved (residential, commercial, industrial, or agricultural). The latter method would include a report listing values on a square foot basis by property type. The specific value would be used to calculate the amount of just compensation for each property. In most cases, the average dollar value per square foot will be used. A licensed real estate broker or other individual familiar with real estate may be used under state law if no compensation is paid for the service;

3. Request for DHCD's Approval of Request for Waiver of Appraisals: The Grantee must submit the *Request for Waiver of Appraisals* form to its Community Development Specialist. See Appendix 39 for a sample request;

4. DHCD's Response: DHCD will consider the request based upon the information in the request.

All information must be accurate and valuation must be consistent. After receiving written approval from DHCD, the Grantee may then proceed to acquire the parcel or easements needed and provide just compensation as outlined in the approved waiver request. If the Grantee does not receive DHCD approval of its request, or the property owner does not waive his or her right to an appraisal, then the Grantee *must* conduct an appraisal and a review appraisal; and

5. Property Owner's Response: The property owner may accept or reject an offer to purchase that lists a fair market value determined using this waiver of appraisal process. Even if DHCD approves this method, the owner has the right to receive an appraisal and a review appraisal as part of the valuation process. If the property owner agrees to the waiver process, the owner must sign a waiver of appraisal form. If the property owner chooses an appraisal and review appraisal as the valuation method, then the Grantee must use that process.

✱ **In acquiring parcels or easements through the acquisition appraisal waiver process, the Grantee must still comply with the other applicable requirements and steps in the acquisition procedures as outlined earlier. The waiver of appraisal process only simplifies valuation and determination of just compensation.**

**Donations**

When the Grantee is acquiring rights-of-ways or easements, it *must* still provide the owner with a *Preliminary Acquisition Notice* and the brochure *When a Public Agency Acquires Your Property* in advance of initiating purchase negotiations. However, the *Preliminary Acquisition Notice* may also include language advising property owners that they may voluntarily waive their right to an appraisal and compensation and donate the parcel or easement to the Grantee. This modified notice is called the *Request for Donation of Land Parcel or Easement and Wavier of Right to an Appraisal*. See Appendix 40 for a sample request. If the property owner decides to waive all rights to appraisal and compensation and donate the parcel or easement, a formal *Donation and Waiver Statement* must be executed. See Appendix 41 for a sample statement.

If the property owner requests the Grantee to secure an appraisal and review appraisal, the Grantee must secure an independent appraisal and a review appraisal from licensed real estate appraisers, and document these steps in a written report. The Grantee must then prepare a *Statement of the Basis for the Determination of Just Compensation*. The Grantee can then prepare a *Waiver of Just Compensation* that clearly states the amount established as just compensation and that the owner understands that he or she cannot be required to donate the property, or sell it, to the Grantee at less than the amount determined to be just compensation and that he or she voluntarily agrees to do so, fully or partially. See Appendices 36 and 43 respectively for samples.

If the Grantee decides not to acquire the property, the Grantee must send the owner(s) a written *Notice of Intent Not to Acquire*. See Appendix 38 for a sample notice.

☑ Because of Virginia's inheritance laws, Grantees should attempt to get the signature of a spouse on a *Donation and Waiver Statement* regardless if the spouse's name is listed as a property owner.

### *Recordkeeping*

The Grantee *must* maintain a separate acquisition file for each real property acquisition for at least five (5) years after Final Closeout, final settlement of the acquisition, or the disposition of the applicable relocation records, whichever is later. Generally speaking, each separate acquisition file must document that the owner received the *Preliminary Acquisition Notice*, the brochure *When a Public Agency Acquires Your Property*, an invitation to accompany the appraiser, a written offer to purchase, a *Statement of Settlement Costs*, etc. See Appendix 43 for more details.

## Relocation Assistance and Anti-Displacement

The Grantee must observe the relocation requirements whenever displacement occurs as a result of a CDBG-assisted activity. HUD Handbook 1378 will generally be used as guidance by DHCD. It contains sample letters and forms, which can be edited to fit local conditions. A copy of the Handbook will be made available to Grantees who will actually conduct relocation as part of their CDBG project. The Grantee's compliance with the requirements will be closely monitored by DHCD. Failure to comply may lead to costly compliance findings.

In order to carry out its responsibilities the Grantee must:

- Appoint one administrative person to review, process, and provide relocation assistance;
- Develop and carry out a Residential Anti-Displacement and Relocation Assistance Plan. See Appendix 8 for more details;
- Provide for the review of all relocation claims and an appeals procedure to ensure uniform and fair treatment of all displaced persons;
- Provide that all assistance and relocation payments are in compliance with other federal laws and regulations identified; and
- Make every effort to coordinate the purchase of the displaced household's dwelling unit with their relocation.

The steps in the relocation process require complete familiarity with the regulations and procedures. Briefly the steps include:

1. Determination of eligibility for residential or business relocation;
2. Survey of persons to verify relocation eligibility, including establishing original occupancy date;

3. Interview to determine relocation needs of residents or business;

4. Notification of relocation eligibility and assistance;

5. Provision of relocation services;

6. Processing claims;

7. Processing relocation claims;

8. Appeals; and

9. Recordkeeping.

## *Relocation Assistance Eligibility and Needs Assessment*

Relocation involves the displacement of persons, businesses, farms, or nonprofits to another residence or place of operation. During the early stages of planning, problems associated with displacement should be identified and solutions developed to minimize the adverse effects of displacement. The Grantee must be prepared to respond to the individual needs and questions of the displaced persons. The Grantee also *must* maintain the confidentiality of records unless applicable law provides otherwise. The Grantee's staff person assigned to provide relocation assistance should be thoroughly familiar with relocation assistance requirements.

The remainder of this chapter is devoted primarily to clarification of the residential relocation process. Displacement of mobile homes, businesses, farms, and nonprofits will be addressed although not as much detail will be devoted to the nonresidential relocation.

The purpose of the residential relocation assistance process is to minimize the negative effects on households relocated because of publicly-funded projects. The assistance is advisory, counseling and financial. Advisory assistance keeps affected households fully informed of procedures, status' and information needed to help them be prepared and to assist them in making critical choices. Financial assistance diminishes any negative monetary impact on relocated households.

**Determination of Eligibility**

Displacement occurs when a "person (or persons) is required to move as a direct result of federally assisted acquisition, demolition or rehabilitation. It would not include tenants evicted for cause, squatters, or persons who occupied a property for the purpose of obtaining relocation benefits.

**Survey of Displaced Persons**

The Grantee must identify persons and perform surveys and interviews with each of those households early in the planning phase of the project. The purpose of these planning surveys and interviews is to determine who is eligible for relocation assistance, and determine their housing and financial needs. Typical information obtained includes:

- Names of occupants and their relationships - Identification of head of household;

- Exact address of dwelling;

- Telephone number(s) of residents;

- Social Security numbers;
- Age, sex, marital status, and minority group classification of each person;
- Date person first occupied the dwelling (documented by rent payment or utility receipt);
- Housing data, including size of current dwelling by number of rooms and square feet;
- Employment status and place of employment;
- Family income and assets, broken down by each wage earner in the household;
- Financial obligations and debts (including dependents, loans, charge accounts);
- Current housing-related expenses;
- Housing status (owner or renter for example);
- Housing preferences (including neighborhood, rental or purchase, subsidized housing);
- Special housing needs (for example, proximity to day-care or medical facilities);
- Health status and health coverage; and
- Household problems and deficiencies (such information is generally obtained through observation, rather than direct questioning - for example, lack of furniture, drug addiction, alcoholism, poor housekeeping standards).

In order to determine accurately the family's or individual's ability-to-pay for replacement housing, it will be necessary to verify the income information provided during the interview(s).

## *Notice of Relocation Eligibility*

After the CDBG Agreement is executed, the Grantee must send a *Notice of Relocation Eligibility* to all households scheduled to be relocated. The notice *must* be sent to all owner-occupants or tenants in occupancy within thirty (30) days of the *Written Offer to Purchase* if the occupant is going to be relocated. The appropriate HUD brochure must accompany this notice: *Relocation Assistance to Displaced Homeowners* or *Relocation Assistance to Displaced Tenants*. They are available at www.hud.gov/offices/cpd/library/relocation/publications. If the Grantee prefers, instead of using the brochure, the Grantee can use its own document as long as it contains substantially the same information.

If the occupant is going to be able to continue to reside in the building or in a nearby building located on the same site for at least four (4) years with a maximum of one temporary relocation move (for a period not to exceed one year) involved, the occupant must be sent a *Notice of Right to Continue in Occupancy*.

The Grantee's appeals procedure should be delivered with the *Notice of Relocation Eligibility* and receipt

documented. See also the below discussion on appeals.

All notices must be written in plain, understandable language. Notices must be either hand delivered with receipt documented or sent by certified or registered mail, return receipt documented. Hand delivery may be preferable because it gives the Grantee the opportunity to explain the relocation process face to face and answer questions. Samples of Notices can be found in Handbook 1378. Grantees are strongly urged to review this handbook prior to launching a relocation assistance program.

The *Notice of Relocation Eligibility* includes the following:

- Project name;
- Grantee contact person and contact information;
- Anticipated date to negotiate for property acquisition;
- The nature and extent of advisory and counseling services available (see below);
- The amounts and types of financial assistance available (see below);
- A clear statement that the Grantee must inspect replacement housing chosen to assure that it is decent, safe, and sanitary and free from unreasonable adverse environmental hazards, as defined by the DHCD HQS, and that relocation payments can be made only for replacement housing that passes inspection;
- A clear statement that the household will not be required to relocate without at least ninety (90) days advance written notice;
- A clear statement that self-relocation without coordination with the Grantee may jeopardize the availability of relocation assistance; and
- Fair Housing information.

☑ Distribute to households a copy of DHCD's *Fair Housing: Know Your Rights* brochure, making sure the owner signs a receipt that is placed in the client files.

## *Advisory and Counseling Services*

All advisory services are designed to keep households informed of their status, options and choices. Advisory services include information provided orally and in writing. DHCD expects that Grantees will work to develop sound rapport with those to be relocated to minimize the possibility of confusion and concern. In this model, written notices simply formalize information transmitted in earlier personal conversation.

The advisory program must include measures needed to:

- Personally interview each household to be displaced, determine specific relocation needs and preferences, explain the relocation payments and other assistance which may be

available, the related eligibility requirements, and the procedures for obtaining such payments and assistance;

- Provide current and continuing information on availability, prices and rentals of *comparable* replacement properties and housing;

- Transport relocates to comparables;

- Ensure that, prior to displacement, comparable replacement dwellings will be available for displaced persons;

- Supply information concerning federal and state housing programs and services;

- Ensure that the relocation process does not result in different or separate treatment on account of race, color, religion, national origin, sex, age, familial status, handicap, or source of income; and

- Minimize hardships to persons in adjusting to relocation.

In addition to the advisory services specifically related to the relocation itself, the Grantee may have a unique opportunity to provide information on non-housing services that could be helpful to the household. The Grantee may provide information directly or may provide referrals to public or private agencies that could assist with:

- Family and personal counseling;

- Access to medical care;

- Access to household goods;

- Information on social security, food stamps, veterans' benefits, or other similar financial assistance programs;

- Transportation needs;

- Child care or school adjustment;

- Employment counseling and job training;

- Aging issues;

- Financial management and planning;

- Family planning; and

- Legal aid.

## *Relocation Assistance*

The financial assistance portion of the relocation process comprises of the following:

- A moving cost component using either a fixed moving expense and dislocation allowance *or* reimbursement for actual reasonable expenses; and

- A housing cost differential component using a specific formula for owner-occupants of more than 180 days, and other options for those who do not meet the 180-day owner-occupant test but meet other criteria.

**Moving and Related Expenses**

All families and individuals who are displaced are eligible for moving costs, either as a fixed payment *or* documented reasonable expenses.

The fixed payment consists of a flat moving expense and dislocation allowance, as set by the Federal Highway Administration. The *Residential Moving Expense and Dislocation Allowance Payment Schedule* is published annually in the Federal Register in late December or January. Grantees can obtain it from DHCD, VDOT, or at www.fhwa.dot.gov.

The following actual reasonable and documented expenses are eligible for reimbursement:

- Transportation of the displaced person and personal property to the replacement site. Transportation costs beyond 50 miles are not eligible;
- Packing, crating, unpacking and uncrating of personal property;
- Storage of personal property not to exceed twelve (12) months or longer if the Grantee determines necessary;
- Insurance of displaced person's personal property in connection with the move and necessary storage;
- Deposits and credit checks; and
- Replacement value of property lost, stolen, or damaged in the process of moving.

**Housing Cost Differential**

Housing cost differential is meant to minimize any negative financial effects of involuntary relocation. Further, they support continued or new homeownership opportunities.

Replacement housing payments are available to owner-occupants who have:

- Owned and occupied the acquired dwellings for not less than 180 days prior to the initiation of acquisition negotiations;
- Purchased and occupied decent, safe, and sanitary replacement dwellings within one (1) year after receipt of final payment for the acquired dwellings or the date the Grantee's obligation is met, whichever is later; and
- Filed a claim within eighteen (18) months of the time the move is completed.

The l80-day owner-occupant who relocates to an ownership unit is eligible for that amount which is the difference between the amount the Grantee paid for his or her unit and the cost of the comparable replacement unit. Also, the owner-occupant is eligible for all increased mortgage interest costs and incidental expenses (closing costs).

A l80-day owner-occupant who first moves into a rental unit is eligible for the Rental Assistance Payment, and who

then purchases and occupies a decent, safe, and sanitary dwelling within one year after the date of final payment for the acquired dwelling or date of move from acquired dwelling, whichever is later, is eligible for the Replacement Housing Payment less the amount of the Rental Assistance Payments.

Down payment assistance and rental assistance are available to a tenant or owner-occupant displaced from a dwelling if the displaced person:

- Has actually and lawfully occupied the acquired dwelling for at least ninety (90) days prior to displacement; *and*

- Is not eligible to receive a replacement housing payment for l80-day owner-occupants; *and*

- Has rented or purchased, and occupied a decent, safe and sanitary replacement dwelling within one year after either—

    - In the case of a tenant, the date he or she moves from the acquired dwelling; *or*

    - In the case of an owner-occupant, the date he or she receives final payment for the acquired dwelling or the date he or she moves from the acquired dwelling, whichever is later.

Households qualifying for down payment or rental assistance have two options from which to choose under the URA:

- Down payment assistance is calculated as the difference between the monthly housing cost of the original (acquired) dwelling and the monthly mortgage payment plus utilities (based on the *Utility Fee Schedule* as found in Appendix 44) of the newly-occupied, comparable unit, multiplied by 42 months; or

- Rental assistance is calculated as the difference between the monthly housing cost of the original (acquired) dwelling and the monthly rental payment plus utilities (based on the *Utility Fee Schedule)* of the newly-occupied and approved unit or a comparable unit, multiplied by 42 months.

**Additional Options for Displaced Renters**

A displaced renter has several additional options for rental assistance. Under Section l04 (d) of the *Housing and Community Development Act of 1974* as Amended, the Grantee must first offer the displaced renter referral to public housing or a Section 8 certificate of a housing voucher, if available. If units are available and the displaced renter refuses this type of assistance, he or she is still entitled to the benefits outlined above under the URA.

If none of these options is available, the Grantee assists the displaced renter in choosing from one of the following:

- Cash rental assistance to reduce rent and utility costs to 30% of income for a 42 month period

and referrals to units, OR may opt to have rental assistance calculated on the basis of sixty (60) months if total tenant payment exceeds 30% of adjusted monthly income or 10% of gross monthly income;

☎ Note that the sixty (60) month calculation is not necessarily higher. The Grantee must consult with its Community Development Specialist on these calculations, and the displaced renter gets to choose;

- Payment to buy an interest in a dwelling unit in a coop or mutual housing association, using the calculation method identified above; or

- Down payment assistance under the URA, outlined above.

## *Identification of Replacement Housing Needs and Resources and Securing Replacement Housing*

One of the purposes of the Survey of Displaced Persons discussed earlier is to provide the data needed to determine replacement housing needs. All replacement housing must be comparable. There are two key criteria to comparable replacement housing. First, it must be "decent, safe and sanitary." The regulations define this to mean that the replacement unit must meet local housing or occupancy codes. The only times that local housing or occupancy codes do not define "safe, sanitary and decent" are when such codes do not exist or when the replacement unit is Section 8 assisted. In the latter instance, Section 8 Existing Housing Quality Standards define "decent, safe and sanitary." The unit must also be free of architectural barriers, if serving a disabled person.

In addition to being decent, safe and sanitary, the replacement unit must also be "functionally equivalent." This means it must be substantially the same as the acquired unit with respect to the number of rooms and living space unless additional or larger rooms are needed to meet the decent, safe and sanitary criteria i.e., two persons per bedroom with the age and sex of children sharing bedrooms at the discretion of the household.

However, a household occupying a dilapidated three or four bedroom house may be provided a smaller two bedroom standard house if portions of the larger house were not needed due to household size and no comparable dwellings are available.

Having identified the replacement housing needs, the Grantee must take an inventory of available housing resources. In doing this, the Grantee must be aware of fair housing criteria that must be met when relocating low-income and minority persons. The regulations require that the Grantee make comparable replacement housing available to low-income or minority relocatees in areas that do not have concentrations of either low-income or minority households if such opportunities are available. Furthermore, the regulations require that the Grantee make available to low-income and minority families special counseling and related services e.g. transportation.

The process of finding suitable housing will involve continuous contact with displacees to solicit information, establish rapport, provide referrals to housing resources and accompany displacees to inspect possible dwellings. Up-to-date information on the availability, prices, and rentals of comparable sales and rental housing must be provided. All units must be inspected using the DHCD HQS inspection form and certified as meeting code before being placed on a referral list. If available, at least comparable three (3) units should be listed.

Some relocatees will not wait for the Grantee to locate suitable units. They will search for their own units and relocate themselves. Occupants who relocate themselves risk not receiving the compensation to which they are entitled. This can happen because:

- The occupants do not know they are entitled to it and fail to apply;
- The Grantee is unable to trace them to their new quarters; or
- The new quarters are substandard (in which case the relocatees will receive moving expenses only).

Self-relocatees who do not inform the Grantee of their plans may forego a pre-move inspection of their new quarters.

An inspection after the move is made usually proves to be ineffective with regard to procuring needed repairs. The Grantee cannot force landlord action at this point, and neither can the occupant unless he or she proceeds through the code enforcement agencies. However, action of this kind is likely to end in the tenant's eviction, either as a result of retaliation by the landlord or because the required repairs are so extensive that they cannot be made until the building is vacated.

✱ **The Grantee must also inform such relocatees that if they move into standard housing within a year from the date they received final payment for their acquired dwelling or from the date they moved from the acquired dwelling, whichever is later, and file a claim within eighteen (18) months, they will be eligible for a replacement housing payment.**

The Grantee should also be aware that if it fails to make referrals to comparable replacement housing and the relocatee makes a self-move to a decent, safe, and sanitary dwelling unit, the Grantee will be liable for the relocatee's increased housing expenses for forty-two (42) months.

## *Completing Relocation and Processing Claims*

The Grantee shall refer at a minimum, one comparable replacement dwelling to the displaced person. Where possible, three or more replacement dwellings should be referred as available in a timely matter. The displaced person must be afforded the opportunity to enter into a negotiated purchase or lease agreement.

### 90-Day Notice to Vacate

After the Grantee has made a reasonable choice of suitable replacement housing opportunities available to the relocatee, the Grantee may issue the *90-Day Notice*

*to Vacate*. The notice must state the date by which the property must be vacated, and indicate that a second notice will be issued at least thirty (30) days in advance of the date the property must be vacated.

The date on which the property must be vacated cannot be less than thirty (30) days after the Grantee has obtained title to the property or legal right of possession, whichever comes earlier. This means that if negotiations for acquisition drag on for six (6) months, the occupant cannot be required to move until at least thirty (30) days after the Grantee has obtained title. Thus, timing of the notices is very important. If a notice is sent in anticipation of a timely sale and there are unforeseen delays, the Grantee should inform the occupant of the delay and indicate the expected date of sale and indicate the property must be vacated thirty (30) days thereafter.

**Continuation of Assistance**

Prior to and following the ninety (90) day notice, the Grantee continues to work with the relocatees - inspecting units, certifying they meet code; assisting or preparing mortgage applications, sale agreements, or leases as appropriate; assisting or preparing claim forms; processing and verifying claims; documenting claims and making payments.

☏ The HUD claim forms must be used. They can be found in HUD Handbook 1378. Call your Community Development Specialist for a copy or go to www.hud.gov.

**Time Limitations for Filing Claims**

It should be noted that claims may be filed up to eighteen (18) months following the completion of the move. This means that claims may be filed months after the conclusion of all other project activities. Therefore, if you have unsettled relocation cases at the time you want to close out your grant, you should calculate maximum payments for each potential claimant, document as unpaid costs, maintain documentation in the files, and note amount of unpaid costs on the *Final Financial Report*; otherwise, the funds remaining in the CDBG Agreement may be canceled and you would be financially liable for relocation costs. This also highlights the need to expedite relocation.

**Relocation Payments**

The Grantee is responsible for ensuring that all payments are made in a timely fashion. Payments should be issued within thirty (30) days following the submission of sufficient documentation to support the claim. Advance payments must be made where they would avoid or reduce a hardship. When advance payments are made, the Grantee must document that the payment was used for the purpose intended. For example, a down payment may include the seller or agent's name and purpose for payment with signed receipt. The Grantee should have the recipient sign a letter acknowledging receipt of relocation payments.

Payments for down payment assistance must be applied to the purchase price of a replacement dwelling and related incidental expenses.

✱ **Lump sum payments are prohibited. An escrow agreement shall be used for disbursement of monthly relocation payments. In the event of the death of the claimant(s), the remaining escrow shall be used to cover current housing expenses; be disbursed to remaining household members; or pay obligation of deceased person's estate regarding the replacement dwelling.**

Payments for rental assistance to owners or renters need not be applied to housing costs. The Grantee has no right to question the uses of the payment; it need not be accounted for beyond obtaining a receipt from the claimant.

☑ Grantees should disburse the payments for rental assistance on a monthly or quarterly basis to the landlord.

If a person makes a claim for payment that must be denied because the unit is substandard, the Grantee must inform the claimant why the claim is being denied, indicate the assistance available for bringing the current unit up to code, and the on-going opportunity to qualify for assistance by moving to a standard unit, providing the move is completed within twelve (12) months of the date of removal from the acquired dwelling or receipt of final payment (if owner-occupant), whichever is later; and that the claim is submitted within eighteen (18) months of the completion of the move.

In any instance in which payments are not made, the Grantee must be able to fully document its efforts to provide payments, the reasons payments were not made, and signed waivers of payment if possible. The regulations mandate that claim for payment be submitted to the Grantee within a period of eighteen (18) months after displacement. The Grantee should strictly adhere to this limitation and fully document its initial notification of this requirement and all subsequent reminders.

If relocation has not been completed within six (6) months of the date of issuance of the *Notice of Relocation Eligibility*, the Grantee *must* provide in its files a written explanation of delay and plan for timely completion. The Grantee may extend the period a homeowner has to find replacement housing.

**Relocation of Mobile Home Residents**

☎ Call your DHCD Community Development Specialist for guidance regarding the relocation of mobile home residents.

**Relocation of Businesses, Farms and Non-Profit Organizations**

The relocation process is fundamentally the same for both residential and nonresidential cases in terms of systematic organization. Despite the many similarities, however, the regulations governing payment of claims to displaced businesses, farms, and nonprofit organizations are complex.

The owner of a displaced business, farm, or nonprofit organization may be entitled to either actual relocation costs or payment "in lieu of" actual relocation costs. To be eligible for the "in lieu of" payment, certain qualifications must be met.

Specific information must be gathered to help relocate a business, farm, collected on a displaced person, with some additions and deletions. A record of this information including equipment or inventory must be kept on file, also for each individual case.

✱ **Displaced businesses, farms, and nonprofits are entitled to receive actual reasonable moving and related expenses. The Grantee is required to provide timely information as to eligible costs, fixed payment in lieu of actual moving, and related expenses when the business cannot be relocated and ineligible costs. See HUD Handbook 1378 for more details.**

**Complaints and Appeals**

The Grantee shall promptly review complaints and appeals. Written complaints and appeals shall be considered regardless of form. If the person needs assistance in filing one, the Grantee shall provide appropriate assistance.

**Actions That May Be Appealed**

Persons being displaced may file an appeal if they believe the Grantee has:

- Made a mistake in determining eligibility for payment;
- Made an error in figuring the amount of payment;
- Been unfair in refusing to waive the time limit for filing a claim or the purchase and occupancy requirements;
- Not provided a reasonable choice of comparable replacement housing;
- Not properly inspected the replacement housing; or
- Failed to comply with the provisions concerning the notice of right to continue in occupancy.

**Levels of Appeal**

There are three levels of appeal. First, an appeal is filed with the Chief Executive Officer or the local governing body of the Grantee. This appeal must be written. The second level of appeal is to DHCD. The third level is to the courts.

**Time Limit**

The time limit for a person to file an appeal is sixty (60) days after the person receives the written notification of the Grantee's determination.

**Right to Legal Counsel**

The person filing the Appeal has a right to legal counsel or other representation, but solely at the person's own expense.

**Grantee Review and Determination**

The Grantee official conducting the review of the appeal shall be either the Grantee's Chief Executive Officer or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

The Grantee shall notify the person of its written determination including an explanation on which the decision was made. The Grantee shall advise the

person of his or her right to appeal to DHCD.

## *Recordkeeping*

The Grantee must maintain a separate relocation file for each displaced person for at least five (5) years after Final Closeout or after the person has received his or her final relocation payment, whichever is later.

The Grantee must also maintain a separate file for each tenant not displaced for at least three (3) years after the termination of the four (4) year guarantee period.

Each separate relocation case file shall be documented sufficiently to demonstrate full compliance with the information specified above.

Furthermore, the Grantee must maintain a separate acquisition file for each parcel of land purchased for at least five (5) years after Final Closeout. See Appendix 24: Model Filing System for more details.

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# CHAPTER 8: FEDERAL LABOR STANDARDS AND EQUAL OPPORTUNITY REQUIREMENTS

This chapter outlines the federal requirements for federal labor standards (FLS) and equal opportunity. The Grantee must develop procedures that comply with these requirements and ensure contractors observe them.

For purposes of clarity, this chapter is divided into the following sections:

- Federal Labor Standards; and
- Equal Opportunity Requirements.

## Federal Labor Standards

The Federal Labor Standards (FLS) for contracts utilizing CDBG funds are primarily set forth in the following three statutes:

- The *Davis-Bacon Act* (40 USC 276(a-a5);
- The *Copeland "Anti-Kickback" Act* (40 USC 276(c); and
- The *Contract Work Hours and Safety Standards Act* (CWHSSA) (40 USC 327-333).

### *Davis-Bacon Act*

The *Davis-Bacon Act* (Davis Bacon) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by DOL and are issued in the form of federal Wage Decisions for each classification of work. The law applies to all construction, alteration, and/or repair contracts in excess of $2,000. The primary exceptions are for activities conducted under force account, contracts for housing rehabilitation contracts for less than eight units, including bathrooms. Water and sewer service line contracts for less than eight residential units are also considered to be housing rehabilitation work for the purpose of labor standards compliance.

### *Copeland "Anti-Kickback" Act*

The *Copeland "Anti-Kickback" Act* requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions. Permissible deductions include taxes, deductions the worker authorized in writing, and those required by court processes. The Act also requires that weekly *Statements of Compliance* (Optional Form WH-347) be submitted to the Grantee. The Act applies to all contracts covered by Davis-Bacon.

### *Contract Work Hours and Safety Standards Act*

The *Contract Work Hours and Safety Standards Act* requires that workers receive "overtime" compensation at a rate of 1 ½ times their basic rate of pay for all hours worked in excess of 40 hours in a work week. It applies to all

construction contracts funded in whole or in part with CDBG monies.

In summary, these statutes require that the Grantee develop procedures that comply with all federal labor standards provisions and compliance procedures. Applicable wage rates and FLS provisions requirements must be included in the bid specifications and contract documents.

### *Labor Standards Checklist*

✱ **At the pre-construction conference, the prime contractor and all known subcontractors must sign the *Labor Standards Checklist*, certifying that they will comply with the Federal Labor Standards. The Grantee must ensure that any additional subcontractors sign the checklist. See Appendix 45 for a copy of the Checklist.**

## Contract Compliance Officer

One person must be identified as responsible for ensuring compliance with the federal labor standards. Known as the Contract Compliance Officer, this individual *must* undertake the following activities:

1. Request the Wage Decision;
2. Verify that the Contractor has not been debarred;
3. Conduct weekly reviews of the payrolls to ensure that all employees are being paid in compliance with federal guidelines and that all other labor standards provisions are being observed i.e., job classifications and payroll deductions;
4. Conduct on-site interviews with construction workers;
5. Enforce the federal labor standards; and
6. Take corrective actions.

## Securing the Wage Decision

Wage Decisions are issued by DOL periodically throughout the year. They are a listing by type of construction of different job classifications and the minimum wages and fringe benefits that must be paid to anyone performing work in those classifications. All CDBG projects, except for most single-family housing, are required to use Wage Decisions. Therefore, all contractors who bid on a CDBG funded project must be aware of their obligation, if they are awarded the contract, to abide by the Wage Decision.

🕐 Approximately fourteen (14) days prior to publishing its Invitation to Bid, the Grantee must submit the Wage Rate Request form to its Community Development Specialist and request that DHCD provide the most recent Wage Decision(s) for the project. This request can be made by mail or fax.

The following information is necessary for the Community Development Specialist to send you a Wage Decision:

- Estimated date of advertising for bids and the estimated date of bid opening;

- A description of the work to be accomplished under the contract to be bid by type e.g., water, sewer, and streets; and by quantity;

- Cost estimates associated with each type of work to be completed; and

- Name and address of the person to whom the Wage Decision should be mailed. This should be the Grant Manager as it is his or her responsibility to know the Wage Decision has been received.

Upon receipt of the *Wage Rate Request* form, your Community Development Specialist will send the correct Wage Decision(s), the affirmative action goals, and the Federal Contract Inserts or "goldenrod inserts" to the appropriate individual.

The rate a Grantee will receive will be an area rate. Area rates do not have an expiration date and are valid until new rates or modifications are issued. The Contractor and his subcontractors are legally bound by the issued area rates *and* any modifications or new rates issued by DOL ten (10) days prior to the bid opening.

Therefore, the Grantee must contact DHCD ten (10) days prior to the bid opening, asking if the Wage Decision has been modified. If it has been, the modified Wage Decision must be issued as an addendum to the Bid Documents. Failure to do so will cause problems with the award of the contract and may result in re-bidding of project.

## *Dual Wage Decisions*

Dual Wage Decisions are issued when a project consist of more than one significant category, which is defined by DOL as at least 20% of the total construction cost. This will be determined when your Community Development Specialist receives the *Wage Rate Request* form. When more than one decision is issued, the engineer must identify in the bid specifications that the contract will be either broken out by Wage Decision or by subcontract or the Contractor may pay wages by breaking out payroll information by Wage Decision or pay the higher wage rate of the decisions issued. This item must be clearly discussed at pre-bid and pre-construction conferences.

## *Issuing the Wage Decision*

The Grantee is responsible for insuring that the Wage Decision, the affirmative action goals, and the Federal Contract Inserts are included in the Bid and Contract Documents.

## *DOL Posters*

Posters related to federal labor standards are also included in the wage-decision package sent to the Grantee. The posters and paperwork that are not included as part of the Bid Documents must be held by the Grantee until the Pre-Construction Conference, at which time the Grantee will give the posters to the successful bidder to be prominently posted throughout construction. The Grantee must ensure that the posters and

the Wage Decision are posted at the job site in a place that is easily accessible to all of the construction workers employed at the project and where they will not be destroyed by the weather.

☏ Call your Community Development Specialist if you require copies of the DOL posters in Spanish or go to www.dol.gov/osbp/sbrefa/poster/main.htm.

## Verifying the Low Bidder's Eligibility

No contractor or subcontractor who is debarred by HUD, DOL, or by an agency of the Commonwealth of Virginia is eligible to work on any CDBG funded project.

Upon the opening of bids, the Grantee must telephone DHCD to receive verbal clearance of the successful low bidder. Although written confirmation will be transmitted by DHCD for inclusion in the project files, the Grantee may award the contract upon verbal confirmation that the low bidder is not on the list of debarred contractors. The Contractor is responsible for obtaining clearance of all subcontractors.

If the local governing body does not issue a conditional or formal award of a construction contract within ninety (90) days of the date of the bid opening, the Grantee must contact DHCD to determine if the wage decision in the bid documents has been modified. If the answer is yes, the modified wage decision *must* be incorporated into the construction contract.

## Monitoring the Use of Job Classifications

All workers must perform in and be paid according to a specific job classification as listed on the Wage Decision. "Workers" mean anyone who is performing construction work on the project, including trade journeymen, flagmen and guards.

Apprentices and trainees may only be so classified if they are part of an apprenticeship program recognized by the Virginia Department of Labor and Industry. See below for a greater discussion on apprentices and trainees.

People whose duties are primarily administrative, executive or clerical in nature are not workers.

✱ **Foremen or supervisors who regularly spend more than 20% of their time performing construction work are workers for the time spent performing construction work. This time must be included on the payroll report and they must be paid at least the hourly rate of any job that they perform.**

### *Additional Job Classifications*

The wage rates issued by DOL must list and identify the general types and classifications of jobs necessary to complete the project. Upon receipt of the Wage Decision, the Contractor and its subcontractors must determine if all of the necessary classifications are listed. If not, once construction has started, the Contractor *must* submit a signed, written request to the Grantee naming the additional job classification(s) needed

and the recommended wage rate(s), including any fringe benefits, for each required classification.

The request should include the following information that:

- The work to be performed by the additional classification is not being performed by an existing classification in the applicable wage decision;
- The proposed classification(s) is used in the area by the construction industry;
- The proposed wage rate(s), including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the applicable wage decision;
- The contractor used the classification(s) and the proposed wage(s) and any fringe benefit(s) developed in preparing the request; and
- The interested parties, including the employees or their authorized representatives, agree on the classification(s) and wage rate(s). Attach supporting documentation.

Subcontractor's requests must go through the prime contractor.
The Grantee must submit the Contractor's or subcontractor's request to DHCD. In addition, the Grantee must provide the following information if it has not done so already:

- The bid opening date;
- Contract award date; and
- Date contract work started.

The proposed wage must be closely aligned with other wage rates already listed in the Wage Decision. For example, the wage rate proposed for an Electrician must be at least as much as the lowest wage rate for other trade classifications already in the Wage Decision. Furthermore, no additional job classification can be paid a wage rate lower than the lowest one listed for Laborers.

The request must also contain signed statements from the affected employees certifying that they agree on the classification(s) and pay rate(s).

DOL, through DHCD, has thirty (30) days from its receipt of the request to concur with or disapprove of the contractor's suggested pay rates.

## *Dual Classifications*

Workers engaged in more than one trade or classification must be paid either:

- The wage for that classification which pays the higher wage rate; or
- The rate specified for each classification for the time actually worked in it, provided that the contractor's payroll accurately documents the time spent in each classification.

## *Dual Wage Decisions*

Often when multiple Wage Decisions are utilized a particular job classification

will appear on both decisions; however, the minimum hourly wage rate, as specified by each decision, may differ. In such cases the Contractor may choose one of the following alterative guidelines to adhere:

- Workers may be paid the wage rate for the job classification which pays the higher wage rate of the two decisions. However, when the job classification appears on only one Wage Decision and the work is being done under the other Wage Decision, a request for an additional job classification must be submitted;

- Workers may be paid the wage rate specified for each job classification, according to the applicable Wage Decision with regards to work being performed, provided that the contractor's payroll accurately documents the time spent in each job classification; or

- Break-out all work into subcontracts according to the applicable Wage Decision and pay workers accordingly.

## *Subcontractors*

A bona fide subcontractor with an established business must list on his payroll records all workers engaged on the contracted work, including himself, if he performs construction work. As the owner of the firm, he need only list his name and that he is the owner. If he has no other employees and claims that he is a subcontractor, he must be carried on the prime contractor's payroll and be paid at least the hourly rate and benefits which correspond to the classification in which he works.

Proof or evidence that a bona fide subcontracting business exists would include a business license, a contractor's license, contractor identification and address, or employer identification number.

## *Apprentices and Trainees*

The only workers who can be paid less than the wage rate on the Wage Decision for their work classification are apprentices and trainees in an approved program. The Contract Compliance Officer (CCO) must contact the Virginia Department of Labor and Industry and get verification that any program claimed by the prime or subcontractors has actually been approved. The CCO must also get documentation of the specific status of individual employees.

If the Contractor has filed a copy of an approved apprenticeship program with the Grantee, apprentices and trainees are permitted to work at a predetermined rate which is less than the determined rate for their job classification if:

- They are employed and individually registered in a bona fide apprenticeship or training program, which is registered with the DOL, Manpower Administration, Bureau of Apprenticeship and Training (BAT), or with the Virginia Bureau of Apprenticeship Training, or if a person is employed in the first ninety (90) days of probationary employment as an apprentice or

trainee in such a program and has been certified to be eligible for probationary employment as an apprentice or trainee;

- They are paid at the rate specified in the approved apprenticeship program for their level of progress; and

- The ratio of apprentices/trainees to journeymen is not greater than that permitted under the registered program.

If the person classified as an apprentice or trainee does not meet the above conditions, they may not be so classified and must be paid at the rate of the job classification in which they are performing.

### *Helpers and Assistants*

Workers cannot be classified as helpers or assistants when those terms are synonymous with a trainee in an informal training program. Rather, they must be classified as laborers. They also must be paid at least as much as a laborer, but may certainly be more than a laborer. If the work being performed is not generally manual in nature and does involve the use of equipment, tools or tasks normally associated with the work of a journeyman, the worker must be paid the wage for the job classification he or she is performing.

## Monitoring Compliance

Compliance monitoring consists of two basic elements:

- Payroll Reviews; and
- Conducting Field Inspections.

### *Payroll Reviews*

The Contractor must submit payrolls weekly commencing the work ending with the effective date of the Notice-to-Proceed with construction until the week ending the date of Final Inspection.

☑ Contractors should number the *Payroll Reports* beginning with #1 and to clearly mark the last payroll of the project "Final." If there is a temporary break in the work, the *Payroll Report* should be marked "No Work" and submitted.

Contractors must either use DOL Form WH-347, *Payroll Report*, or a payroll form of his own choice, provided such a form contains all of the information that is required on WH-347 and is approved by the CCO.

The *Payroll Reports* are called certified because each payroll is signed and contains language certifying the information is true and correct. The payroll certification language is found on DOL form WH-348, *Statement of Compliance.* Contractors must submit weekly form WH-348 or its equivalent. See Appendix 47 for copies of the forms.

The *Payroll Report* and the *Statement of Compliance* must be submitted promptly for every work week of the project no later than seven (7) work days following completion of the work week. *Payroll Reports* must be submitted directly to the Grantee, not the Project Engineer, on a weekly basis.

🕐 The CCO must examine the payroll report promptly upon receipt. It

is very important that the first *Payroll Report* is right. Doing so helps to establish the proper tone with the prime and subcontractors, ensures mistakes are not repeated, and that any required restitution can be made while the location of workers is still known.

☑ The use of the Log of Payroll Reports and the Log for Reviewing Employees on Payrolls will greatly assist monitoring. The Log of Payroll Reports is filled out each week to summarize the Payroll Report review. The Log for Reviewing Employees on Payrolls is good for tracking Local (Section 3) County Workers, Minority and Female Hires, the number of interviews conducted, and comparing the wage rates listed on the Wage Decision, the Payroll Report and the Register of Assigned Employees. See Appendices 48 and 49 respectively for copies of the forms.

Each *Payroll Report* should be initialed and dated after each review to document compliance, especially if the two logs are not used. The Grantee must retain the *Payroll Reports* for five (5) years.

The examination of *Payroll Report* forms should include the following:

**Completeness**

Each *Payroll Report* must be examined to determine if it includes all required items of information and is accompanied by the signed *Statement of Compliance*. If the Owner or Officer did not sign the *Statement*, authorization for the employee signing the *Statement* must be obtained.

✱ **The CCO must ensure that the section of the *Statement of Compliance* which specifies how fringes will be paid is filled out as this is frequently overlooked by the contractor.**

If a *Payroll Report* is found to be incomplete, a copy *must* be returned to the Contractor for either completion or submittal of an amended report. If falsification is suspected, the payroll report should not be returned; rather a report of such findings should be submitted to DHCD.

**Employee Information**

Each worker's permanent home address and *employee identification number* must be reported on the first *Payroll Report* on which his name appears. The home address should be verified by employee interviews. Afterwards, the address and employee identification number only need to be reported if there is a change in this information.

**Job Classifications and Wage Rates**

Each job classification and corresponding wage rate listed on the payroll report form *must* be compared with those on the applicable Wage Decision to determine whether the report rate is at least equal to that required by the Wage Decision. If the wage rate is lower than required, the Contractor must be *immediately* requested in writing to pay the required rate and make proper restitution.

The CCO should also verify that the ratio between trade journeymen and apprentices complies with the approved apprenticeship program.

**Computations**

Payroll computations must be reviewed to determine whether payrolls are substantially accurate. If the value of the fringe benefit(s) the Contractor provides is less than the fringe benefit rate on the Wage Decision, the Contractor will need to add the balance of the Wage Decision fringe benefit rate to the basic rate paid to the worker. Overtime hours must be paid at no less than 1.5 times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.

**Deductions**

The Contractor is to show the amounts of any deductions from the gross earnings. "Other" deductions *must* be reviewed to determine their permissibility. Permissible salary deductions include deductions made in compliance with Federal or State law, court authorized deductions, and any deduction constituting a contribution on behalf of the person employed.

The employee *must* authorize any voluntary non-standard deduction in writing. These may include bond purchases, loan repayments, charitable contributions, uniforms, union fees, and health insurance premiums. The authorization must itemize each deduction by type, the associated amount and when the authorization expires. If the amount authorized changes, a new authorization must be submitted to the Grantee. See Appendix 50 for a sample authorization form.

**Discrepancies**

It is not necessary to investigate discrepancies that do not indicate an underpayment. If there is a difference between the amount reported on the *Payroll Report* and that amount stated by the worker *and* both amounts are higher than required by the Wage Decision, no action is required.

If, however, either the amount reported paid on the *Payroll Report* or the amount stated by the worker is *lower* than that amount required, it is necessary to take appropriate corrective action. See "Taking Corrective Action," as found on page 113, for more details.

☑ Arrange for a technical assistance visit by your Community Development Specialist after you have completed your review of the first four (4) to six (6) payroll reports to ensure you understand the monitoring requirements.

## *Conducting Field Inspections*

The CCO *must* carry out field inspections to verify and monitor the information reported in the *Payroll Reports*. Resident Project Representatives of the Engineer (RPRs) *cannot* be utilized for Davis-Bacon monitoring activities.

In performing the field inspections, the CCO must employ a general site observation and employee interview process.

**Site Observation**

After receiving and carefully reviewing the payroll records, the CCO must monitor on-site construction activities at various times to become familiar with the activities performed by various workers and determine whether the types and numbers of workers generally

coincide with the *Payroll Report*. If there appears to be a discrepancy or if workers appear to be performing more than one trade, these must be checked through Employee Interviews.

The CCO must note the person who appears to be job superintendent. The CCO should also verify that the Wage Decision and DOL posters have been posted.

**Employee Interviews**

The CCO is required to verify Payroll Record information through interviews with employees utilizing the *Record of Employee Interview* form. Copies of the form will be sent to the Grantee, along with the Wage Decision. Employees should be selected for interviews either at random or on the basis of suspected irregularities as determined through the site visit or payroll report. See Appendix 51 for a copy of the form.

❋ **The number of interviews necessary is determined by the size of the Project. A minimum of at least one worker per trade and 25% of the total number of workers must be interviewed. Interviews must be conducted during construction a minimum of once a month. Interviews of foremen only apply if they are working foremen.**

Interviews must take place during the times in which each subcontractor is on the job site to assure that all trades are covered. Additionally, unless there is reason to suspect falsification or intimidation, the employee interview should take place at the job site during work hours. However, if need be, the interviews can be done by mail.

The CCO should first observe what job the worker to be interviewed appears to be performing, noting the tools and equipment be used. The CCO should approach the worker at an appropriate time, identify him or herself and state the purpose of the interview. The actual interview should be conducted in such a place and manner as to maximize privacy and avoid disruption of the work being performed.

The worker should be informed that the information given is confidential, and that their identity will be disclosed to the employer only with the employee's written permission. The employee should be informed that the purpose of the interview is to obtain information for use in determining whether the required wages are being paid.

The CCO should cover the items on the interview form thoroughly. Special care should be made to establish clearly what the worker's job classification actually is on that particular project, the last date worked on that particular project prior to the day of the interview, and rate of pay on that particular project.

After completion of the interview, the CCO MUST note on the form whether the employee's statements were consistent and whether they verified what was observed by the CCO.

❋ **The CCO must cross-reference the information from the employee interview against that included in the weekly *Payroll Report*, the *Register of Assigned Employees*, and the Wage Decision.**

The CCO indicates he or she has completed the required cross-reference

by filling out the bottom portion of the Record of Employee Interview form, which has been amended for this program for this purpose.

Appropriate action must be initiated to clear any discrepancies and questionable items.

☏ Call your Community Development Specialist for directions on how to interview Spanish-speaking workers or for a copy of the *Record of Employee Interview* form's instructions in Spanish.

## *Enforcing Labor Standards*

When apparent violations of a significant nature are discovered, the Contract Compliance Officer must initiate an investigation and contact DHCD. Violations of a significant nature would be types that are not readily adjustable through an informal process. These would include:

- Valid complaints of an employee or another knowledgeable party;
- Habitual contract violations which indicate carelessness on the part of the Contractor in respect to all of his contractual responsibilities;
- Habitual delay in furnishing required payrolls, certifications and statements without satisfactory explanation;
- Discrepancies in time or payroll records and observed conditions which evidence apparent falsification; and
- Apparent violation of the Copeland "Anti-Kickback" Act and/or the Contract Work Hours and Safety Standards Act.

☏ Contact your Community Development Specialist immediately if violations such as those listed above are substantiated. Evidence of such violations must be submitted to DHCD for action.

## *Taking Corrective Action*

It is important that errors, incompleteness, and violations are identified and that corrective action is taken immediately. Generally speaking, the sooner a problem is addressed, the easier it is to remedy the situation.

If violations resulted in underpayment of wages, the Grantee MUST take action to ensure proper restitution. The Contractor must be informed in writing to begin paying the required wage rate immediately and to make restitution to the workers for past underpayments. The letter should identify the amount of restitution owed to each affected employee.

The Contractor shall document such restitution by submitting a supplemental *Payroll Report* containing amounts paid and copies of both sides of cancelled checks issued to the appropriate employees.

☏ Contact your Community Development Specialist for direction if an employee owed restitution could not be located.

Should the Contractor fail to make full restitution and correct violations within a

reasonable period of time, the Grantee MUST withhold as much of the amounts due the Contractor as is necessary to ensure payment to workers. Withheld funds should be set-aside in a special non-interest bearing escrow account for wage restitution. From this account, the Grantee shall pay either the Contractor at such time as he produces evidence of restitution or the affected workers directly.

Should the Contractor dispute the findings and actions of the Grantee, the situation shall be promptly reported to DHCD for consideration and appropriate action.

The Grantee shall prepare a *Final Wage and Compliance Report* to be submitted to DHCD containing:

- Total restitution paid;
- Identities of contractor, affected employees and restitution; and
- A brief statement as to the nature of the violation.

This report is required only when the total amount of restitution exceeds $1,000 per CDBG project.

# Equal Opportunity Requirements

The Office of Federal Contract Compliance Program has primary responsibility for enforcing DOL's Equal Employment Opportunity (EEO) provisions and not the Grantee. However, the Grantee does have responsibility for the following:

- Informing the Contractor of requirements and assisting the Contractor in complying with the requirements;
- Inserting in Contract Documents the appropriate Equal Opportunity provisions; and
- Awarding contracts and approving awards of subcontracts, in excess of $10,000 (ten thousand dollars), to only those contractors or subcontractors who are in compliance with the Federal Equal Employment Opportunity requirements, and who are not on a debarred list.

## *Bidder Compliance Statement Certification Regarding EEO*

Proposed contractors and subcontractors with bids exceeding $10,000 (ten thousand dollars) must submit the *Bidder Compliance Statement Certification Regarding EEO* before award of any contract or subcontract in the following categories:

- For construction contracts or subcontracts of unlimited amounts; and
- For non-construction (service and supply) contracts or subcontracts of less than one million dollars.

❋ **Grantees shall not award any contract or approve the award of any subcontract where the certifications indicate that the proposed contractor or subcontractor has not filed with the Joint Reporting Committee all reports**

**due, or has not developed and has on file at each establishment affirmative action programs (when required).**

Grantees shall also not award any non-construction contract or approve the award of any non-construction subcontract of *one million dollars or more* until a full, pre-award equal opportunity compliance review has been made by the Office of Federal Contract Compliance Programs and the proposed contractor/subcontractor is determined to be in compliance. See Appendix 52 for a copy of the Certification.

## *Equal Employment Opportunities Checklist*

✱ **At the pre-construction conference, the prime contractor and all known subcontractors must sign the *Equal Employment Opportunities Checklist,* certifying that they will comply with EEO. The Grantee must ensure that any additional subcontractors sign the checklist. See Appendix 53 for a copy of the Checklist.**

## *Monitoring EEO and Section 3 Requirements*

Grantees are required to systematically monitor and document the results of their equal opportunity and Section 3 programs. This is accomplished through the prime and subcontractor's submission of registers prior to and during construction of the project. Section 3 goal attainment will also be documented by Grantees on their annual Section 3 Report.

**Register of Assigned Employees (RAE)**

This form documents the workers assigned to the project. It must be submitted prior to the start of construction to document the initial workforce and be updated throughout the construction process when additional workers are hired for the project or when the status of current workers changes. See Appendix 54 for a copy of the Register.

**Register of Contractors, Subcontractors and Suppliers**

This form documents procurement, including contracts, of more than $10,000 (or more than $1,000 if a housing rehabilitation project) made during the reporting month. The prime and subcontractors must submit the *Register* monthly. If no procurements meeting the threshold were made during the reporting month that should be noted on the form. See Appendix 56 for a copy.

## *Reviewing the Registers*

The Contract Compliance Officer (CCO) is responsible for reviewing all weekly *Payroll Reports*. In so doing, every person listed on a *Payroll Report* must also be listed on the RAE and the information must match.

The information derived from the monthly review of both registers is important for several reasons. Included among these is the fact that this is how the contractor(s) are evaluated on their efforts to use businesses that are located in and owned by County residents and to employ LMI persons and to use

minority- and female-owned businesses. Therefore, it is important that the CCO ensures the Registers are filled out completely. If not, corrective action must be taken.

Furthermore, the Grantee must compile and submit annually performance data from its contractors and its own activities under each construction, non-construction, supplies and materials contract. See Appendix 22 for more information.

## *Recordkeeping*

In order to show performance and/or good faith effort, the Contractor and Grantee must keep the following records:

- All applications regarding employment, whether made at the site, at the Virginia Employment Commission, or at the contractor's place of business, and the results thereof, must be reported cumulatively every six months;

- All bids, estimates, quotes, or inquiries made concerning the procurement of goods or services made in completing the project; and

- Documentation of the contractors' and Grantee's solicitation for goods, services or employees which are intended to attract targeted minority, female and local (Section 3) county businesses or populations must be maintained, compiled and reported to DHCD at least annually. See Appendix 22 for a sample.

# CHAPTER 9: HOUSING

This chapter outlines the requirements specific to housing rehabilitation and production projects. These projects assist Grantees in rehabilitating LMI-occupied housing units to DHCD HQS or in support of the development of new housing units which will be occupied by LMI persons.

✱ **In Housing Rehabilitation projects, all LMI households assisted must have been project area residents at the time of the grant application's submission unless prior approval is obtained from DHCD.**

✱ **CDBG funds may not be used to rehabilitate houses that have been previously rehabilitated with CDBG, IPR, or Neighborhood Stabilization Program funds.**

For purposes of clarity, this chapter is divided into the following sections:

- Housing Rehabilitation;
- Application Process;
- Alternatives to Rehab;
- Rehabilitation Loan Packaging;
- Contracts and Agreements;
- Soliciting and Qualifying Contractors;
- Initial Inspection;
- Temporary Relocation;
- Preparation of Specifications and Bids;
- Project Sign;
- Bidding and Construction Process;
- Housing Production; and
- Recordkeeping.

## Housing Rehabilitation

The phrase "housing rehabilitation" applies to all residential improvements made on private property with CDBG funds. Improvements include housing repairs, bathrooms, wells and septic systems, and residential water and sewer connections. All rehabilitation work must be done in conformance with the DHCD HQS as found in Appendix 57. Housing rehabilitation projects involving eight (8) or more units per construction contract must also follow the requirements outlined in Chapter 6: Design and Construction Management.

### *Implementation*

Prior to initiating implementation of a housing rehabilitation project the Grantee must adopt a Housing Rehabilitation Program Design. The Program Design sets forth the policies and procedures the Grantee will use to guide decisions it makes throughout its

project. (See Appendix 17 for a more detailed description.)

Every housing rehabilitation project must have a Housing Rehabilitation Oversight Board. The main function of this Board are:

- Monitor progress and performance;
- Approve applicants selected for assistance;
- Approve pre-qualified contractors to bid on houses to be rehabilitated;
- Approve contractor bids; and
- Resolve complaints and disputes that arise during the project.

The Housing Rehabilitation Oversight Board should meet regularly (monthly is expected) and be constantly updated and engaged in the implementation of the housing rehabilitation activity.

The primary function of the Program Administrator (if not the Grant Manager) is to oversee all day-to-day program activities to assure that they are carried out fairly and in conformance with the adopted Housing Rehabilitation Program Design (Program Design). The housing rehabilitation construction process is primarily the responsibility of the Rehabilitation Specialist, but the Program Administrator is expected to oversee the work of the Rehabilitation Specialist.

# Application Process

Designing a set of application procedures which are comprehensive and fair is a fundamental prerequisite to a successful program. The Grantee's procedures must be simple enough so as not to discourage participation in the program. However, they must contain enough safeguards to ensure each application is judged by the same set of standards.

## *Soliciting Applicants*

All households within the designated project area must be directly informed of the availability of assistance, procedures on how to apply, and the criteria and procedures for providing assistance.

One of the most effective methods to notify potentially eligible applicants about participation is by describing the Rehab Program at a neighborhood meeting or a series of neighborhood meetings. Such meetings should begin well in advance of your accepting applications.

❋ **The Grantee must provide all residents of the project area, in writing, with information about the project. Such information should describe the program, the written complaint and appeals procedure and list the dates, selection procedures and criteria, and locations of neighborhood meetings at which further questions can be asked. See Appendix 55 for a sample brochure.**
An additional means of soliciting applicants is by enlisting the assistance of local newspapers. News stories describing the benefits and procedures of the program can be helpful. Newspaper

advertisements are generally less effective.

Outreach to social service agencies, senior citizen and church groups are also helpful. In many cases when people are uncertain of a "government" program the assurance of a trusted person such as a friend or clergyman is helpful.

Finally, if there are significant numbers of illiterate persons in the project area or if response is low, it is important that specific targeting be done. It may be necessary to directly visit targeted households (elderly, disabled or uneducated households) to enlist their participation.

## *Accepting Applications*

Before accepting applications, Grantees will need to decide at what times and place applications will be taken. It is recommended that Grantees take applications at specific predetermined hours at a convenient location so as not to disrupt other work activities and create a scheduling conflict for applicants. Once the decision is made it should be advertised with other program information.

There will be applicants who, due to working hours, age, or disability, may not be able to appear at your regular office during normal working hours. For this reason, DHCD suggests that Grantees consider taking applications at times and locations that will provide many opportunities for all potential applicants.

## *Screening Applicants*

One of two methods of pre-qualifying or screening applicants is generally used in programs. The first method is the use of a short-form application that determines whether a household appears to meet the basic eligibility criteria. The applicant fills out and submits the short form to the Program Administrator or designated Intake Surveyor, who determines whether the applicant proceeds to the full application stage or, based on the information provided, is ineligible for assistance.

The second method of screening is to have all potential applicants meet personally with the Intake Surveyor. If the interview indicates that the applicant is probably eligible, either the full application may be taken at that time or an appointment is made to take the full application at a later date.

## *Completing the Application*

Once preliminary eligibility has been established, a person is ready to complete a full formal application. It is required that the application be filled out by the Intake Surveyor during an interview. By doing this, the Grantee will eliminate inaccurate information due to misunderstanding of the questions by the applicant which could result in time consuming revisions.

The application should contain the following information:

- Name, address and phone number;
- Household composition (identified by name, age,

relationship to applicant and employment status);

- Race, ethnicity, and disability status of household members;
- Source and amount of income for all household members, including the name, address, and phone number of all employers to all household members;
- Description and amount of all household assets, including name and account number of financial institutions;
- Length of homeownership;
- Mortgage and or lien holders, including the terms and monthly payments and account numbers;
- Homeowners insurance coverage, including the name of insurance company and annual premiums and policy expiration date;
- Medical and other program allowed deductions;
- Utility types and average monthly cost;
- List of property improvements needed;
- Above the signatures a statement stipulating the right to verify all information given with warning: **"It is a violation of Federal Law and a Criminal Offense to make willful false statements or misrepresentations in the completion of this application for assistance;"** and
- Signature of applicant(s) and persons completing the applications.

The application must also include tenant information on rent and utility expenses in the case of investor-owned properties.

## *Conducting the Interview*

During the interview, explain the purpose of the application, how it will be processed and that all information will be verified. Emphasize also that all application and verification information will be kept strictly confidential.

☑ Be alert to discrepancies in information presented that may signify a possible omission. Probably the most common error or misrepresentation made by an applicant is the omission of a source of income or asset. Tactfully ascertain from the applicant whether they have omitted such information.

At the end of the interview, ask the applicant to carefully read the warning about misrepresentations. Both the applicant(s) and the Intake Surveyor must sign the application form.

☑ The interview is a good opportunity to explain again the program's purpose and requirements, including that this is not rehabilitation for aesthetic purposes. Also of particular note are ability-to-pay, junk and debris removal and Home Maintenance Education Program (HMEP) attendance requirements. At this time, the Grantee should supply the

applicant with a copy of the complaint and appeals procedure.

## *Income and Asset Verification*

All income and asset information must be verified by third party documentation. Gross income of the household from the previous year must be used. Ten percent of liquid assets or actual interest earned must also be counted as income and added to the gross income of a household.

For each type of verification, the program should develop a form letter which explains that the applicant wishes to participate in the program and verification of income and assets is required for participation. It should be formatted such that it has

- Blanks for the information to be filled in,
- A place for the person providing the information to sign, and
- The signature of the applicant.

☑ DHCD recommends that Grantees first telephone the firms or institutions being sent the income verification form in order to explain the request. The Grantee should also enclose a self addressed stamped envelope with the verification form. Employers and banks are more willing to cooperate in verification requests the less cumbersome it is for them to do so.

W-2 forms or independently certified tax statements may be used to verify income only when the Grantee has failed to receive cooperation from the employer.

☎ Call your DHCD Community Development Specialist for guidance if none of these verification methods are successful.

☑ DHCD recommends that Grantees verify that applicants are current on their mortgage payments just before the construction contract is executed, especially if there has been a lengthy gap between the application process and the start of construction.

## *Federal Equal Credit Opportunity Act*

Along with the application and income verification letters, applicants must sign an *Acknowledgement of Receipt of ECOA Notices and Disclosures* form. See Appendix 58 for a copy of the form.

## *Selection of Applicants*

The Rehab Board must review and approve eligible applicants based on the priority criteria outlined in the Program Design.

Ineligible applicants should be notified immediately in writing that they are ineligible and given the reasons for this determination. See also “Complaints and Appeals,” as found on page 100.

All eligible applicants must be notified in writing and advised of the next step in the rehabilitation process. Generally the next step would be the initial inspection by the Rehabilitation Specialist and Program Administrator.

## *Timing of Applications*

It is strongly suggested that a "staggered" application system be established. By using this type of system, families who were late in learning of the program's existence will have a reasonable chance of applying for and receiving funding in subsequent rounds of the program. Some programs allow for the one time carryover of unfunded applications into the next round of competition.

## *Property Ownership and Control*

Ownership for all properties, including mobile homes, must be verified and documented so the Grantee can ensure that the program is executing a contract with the person(s) who legally own and control the property to be rehabilitated. This assures that the identified, eligible beneficiary will have continued use and enjoyment of the property and that the CDBG loan is secured. Establishing property ownership is usually done by obtaining a copy of the deed from the owner and conducting a title search..

DHCD allows less than fee simple ownership if it cannot be documented or achieved. A test for control could be payment of property taxes and insurance for at least the last three (3) years.

Once control has been established, an enforceable Deed-of-Trust must be signed and recorded. However, an attempt must be made to contact, by certified or registered mail, and obtain the signature of all owners on the Deed-of-Trust.

Life estate ownership may be accepted provided that both the owner(s) of the property and the occupant who has the life-rights sign the construction contract, demolition contract and the Deed-of-Trust.

☑ Because of Virginia's inheritance laws, Grantees should attempt to get the signature of a spouse on a life-estate gift or demolition contract regardless if the spouse's name is listed as a property owner.

Should the individual who has life-rights cease to live in the property during the mandatory ten (10) year term of the loan, the owner(s) of the property must either buy-out the loan at full value, less what has been paid or forgiven, or find an eligible LMI occupant for the property.

Title searches are required. A maximum amount of $200 may be included as an administrative activity unless the Program Design calls for the actual repayment of a rehabilitation loan. If the beneficiary is repaying the full amount of the loan, not to be confused with a forgivable loan, the legal costs may be shown in the rehabilitation activity as a construction cost.

☑ Grantees are strongly encouraged to purchase a title abstract. The cost may be shown in the rehabilitation activity as a construction cost.

## *Property Eligibility*

Only houses with HQS violations occupied by LMI households that are the household's primary place of residence are eligible for CDBG assistance. It is the responsibility of the Housing Program Administrator to ensure that the

applicant's property is eligible according to the Grant Management Manual and the Grantee's adopted Program Design. For more information about each type, see Appendix 17: Housing Program Design.

**Owner-occupied Properties**

A property owned by a LMI household that can be rehabilitated to DHCD HQS with a base CDBG investment of $25,000 or less is the primary type of property eligible for housing rehabilitation. The base cost can be supplemented with "exceptions" that may exceed the base cost limit.

**Investor-owned Properties**

Rental units are eligible for rehabilitation. However, in the case of investor-owned properties, a legally-recorded Investor-Owned Rental Commitment to provide the improved housing units to LMI households for ten (10) years at affordable rents must be executed.

**Contract Purchase Properties**

In this situation, a LMI tenant is permitted to purchase a property directly from the investor-owner at a moderate interest rate with little or no interest rate.

**Heir Properties**

An heir who can demonstrate control over a property and the likelihood of continued occupancy can receive assistance under certain circumstances.

**Life Estates**

As discussed earlier, LMI households who have a life estate that was recorded prior to the construction contract's execution are eligible if the Housing Program Design allows this type of property to be rehabilitated. DHCD must be notified in writing of any change in a beneficiary's life estate status.

**Vacant Property**

Vacant property can only be rehabilitated with prior written approval from DHCD.

**Mobile Homes**

Owner-occupied mobile homes are eligible for rehabilitation provided they do not meet DHCD HQS, and the cost of the rehabilitation will not exceed the cost limits for mobile homes. If the rehabilitation costs exceed these limits, the mobile home must be substantially reconstructed with a stick-built unit. The use of mobile homes to replace a mobile home or a stick-built home may occur only with prior DHCD approval.

A copy of the DMV title must be placed in the client rehabilitation file.

## *Cost Feasibility Evaluation*

At this point in the process, some Grantees will ask the Rehabilitation Specialist to conduct a preliminary inspection. The purpose of the preliminary inspection is twofold. First, it confirms that the unit fails DHCD HQS inspection and is eligible for rehabilitation. Second, it confirms that the required work can be completed within DHCD's program parameters and

in accordance with the local Program Design. In particular, the Program Administrator and Rehabilitation Specialist can proceed with confidence that the cost of the work will not exceed funds available or determine that additional or other housing resources are needed to assist the household.

**Construction Cost Limits**

Grantees may use up to $25,000 to rehabilitate houses, not including mobile homes, to DHCD HQS and up to $40,000 to substantially reconstruct housing units determined to be unsuitable for rehabilitation. Under certain circumstances, DHCD will allow a base cost of up to $35,000 for a single rehabilitation. These circumstances are:

- The Grantee tests for the presence of lead-based paint, as outlined in the lead related regulations, and all tested surfaces in a unit reveals no lead; or

- The Grantee has at least four (4) licensed lead abatement contractors who are qualified to bid on the job in question; or

- The unit was constructed after 1978.

✱ **To find out if a lead abatement contractor has a DPOR license, call 804-367-8511 or go to www.dpor.virginia.gov and click on "License Lookup. Click on "Asbestos, Lead and Home" for the LBP abatement training schedule.**

**Exceptions**

Exceptions allow the Grantee to commit up to $20,000, beyond the base construction cost, to the completion of the project. The following activities are considered exceptions:

- Construction of a bathroom when rehabilitating a unit that lacks one;

- Installation of a well and/or septic system. CDBG funds may not be used to install "pump and haul" systems. Wells must be drilled, tested and approved. Payment will be made for only one (1) well, regardless of the number of wells drilled;

- Houses that require alternative septic systems are eligible for an additional $10,000 in exceptions (up to a maximum of $30,000) for additional costs for the design and installation of an alternative septic system;

- Provision of water and/or sewer connections, including water meters. Check with your Community Development Specialist about how CDBG funds may be used to install connections to mobile home parks;

- Provision of ramps and other accessibility features;

- Provision of one or more additional bedrooms to relieve an overcrowded situation in which more than two (2) bedrooms are

necessary or other changes to a unit's footprint;

- Actual laboratory costs for evaluation of lead tests;

- Housing rehabilitation flood proofing solutions. Flood proofing solutions are defined to include house elevations; the elevation and relocation of utilities; the addition of basement sump pumps with backup generators; the reinforcement of basement doors and dry flood proofing methods as appropriate with the building code; and

- Construction related to asbestos abatement and/or disposal.

✱ **All exceptions must be listed as alternates on the bid form, but they must be contracted out separately from the base construction costs. Failure to do so may result in the ineligibility of the entire project.**

**Administrative Housing Rehabilitation Cost Limits**

Administrative Housing Rehabilitation costs are limited to 10% of the total CDBG award, not exceeding the limits found in Appendix 3: Project Budget. They include outreach and intake, income eligibility verification, title issues, deed recordation, staff time for delivery of Home Maintenance Education Program activities, legal fees and hazard's insurance. CDBG funds cannot be used to insure the house's contents.

Legal fees related to the recordation of Deeds-of-Trust may not exceed $200 per unit. See "Property Ownership and Control," as found on page 122, for more details.

**Construction-related Soft Costs**

Up to 10 percent of the total housing rehabilitation construction activity budget may be used for Rehabilitation Specialist services such as inspections, specifications, bidding and the delivery of HMEP training. Other CRSC include fees for engineers, architects, property survey costs, inspections, blower door tests, lab tests, soil evaluation tests and clearance tests. Additionally, crucial non-housing activities or non-construction housing support activities that will clearly complement the housing improvements taking place in the project area and will meet a national objective may be included in a housing rehabilitation project with prior DHCD approval. CDBG participation in these activities shall not exceed 15 percent of the total amount requested.

**Demolition Cost Limits**

Demolition costs are only allowed on substantial reconstruction projects. They are "stand alone" costs that must be contracted out separately from the base construction and exceptions contracts. Although there are no cost limits for demolition, DHCD expects them to be reasonable. DHCD reserves the right to cap or cut costs, if necessary.

**Temporary Relocation Cost Limits**

CDBG funds may be used to cover eligible temporary relocation costs up to $2,000 per unit. Eligible temporary relocation expenses include motel and storage costs but not expenses incurred

by family members with whom beneficiaries are staying. If the Grantee does not incur any actual relocation costs, the $2,000 is not available. The Grantee needs prior approval from DHCD to exceed the $2,000 cap.

**Home Maintenance Education Program Cost Limits**

Once the HMEP is incorporated into the local Program Design, up to 1% of base construction costs per unit, not to exceed $250, is allowed. HMEP costs must be based on actual documented costs and must be drawn down with the final request for the unit. These costs are not intended to cover staff or Rehabilitation Specialist time for delivering training. Rather, they are intended to cover items such as printed materials (but not copying), cleaning kits and tool kits.

**Mobile Home Cost Limits**

Mobile homes may be rehabilitated provided the cost of rehabilitation will not exceed $10,000 plus $10,000 for water and wastewater installation. No other exceptions apply. See "Mobile Homes," as found on page 123, for more details.

These cost limits are not applicable to a double-wide or equivalent with a continuous foundation on footers, which for these purposes only, are considered a permanent home.

In addition, renters occupying mobile homes that will exceed $10,000 may be relocated.

☎ Call your DHCD Community Development Specialist if the mobile home was once a single-wide, but has had a permanent structure attached to it and is on a continuous foundation. DHCD must be consulted to determine the eligibility of this property for participation in the program.

# Alternatives to Rehab

In some cases, it will be necessary or advisable to consider alternatives to rehabilitating a house. Alternatives may be necessary due to the cost of rehab, the site or condition of the original structure, or household circumstances. The most typical alternatives are permanent voluntary relocation, partial rehabilitation and substantial reconstruction. Finally, there may be other considerations that affect a Grantee's dealings with a potential beneficiary.

## *Permanent Relocation*

In some instances, whether by design or upon encountering an infeasible property, Grantees may need to consider relocation of a family from a house that qualifies for substantial reconstruction. The relocation could be into a house with no DHCD HQS violations or to a house that will undergo rehabilitation within the project area.

Where renter-occupied residents are being relocated or are being assisted to become homeowners, the relocation payment is limited to down payment assistance plus moving allowance provided under the URA. The tenant may be offered 20% down payment assistance to acquire their presently occupied home rather than do relocation. If the property to which the owner occupied family is being relocated will require repairs to meet the DHCD HQS,

the cost of the repairs must be counted as part of the approved “Uniform Act” relocation payments (excluding moving expenses). The house being vacated must be demolished within thirty (30) days of the Certificate of Occupancy being issued.

Relocation requirements are discussed in more length at Chapter 7: Acquisition and Relocation.

## *Partial Rehabilitation*

In certain circumstances, the Grantee may find that some properties are unsuitable for rehabilitation only because they will exceed the base $25,000 cost limit and not because significant structural damage requires demolition. While these houses may exceed the cost limits, there may be several reasons why it is not desirable to demolish the structure and replace it with a new one. In such cases, the structure may be partially rehabbed so that all portions of the structure that are used daily by the occupants are brought to DHCD HQS. Those portions of the house which do not receive rehabilitation *must* be closed off and remain unused. Cost limits imposed on those properties deemed suitable for rehabilitation must be used.

✱ **All cases of Partial Rehabilitation must be approved by DHCD in advance of the execution of a construction contract.**

## *Substantial Reconstruction*

If a Grantee encounters a family in a house that needs to be substantially reconstructed and it can be done within DHCD cost limits, the Grantee may construct a dwelling, demolishing the existing structure. Houses identified in the grant proposal do not require approval by DHCD. Houses which were not identified as needing substantial reconstruction in the application must receive DHCD approval prior to work beginning.

DHCD's policy for allowing the cost of "Substantial Reconstruction" of housing is as follows:

- The house must be owner-occupied;
- Substantial Reconstruction is a last resort after rehabilitation and relocation have been explored and documented as infeasible;
- The Grantee's Program Design must have clear definitions of both "Suitable for Rehabilitation" and "Unsuitable for Rehabilitation." The house to be reconstructed must be documented clearly as "Unsuitable for Rehabilitation” and must be demolished within thirty (30) days of the Grantee’s Final Acceptance;
- Demolition means the dismantling, razing, and deconstruction of stick-built houses and mobile homes approved for substantial reconstruction so that the demolished

house cannot be reused in any way. Demolished materials must be disposed in a landfill and/or salvaged for scrap.

It is the responsibility of the Rehab Specialist and the Grant Manager to verify that said demolished units comply with these guidelines.

- In the case where a contractor has physically begun rehabilitation and it is discovered that conditions are worse than expected making the property "unsuitable for rehabilitation" by the local definition, the Grantee may terminate the contract and proceed with "substantial reconstruction" after submitting and having approved a written request to DHCD which explains the situation. All work must be completed with DHCD cost limits;

- For properties which are determined to be "unsuitable for rehabilitation" after submission of the application to DHCD but prior to actual construction, the following process must be followed;

- The Rehabilitation Specialist must prepare a written itemized cost estimate of the repairs needed to bring the house to DHCD HQS and the cost must clearly exceed the limitations in the Program Design, or the Rehabilitation Specialist must document that a structural condition exists which clearly causes the property to meet the definition of "Unsuitable for Rehabilitation" as set forth in the Program Design;

- The Rehabilitation Specialist must prepare plans and specifications for the proposed substantially reconstructed house, and either prepare an itemized cost estimate or secure bids from contractors and suppliers of the cost of the proposed house;

- The cost of the proposed substantially reconstructed house must be less than the estimated cost of rehabilitating the existing house;

- The Grantee must submit to DHCD the Substantial Reconstruction Worksheet which provides the cost comparisons listed above. Attached to the worksheet the Grantee must submit

the rehabilitation cost estimate (or description of the structural defect making the property unsuitable for rehabilitation) and the basis for the cost estimate of construction of the reconstructed house. In addition, a sufficient number of photos of the house proposed for demolition to document the interior and/or exterior condition of the house. See Appendix 59 for a copy of the worksheet; and

- The substantially reconstructed home may be either stickbuilt or a modular home which meet the Virginia Uniform Statewide Building Code (USBC).

# Rehabilitation Loan Packaging

DHCD requires that all housing assistance be provided in the form of a loan. The amount of the loan is based upon the cost of the housing rehabilitation. The repayment of the loan is based on the ability-to-pay of the beneficiary household and must be calculated according to the *Ability-to-Pay Worksheet*.

## *Minimum Repayment Requirements*

All housing rehabilitation projects must abide by the following requirements related to repayment of loans:

- All rehabilitation loans must be secured by a ten (10) year recorded Deed-of-Trust. For rental property, the Deed-of-Trust must be signed by the investor-owner;

- The Deed-of-Trust must be tied to a promissory note (Deed-of-Trust Note) requiring that the beneficiary make 120 monthly payments over ten (10) years at 0% interest;

- The amount the beneficiary pays is determined by the ability-to-pay calculation, however the minimum payment for all loans is $25;

- Homeowner beneficiaries must pay 25% of their monthly income towards their housing costs. “Housing costs’ include rent or mortgage, utilities (See Appendix 44 for a copy of the required *Utility Fee Schedule*.), taxes and insurance. If these costs are less than 25% of the household income, the difference is the ability-to-pay or repayment amount. See Appendix 60 for more details on how to calculate the ability-to-pay amount;

- Regardless of direct costs incurred by the investor-owners, rent may not exceed or be raised to exceed 35% of gross income

of the tenant household. This amount must be clearly established in a written lease agreement with a one-year minimum. The rent amount shall be maintained at the same level for all subsequent tenants during the entire term of the loan;

- The difference between what the beneficiary pays as determined by the ability-to-pay calculation and the actual amount of the amortized loan is forgiven each month;

- The forgivable term must run concurrent with the repayment period;

- The beneficiary's ability-to-pay may be reviewed on an annual basis. It must be reviewed if the composition of the household changes or if requested by the beneficiary, and the monthly payment toward the loan payment adjusted accordingly;

- Homeowner beneficiaries must agree, in writing, to reside in the property rehabilitated for the entire term of the loan;

- If the beneficiary fails to meet the obligation set forth above, all outstanding CDBG loan monies must be repaid to the Grantee at the time the beneficiary moves. See Appendix 17 for more details;

- In the event of a sale of the property before the term of the loan has ended, the outstanding amount of the loan must be repaid;

- In the case of death or institutionalization of the owner, the heirs may rent the property to allow an LMI family to reside in the property if approved by DHCD. If the beneficiary had life-rights to the property, the owner may either buy-out the loan at full value, less what has been paid or forgiven, or find an eligible LMI household to rent the property;

- All housing rehab beneficiaries with an ability-to-pay are expected to pay according to standard terms and conditions set forth herein. Every household is expected to pay at least its calculated ability-to-pay amount. A minimum monthly payment amount that exceeds the calculated ATP amount required, may be established. This monthly minimum payment may not exceed $25.00. See Appendix 17: Housing Program Design for more details; and

- The Program Design must include special policies for the evaluation of prior, existing debt in the ability-to-pay calculation.

✱ **The Grantee must use the *Ability-to-Pay Worksheet* to calculate a beneficiary's ability-to-pay. See Appendix 60 for a copy of this form. When completing this worksheet, the cost of utilities must be calculated using the *Utility Fee Schedule*, which is found in Appendix 44. The**

**difference between the actual amortized loan and the amount forgiven each month is calculated using the *Loan Repayment Worksheet*, which is also found in Appendix 60.**

## *Loan Servicing*

The Grantee or a qualified agency or institution which services loans under this program will be under *no liability* for loss of funds due to lack of repayment or default by program beneficiaries.

The responsibility of entities servicing loans is to collect, forgive and otherwise manage payments monthly. The servicing agents are to maintain records of loan balances, final payment due dates, and to make a good faith effort to collect delinquent loans.
Collection of delinquent loans may be conducted according to local policy (up to and including foreclosure) but must adhere to all requirements under State and Federal law related to the collection of delinquent or bad debts.

✱ **The Grantee must issue an annual payment history statement to each beneficiary regardless of ability to pay.**

See Appendix 17: Housing Program Design for more details.

# Contracts and Agreements

After all selection criteria have been satisfied and a contractor has been selected, all parties must enter into a contract(s) prior to the issuance of a Notice to Proceed. Depending upon the nature of the assistance, several documents may be executed at this time. These are the construction contract, the "exceptions" contract, the demolition contract, the Deed-of-Trust or the security instrument, Investor-Owner Rental Commitment (when applicable), and Deed-of-Trust Note or the promissory note. A Deed-of-Trust must be executed and recorded prior to construction on all rehabilitation contracts. Provisions of the Deed-of-Trust should require that a Note be recorded with a credit balance provided to the owner at the conclusion of the construction contract. This should eliminate the need for amendments to the mortgage instrument as a result of change orders.

## *Construction Contract*

For rehabilitation projects, two (2) construction contracts are required. The first one is for the base construction costs and the second one is for the exceptions. For substantial reconstruction projects, the base construction costs and any necessary exceptions can be combined into a single contract. Regardless of the number of contracts executed, cost limits per category may not be exceeded.

As mentioned earlier, demolition costs are only allowed on substantial reconstruction projects. They are "stand alone" costs that must be contracted out separately and must incorporate the *Attachment for Non-construction Contracts* as found in Appendix 10.

Each contract should include an agreement with general conditions, federally-required closing documents and federal construction contract

language. The Rehab Board should have an attorney review and approve the contract used in the program. The attorney should be advised of DHCD recommendations and requirements.

✱ **Any single construction contract obligating housing funds may not exceed $25,000 unless the contractor is a licensed lead abatement contractor. If at least four (4) licensed lead abatement contractors bid, and one (1) of them is the successful bidder, the base contract may go up to $35,000.**

The following provisions must be included in the construction contract:

- Date of contract;
- Date (or number of days) until construction is to begin;
- Completion date;
- Amount of contract;
- Method of payment, including timing of progress payments and homeowner's role in approving all contractor payments;
- Contractor's name, address, DPOR license and/or registration number, expiration date, license classification (a, b, or c), and license designation (building [bld] or home improvement contracting [hic]);
- Reference to master and job specifications;
- Contractor's removal of debris and equipment during and after construction;
- Contractor's use of homeowner's utilities;
- Contractor's insurance requirements;
- Access to property by contractor and program officials;
- Warranty requirements;
- Non-assignment of contract clause;
- Hold harmless clause;
- Right of inspection - power of inspector;
- Statement of compliance with all local requirements for building permits, inspections, and zoning;
- The Owner's pre-construction clean up requirement;
- The Occupant's home maintenance education program attendance requirements;
- The Owner's resale or residency requirements;
- Termination clause;
- Change order procedure;
- Restrictions on side deals between the homeowner and the contractor;

- A "plain-language" exculpatory clause concerning events beyond the control of the Contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;

- Signature of parties to the contract;

- *Federal Construction Contract Language* attachment; and

- *Notice of Lead-Based Paint Presumption* and *Confirmation of Receipt of Lead Pamphlet*, if applicable.

It is a local Program Design decision if the construction contract will contain a provision for liquidated damages.

All of the items may be incorporated into a two-party contract between the homeowner and the Grantee (Homeowner Agreement) and a two-party contract between the Contractor and the Grantee (Construction Contract) or a three-party contract between the homeowner, Grantee and contractor. Most Grantees use a three-party contract.

☑ It is highly recommended that the Grantee *verifies* that there is a signed one (1) year lease in place between the tenant beneficiary and the investor owner before the construction contract is executed.

## *Federal Construction Contract Language*

All housing construction contracts must incorporate or attach the *Federal Construction Contract Language for Housing Rehab.* See Appendix 61 for a copy of the language.

## *Deed-of-Trust*

The *Deed-of-Trust* is a security instrument that secures the beneficiary's commitment to adhere to the loan, resale, and residency requirements to the title of the house and property, and references the Deed-of-Trust Note.

The Deed-of-Trust must be in place for a period of 10 years.

A Deed-of-Trust must secure all loans, including loans to heir-occupied and life estate properties. It must cover the construction cost of all improvements, including any exceptions and demolition. In addition to referencing the amount of assistance, the agreement should incorporate the following:

- The complete address of the Trustee's residence;

- Conditions of the loan;

- Deed-of-Trust Note or loan agreement;

- Payment of Debt, Taxes and Utility Charges;

- Maintenance of property during term of loan;

- Program's role in inspecting and approving work and payments;

- The Owner's requirement to obtain adequate hazard insurance, with the Grantee listed as a loss payee;

- The Owner's requirement to obtain an annual septic maintenance agreement, as required by the Virginia Department of Health for alternative septic systems;

- Resale and residency requirements;

- *Notice of Right to Cancel* attachment;

- Truth-in-Lending Disclosure Statement attachment; and

- If the Deed-of-Trust is for an Investor-owner's property, the following additional clauses must be included in the Investor-Owner Rental Commitment, preserving the benefits to the renter and objectives of the program including:

    - Amount of current (base) rent;

    - Restrictions regarding rent increases;

    - Affordability requirements including limit of no more than 35% of gross income for rent plus utilities. However, the rent shall remain at the same level for all subsequent tenants for the balance of the loan term; and

    - Investor-owners cannot reduce the number of years of required LMI benefit.

☑ It is recommended that the Deed-of-Trust prohibit the house from being used as bond security so someone can get out of jail while awaiting trial.

☑ In a life-estate situation, the Grantee should check with its Attorney to determine if the Deed-of-Trust should say the estate is encumbered in order to protect the Grantee if the beneficiary defaults.

The Deed-of-Trust must be recorded at the courthouse in the county or city where the rehabilitated house is located.

☑ It is recommended that all signatures be notarized and the Deed is recorded immediately after contract execution.

CDBG loans may be placed in first, second, third, etc., position on a property title. Once recorded, the Grantee may not subordinate DHCD's position without its prior written approval. In addition, the project's Program Design must stipulate under what special circumstances subordination will be considered e.g., bankruptcy, removal of code violations, bills due to a medical emergency and whether the decision will be made by the Project Management Team or the Rehab Board. Furthermore, the Program Design must require that the homeowner will be required to attend instruction on predatory lending prior to intermediary subordinating.

See Appendix 62 for a Deed-of-Trust sample.

## *Deed-of-Trust Note*

The Deed-of-Trust Note is a promissory note or the beneficiary's written promise to adhere to all the commitments made in the Deed-of-Trust and stipulates when and how all of the terms of the loan are to be satisfied. The Note must be held in safekeeping i.e. a safe, safe deposit box, or a drawer or cabinet that is routinely kept locked by the Grantee until all the terms of the loan are satisfied.

☑ It is recommended that the Note be kept in a safe.

The note should stipulate the following:

- Rate of interest;
- The monthly payment based on the homeowner/occupant's ability-to-pay;
- The amount of the monthly payment to be forgiven;
- The conditions for deferment of monthly payments due at a later date;
- The 10 year term of the loan, and the loan due date.

At the end of the loan term, the Deed-of-Trust Note must be marked "paid in full", for all amounts paid and/or forgiven. A *Certificate of Satisfaction* must be issued by the Grantee to the homeowner, indicating that the note has been satisfied and all obligations have been met.

☑ It is recommended that the *Certificate of Satisfaction* be sent certified, along with a letter stating that it needs to be taken to the Clerk's Office. This will give the Grantee proof that it released the *Certificate*. Check with your attorney as to how long you have to release the *Certificate* in order to avoid any court fines. See Appendix 63 for a *Deed-of-Trust Note* sample.

## *Notice of Right to Cancel*

This closing document must accompany every Deed-of-Trust and be provided to each beneficiary at closing. As required by Regulation Z of the Truth-in-Lending Act, it allows every homeowner a three-day grace period between the signing of the Deed-of-Trust and the start of construction to cancel the construction contract. During this time period, no activity regarding this loan may take place. This includes recordation of the Deed-of-Trust and issuance of the Notice to Proceed. See Appendix 64 for a copy of the Notice.

## *Truth-in-Lending Disclosure Statement*

This is another closing document, which must accompany the *Deed-of-Trust Note* and be provided to each beneficiary at closing. It details the exact amount of money borrowed, including any interest charges, payment schedule, prepayment and late payment policies, insurance requirements, and reference to contract, as required by Regulation Z. See Appendix 65 for a copy of the Statement.

# Selecting and Qualifying Contractors

The first step in the rehabilitation contracting process is identifying and recruiting good contractors. Begin by determining what qualifications are expected. Remember, your program will only be as good as the contractors who actually do the work.

✱ **Good contractors will make a good program, and a good program will attract good contractors. Conversely, by utilizing poor contractors you will deter good contractors and families from participating, as well as creating headaches for yourself.**

Any contractor doing work on a housing rehabilitation project funded with CDBG monies must be licensed pursuant to the regulations of the Board of Contractors. All licenses must have a classification and a category. The appropriate classifications and categories acceptable for rehabilitation work are outlined below.

## *Classifications*

All contractors must be licensed by the Virginia Department of Professional and Occupational Regulation (DPOR) as a Class A, Class B, or Class C contractor. Most contractors working on housing rehabilitation projects will be Class B contractors. This means they can work on any single job whose total contract value is between $7,500 and $70,000 or contracts totaling between $150,000 and $500,000 during any twelve-month period.

A Class C contractor may be able to do minor rehabilitation work. The current threshold for these contractors are single contracts between $1,000 and $7,500 or contracts totaling less than $150,000 over a one-year period. It is unlikely that a Class A contractor would bid on housing rehabilitation work as they can do work on single contracts of $70,000 or more.

✱ **To find out if a contractor has a DPOR license, call 804-367-8511 or go to www.dpor.virginia.gov and click on "License Lookup." Grantees should also be aware that the thresholds are subject to change by DPOR. Therefore it is prudent to periodically check the current thresholds with DPOR.**

## *Designations*

In addition to having a license classification of A, B, or C, each contractor must also have a license designation. General contractors doing rehabilitation work must be designated as either a "Building Contractor [BLD]" or a "Specialty Contractor [SVC]". If a contractor has SVC designation, then he/she must have the specialty service of HIC (Home Improvement Contracting) following the SVC designation i.e., SVC-HIC.

For any electrical work, plumbing work or heating, ventilation and air conditioning (HVAC) work to be done on a house being rehabilitated with CDBG monies, the following applies:

- If the respective work e.g., electrical, is $1,000 or more, the work must be done by a contractor licensed to do that

specific kind of work (have the ELE designation on his or her license);

- If the respective work is less than $1,000, and the Grantee participates in the Tradesman Certification Program, the work must be performed by a person who has a Masters Certification in that respective trade; and

- Any digging of wells for potable water service can only be done by a contractor licensed as a "Water Well Contractor (WWC)" regardless of the cost to dig the well.

Some contractors may have multiple designations on their license such as Building (BLD), Electrical (ELE), Plumbing (PLB), and/or HVAC. If a General Contractor has such multiple classifications, retention of a licensed subcontractor in a related field is not necessary.

## *Lead Training and Certification*

Each contractor, subcontractor and worker must have successfully completed a HUD-approved Lead-Safe Work Practices (LWSP) training course relative to the rehabilitation of housing constructed prior to 1978. This course should be offered at least annually by various localities. The Program Administrator must also obtain verification of EPA "Renovation, Repair and Painting" certification as a firm with a Certified Renovator assigned to the project, and place it in the Pre-qualified Bidders file.

## *Pre-Qualifying Contractors*

Pre-qualification of construction contractors must be done through the use of a standardized application form. Information requested must include:

- Type of work performance;

- Recent projects completed of the type and size to be bid;

- Suppliers and credit established;

- Bank references;

- Insurance coverage;

- Subcontractors utilized and their contractor's license (Class A or B);

- Number of employees;

- Proof of necessary license (Class A or B); and

- Proof of Lead training.

See Appendix 66 for a Contractor's Qualification Statement sample.

## *Standards for General Contractors*

The Grantee must develop criteria to evaluate contractors for inclusion or exclusion on the Bidders List. The criteria should allow you to include only legitimate, experienced general contractors with good references and credit histories. The criteria should allow rejection of contractors due to predetermined standards of experience, capability and credit. Job and credit references should be verified. If

feasible, the Rehabilitation Specialist should inspect the contractor's most recent work.

It may be necessary to reject contractors due to poor workmanship or bad credit. Additionally, you may want to limit inexperienced contractors to smaller jobs initially or to advise specialty contractors to act as subcontractors to general contractors. Without pre-qualification it is very difficult to limit the involvement of inexperienced or specialty contractors and a multitude of problems may lie in store for both the program and the contractor.

More stringent standards may be required, but must, at a minimum, utilize the following standards:

- Licensed by DPOR as a Class A, Class B, or Class C and licensed in the appropriate trades to be included;
- Documented current personal property liability insurance coverage of $100,000 property and $300,000 bodily injury (minimum);
- Good references from at least two (2) jobs similar in work and dollar value to the work on which they are bidding. Grantee must document having checked references;
- Have been in business as a General Contractor for at least one year;
- Have an established credit record with no outstanding or pending judgments or claims. Bonding cannot be required if adequate credit is established; and
- Proof of training in Lead-Safe Work Practices, EPA Certified Renovation Firm and Certified Renovator.

✱ **All contractors to be included on the Pre-Qualified Bidders' list must be approved by the governing board of the program.**

## *Advertising for Contractors*

Solicitation must be made in a newspaper(s) that is generally circulated in the project area. The advertisement must state the following:

- The Grantee is operating a housing rehabilitation program;
- The total dollar amount of all rehabilitation contracts to be let;
- The estimated number of rehabilitation contracts to be let;
- The general qualifications necessary for contractors to be eligible to bid on rehabilitation work; and
- Where and how contractors may pre-qualify for the bidder's list.

## *Direct Solicitation of Contractors*

Direct solicitation of good, local contractors should be done also. This can be done by posting notices at the County Building Official's office and at local building supply stores or

contacting contractors known to the Rehabilitation Specialist.

### *Bid Phases for Contractors*

Grantees need to make every effort to increase the level of contractor participation and improve production levels. Once the Grantee has more than five (5) contractors who are pre-qualified, the Grantee must divide them up into two (2) groups. Contractors A, B, C, and D would participate in the first bidding cycle. Contractors B, C, D, and E could participate in the second cycle. Contractors C, D, E, and F would participate in the third cycle and so forth. This gives all contractors an approximately equal number of opportunities to bid and receive a contract. Bids are awarded to the lowest responsive and responsible bidders on a house by house basis. The Grantee must establish a schedule for bidding to complete the CDBG contract within the CDBG Agreement period.

### *Contractors' Information Meeting*

It is advisable that Grantees schedule a contractors' information meeting. Such a meeting can be very helpful in creating understanding of the program and securing cooperation between the program and potential contractors.

At the contractors' meeting, the Program Administrator and/or the Rehabilitation Specialist must explain the program and bidding procedures. The standards and master specifications to be utilized in the program are distributed and explained. Procedures for bidding, contract form, and payment, should be fully explained and distributed in writing.

### *Using the Pre-Qualified Contractors List*

Once a list of qualified contractors is established, the Grantee may assure a reasonable level of quality control by bidding exclusively from the list, provided:

- All contractors on the list are given a nearly equal number of bidding opportunities,
- There is continued opportunity for additional contractors to apply for pre-qualification and inclusion on the bidder's list, and
- Bids are solicited from at least four (4) contractors for each contract.

## Initial Inspections

Once the homeowner's application has been approved, the initial inspections must to be scheduled.

❋ **The purpose of the initial inspections is to determine deficiencies in the property, which do not meet the DHCD HQS. Both the Program Administrator and the Rehabilitation Specialist are required to do independent initial inspections, using the *DHCD HQS Inspection Checklist and Certification*, which is found in Appendix 57. The Rehabilitation Specialist not only determines what needs to be repaired, but should, by taking notes and measurements, gather enough information to enable him or her to write specifications for the repairs and perform a cost estimate. In addition, a floor plan of**

**rooms where any work is to be done should be produced.**

(Some programs make a preliminary inspection before approval for the purpose of property eligibility and cost feasibility determination. Such an inspection does not serve the purpose of what is referred to here as the "initial inspection.")

## *Conducting the DHCD HQS Inspection*

The Rehabilitation Specialist should introduce him or herself to the property owner or tenant, explaining the need for an intensive inspection of all parts of the property and for an interview with the occupants. During this interview, the Rehabilitation Specialist should ask what repairs or improvements the occupant feels need to be made, reminding the homeowner first that the program covers only safety issues and not aesthetics. Special attention should be paid to electric and plumbing problems. Questions about blown fuses and plumbing backups should be asked specifically. The Rehabilitation Specialist should ask about winter heat bills to determine if special attention should be paid to weatherization. At the close of the interview, the Rehabilitation Specialist should ask that the occupant remain available for further questions. Using the DHCD HQS checklist, the Rehabilitation Specialist should systematically go through the house room by room. Floors, ceiling, walls, windows, and outlets should be checked in all living areas.

All housing components must be compared against the DHCD HQS. See Appendix 57 for a copy.

**Lead-based Paint (LBP)**

Part of the inspection includes noting any interior or exterior failing paint condition. For the purposes of this program, failing paint includes:

- Paint that is peeling, chipping, pitting or otherwise unstable;
- Finishes on friction and impact surfaces that rub, bind, or crush;
- Finished horizontal surfaces known to have been chewed by a child under the age of 6; and
- Bare soil onto which deteriorated paint might have fallen.

If no failing paint condition is noted, and no work will be conducted that will disturb more than two (2) square feet of a painted surface, this is documented and no further lead requirements apply.

If a failing paint condition is noted, and the house was built prior to 1978, the Rehabilitation Specialist (licensed Risk Assessor) and the Program Administrator must presume that the failing paint is lead paint. This triggers certain requirements:

- The work write up must incorporate “interim controls” and must meet certain lead-related reporting requirements as per the terms of the Risk Assessor licenses;
- The contractor awarded this job must be an EPA Certified Renovation firm and have an EPA certified renovator assigned to the project who

can train the crew in Lead Safe Work Practices;

- The area(s) in which potentially lead-disturbing work occurred must be thoroughly cleaned; and

- At the completion of the work, the Risk Assessor must complete appropriate dust sampling, and the sampling reveal that lead, if present, is within acceptable limits. If not, the area(s) must be cleaned again and additional samples taken.

See Appendix 68 for more details about lead-based paint.

☏ If rehabilitation is planned for a house occupied by a child who is known to have an elevated blood lead level, the Grantee must contact DHCD to determine the appropriate steps.

✱ **To find out if a Risk Assessor has a DPOR license, call 804-367-8511 or go to www.dpor.virginia.gov and click on "License Lookup."**

☑ DHCD strongly recommends that the Grant Manager, the Rehabilitation Specialist, the Risk Assessor, and the Contractor not receive final payment for a unit until the report from the lead clearance test is back and it is okay for the household to move back into their house.

☑ Test children seven (7) and under for lead before rehabilitation.

☑ When assisting Spanish-speaking beneficiaries, refer them to the U. S. EPA Spanish website at www.epa.gov/espanol. It contains Spanish language material on lead poisoning prevention.

**Asbestos and Asbestos Abatement**

Sometimes the Rehabilitation Specialist will determine during the initial inspection that the house scheduled for rehabilitation contains asbestos material. See Appendix 69 for more details about how Grantees are to handle such situations.

**Supplemental Inspections**

The following supplemental inspections are also required before work on the unit is bid out:

- A termite and infestation inspections by a licensed inspector;

- A chimney inspection; and

- A blower door test both at the beginning and the completion of the project. When the initial blower test is completed, the entity responsible for the test must draft recommended weatherization specifications to be included in the bid specs, in addition to providing a target air exchange rate. The second test must be completed before completion of punch list items. Blower door tests are not required on houses scheduled for demolition.

## Temporary Relocation

Temporary relocation as part of rehabilitation due to an assumption of the presence of lead-based paint (LBP) and use of interim controls is mandatory except in the following circumstances:

- All household members are 62 years or older;
- All interior work will be completed in an eight-hour period;
- All interior work will be completed in five (5) consecutive days and the bedroom(s), bathroom, and kitchen can be isolated from the rehabilitation work; or
- Only exterior work will be done.

☑ Before any beneficiary is temporarily relocated, a written agreement should be signed between the beneficiary and the Grantee. This agreement must outline the period of time the beneficiary will be relocated, what expenses will be paid by the Grantee, the cost limits for each type of expense, who is responsible for identifying where the beneficiary's possessions will be stored during the relocation, and who is responsible for placing the possessions in said storage, being mindful of security of stored items.

☑ DHCD encourages Grantees to identify creative ways to reduce temporary relocation costs. This may include encouraging households to live temporarily with family and friends or the staggered use of vacant or substantial reconstruction units as temporary dwellings for households. Likewise, Grantees might purchase a moveable storage unit that can be placed on site to hold the household's belongings.

## Preparation of Specifications and Bids

After the Rehabilitation Specialist and the Program Administrator have developed their respective lists of all of the needed repairs and have met to compare their findings, the Rehabilitation Specialist should begin the task of writing specifications for bidding and carrying out the work.

Good job specifications are an essential element in a successful rehabilitation program. The job specifications are the basis for competitive bidding. They are a part of the contract documents. The job specifications are the basis for resolving disputes and for requiring contractors to fully complete necessary repairs.

### *Specification Language*

Good job specifications have three common attributes: clarity, measurability and specificity.

### *Master Specifications*

The Rehabilitation Specialist must employ master specifications, which are based on the DHCD HQS. See Appendix 57 for a copy of the DHCD HQS. They are a set of standard specifications covering materials, equipment and installation procedures to be used in your Rehab Program. The master specifications should cover every

component of housing construction and for each component should describe in detail the grades and standards of materials and equipment, which the program considers adequate. This description may include brand names or equivalents, and performance standards. For each component e.g., doors, windows, roofing, the master specifications should describe what parts make up the component so when the component is referenced in the job specifications, the contractor will be expected to replace all parts.

The master specifications should also detail construction methods to be used in the installation and repair of all common components so that when the word "install" is used the contractor knows what is expected.
By referencing the master specifications, the job specifications can be shortened considerably while still being descriptive. Of course, if a type of repair is not covered in the master specifications or the Rehabilitation Specialist wishes to provide special emphasis on a certain installation, a detailed description should be included in the job specifications.

✱ **All job specifications should state that all work is to conform to the master specifications. Many programs provide references to the applicable section of the master specifications in the appropriate corresponding section of the job specifications.**

☑ Adherence to green building practices, where appropriate, is encouraged. DHCD encourages the use of Energy Star rated appliances whenever economically feasible as they will provide cost savings to your beneficiaries in the long run. For more information, go to www.energystar.gov, www.aarp.org/universalhomes or www.buildinggreen.com.

☑ DHCD also encourages the use of Green Building Techniques (See Appendix 70: Energy Efficient Green Building) and Universal Design elements whenever possible e.g.; 36" wide doorways. This is particularly applicable where substantial reconstruction of a unit will take place.

Substantial Reconstruction cost limits provide an additional $4,000 for homes built to nationally recognized Green Building standards such as EarthCraft, LEEDS, etc. The standard must be approved in advance of construction start and must provide for a third party certification.

## *Job Specification Format*

The Rehabilitation Specialist should use the same format with each bid. Typically, the format would include:

- A cover sheet with all pertinent contact information;
- Paragraphs containing specifications for individual or related repairs. Each paragraph should be numbered and contain an underlined heading that describes either the component or room location of repairs. Interim control measures should be under one heading. Each paragraph should have a space for the subtotal bid for those repairs;

- The last page should summarize the total bid, making sure to separate base costs from exceptions; and

- Floor plans should be provided, showing the location of all major work in each room.

☑ As with other formal procurements, the bid should include Instructions to Bidders, General Conditions and a Bid Form.

The bids should indicate that the Grantee reserves the right to reject bids which are not within 10% of the cost estimate.

## *Organization of Work Items*

The organization of individual work items within the job spec should be decided by the Rehabilitation Specialist. There are two general methods of organizing specification: room by room, and by component. Many programs use a combination of these two methods. Room by room headings are used for all carpentry and room specific repairs. Component headings are used for major systems which affect the entire house or a significant portion of it e.g., electrical, heating, insulation, roofing, etc..

All lead hazard reduction activities or interim controls should be itemized in the write-up so that timeframes coordinating cleaning, clearance testing, and temporary relocation are identified as needed.

## *Cost Estimating*

Every program must complete a thorough cost estimate for every job it bids before the bid is advertised. The cost estimate should be done by unit cost of each repair and broken out by the same subtotals listed in the bid.

In order to arrive at a unit cost, the Rehabilitation Specialist should utilize experience, reference books and local prices. By experience it is assumed that the person doing the estimating has some contracting experience upon which to assess costs. If the estimator has little or no contracting experience or has experience in only a portion of home repair, he or she will have to rely more heavily on the other sources.

All cost estimators should utilize at least one reference book which gives an updated listing of unit costs of typical home repairs. Some sources for these publications are Home Tech Publications, McGraw-Hill (Dodge Reports), Craftsman books, Fred R. Walker. Addresses for the sources are available from DHCD. Reference books should be used as a general guide to specific unit prices. The Rehabilitation Specialist should fine tune these prices through actual bid results and research on local prices.

A good estimator should routinely check with local suppliers to keep track of the cost of commonly used materials and equipment. This exercise not only assists in honing cost estimating skill, but also develops good relations with suppliers. It also provides the Rehabilitation Specialist with knowledge of what materials are locally available and what materials may be acquired at a good price. (Example: The estimator in visiting local suppliers may find that fiberglass tub kits are available at considerable savings over tile installation).

The Rehabilitation Specialist should use the cost estimates in several ways. Cost estimates may show that the bids will likely exceed the program's maximum allowable cost per house, thus creating a need to delete or scale down certain work items to include alternatives. When bids are reviewed, they can indicate that a bidder either misunderstood the job specifications or was taking the job at a loss. Some bidders will bid low in order to win a contract, planning to recoup by requesting numerous change orders.

☎ After completing the initial inspection, it may be determined that a house originally designated as a rehabilitation should be done as a substantial reconstruction. Grantees cannot exceed the number of substantial reconstructions listed in the CDBG Agreement without prior approval from DHCD.

## Project Sign

DHCD requires that a project sign be installed within thirty (30) days of the execution of the CDBG Agreement, regardless if the first activity is a housing rehabilitation or infrastructure activity. If the project sign has not yet been installed, the Grant Manager needs to ensure that the project sign is erected within two (2) weeks of the first housing construction contract award. See Appendix 23 for the project sign requirements.

## Bidding and Construction Process

All housing rehabilitation construction contracts that will use CDBG funds must abide by the *Virginia Public Procurement Act*. The Act allows use of one of the following processes depending on the estimated value of the contract to be awarded:

All contracts less than $50,000 in estimated costs must be done in accordance with the Grantee's adopted small purchase procedures. These procedures do not have to require competitive sealed bids for construction contracts if the aggregate or sum of all phases of a contract is not expected to exceed $50,000 as long as the procedures provide for competition wherever practical. However, procurements that are expected to exceed $30,000 must require the written informal solicitation of a minimum of four (4) bidders.

The small purchases procedures should have been reviewed by DHCD during the Pre-contract Activities Phase. If there is no approved procedure, the process described for contracts greater than $50,000 must be used.

Contracts with an estimated cost of $50,000 or more must use a competitive bid process. A public notice should be posted in a designated public area and advertised in a newspaper of regional circulation at least ten (10) days prior to the date set for receipt of bids. Bids must be opened in public with an announcement of the bids received.

## *Pre-Bid Conference*

DHCD *highly* recommends that a pre-bid conference be conducted. The purpose of the pre-bid conference is to allow bidders to ask questions and comment upon the Bid Documents and for the Grantee to issue instructions or clarifications to them.

The pre-bid conference should be held at a time approximately midway between the Invitation to Bid and the Bid Opening. The time, date, and place of this conference should be included in either the Invitation to Bid or the Instructions to Bidders.

The Rehabilitation Specialist should walk through the property with the contractors in attendance. Any questions concerning work specified should be answered, but the Rehabilitation Specialist should be very careful to provide comments only in explanation of what the specifications cover. Substantive verbal instructions or changes may not take place at the Pre-Bid Conference.

❋ **Absolutely no changes, alternatives, or additions to the specifications may be officially agreed to at this Pre-Bid Conference. Any changes to the Bid Documents must be done as a written addendum to them.**

## *Addenda*

Changes to the Bid Documents that take place after the publication of the Invitation to Bid are called addenda and become a binding provision. All addenda must be issued in writing. Verbal addenda are strictly prohibited. Addenda can derive from:

- Comments or questions received at the pre-bid conference;
- Phone inquiries from prospective bidders; or
- Clarifications of technical issues discovered after formal advertising.

When an addendum is necessary, it must be provided to every prospective bidder who received a copy of the Bid Documents. Addenda should be transmitted to all bidders at the same time and at such a date as to allow sufficient time for bidders to accommodate the changes in their bids.

## *Bid Opening*

Everyone with a vested interest in the rehabilitation project should attend the bid opening. At a minimum, the Program Administrator and the Rehabilitation Specialist must attend. All bids must be opened publicly and read aloud at the time stated in the advertisement.

After the bids have been opened and read, interested parties should be informed that the bids shall be taken under advisement and the parties will be notified of the award. A bid tabulation form shall be prepared comparing the base and individual exception prices and the Rehabilitation Specialist's estimate, signed by the Program Administrator and Rehabilitation Specialist, and placed in the client rehabilitation file.

❋ **Bids may not be accepted past the stated time for close of receipt of bids. No verbal modifications or clarifications of bids will be allowed**

**after the bids are opened. Withdrawal of a bid by a contractor after it has been submitted is allowed only as described in the *Virginia Public Procurement Act.***

## *Contract Award*

The Rehabilitation Specialist and Program Administrator should evaluate the bids received, determining if they are complete, based on the requirements set forth in the invitation and the program design, and within DHCD's cost limitations. A contract award recommendation shall be made to the Rehab Board. All bids must be reviewed and approved by the Rehab Board with the contract signed by the Chief Executive Officer or Chief Elected Official. No bid shall be awarded until it has been confirmed that the contractor is not on the state list of de-barred contractors. Please contact your CD Specialist for this written debarment confirmation and include it in the client file.

If the cost of the best bid is not within 10% of the Rehabilitation Specialist's cost estimate, a memo must be placed in the client rehabilitation file, justifying the contract award. If the contract is not awarded to the lowest bidder, the reason must also be documented. This could include the bidder not being in good standing with the program or the bidder not having the capacity to complete the project within sixty (60) days.

✱ **No person may bid on or be awarded a contract to perform work on property which they own or in which they have financial interest.**

If the contract award results in the contractor receiving contracts that in total or in accumulation exceeds $50,000, the Program Administrator must obtain a completed *Community Improvement Grant Disclosure Report*, which is found in Appendix 71.

## *Pre-Construction Conference*

Upon award of the bid, a pre-construction conference must be held. This is a critical event in implementing an effective, timely construction process and clarifying any remaining questions that the homeowner has about the project. The conference should be a formally scheduled meeting attended by the Program Administrator, the Rehabilitation Specialist, the Homeowner, and the Contractor.

The first part of the conference will be an overview of the construction process. All participants should reach a mutual understanding of how the construction work should be carried out, what the end product will be, and the roles of all parties in the process. The following items should be discussed:

- Start and completion dates;
- Work hours;
- Inspection procedures;
- Payment schedule;
- Responsibilities of all parties;
- Complaint and appeals procedure;
- Change order procedure;

- Debris removal and clean-up requirements; and

- Temporary relocation.

At the conclusion of this portion of the conference, the contracts should be executed, along with the federally-required notices. A copy of the complaint and appeals policy should be given to the homeowner, again.

The second part of the conference is a site visit. The contractor and homeowner/tenant should be taken room by room and shown location of all work. All parties should thoroughly understand what will be done. Homeowner preference in colors and styles of fixtures should be discussed.

If there is a disagreement about the scope of work, the Rehabilitation Specialist should provide a ruling based on the work write-up. If work is not covered by the write-up, a change order should be requested or the Rehabilitation Specialist should inform the homeowner it is not covered. The Rehabilitation Specialist should make it clear that items requested by the owner not covered in the contract will not be paid for with CDBG funds. Side deals should be forbidden.

If during the site visit, the Rehabilitation Specialist determines that the homeowner has not properly cleared the site, he or she should put a hold on the project until it is done. This may require a change order to modify the start and completion dates of the project.

## *Change Orders*

Change orders are any alteration made through an addendum to the rehabilitation contract. This includes changes to the specifications, changes to the contract amount and/or an extension to the contract's completion date. Change orders must be initiated by the Rehabilitation Specialist as soon as the need for them is determined. Those pertaining to the specifications should be only for work that could not have been foreseen prior to construction and must relate to eligible DHCD HQS deficiencies. The amount of the change order should be supported by predetermined unit prices or be negotiated with the contractor.

It should be noted that a program which approves a lot of change orders will generally receive continual requests for additional ones since contractors build in a higher profit margin for change orders than for bid work items.

❋ **All change orders must be signed and dated by the contractor, homeowner, Rehabilitation Specialist, Program Administrator, Grantee and DHCD prior to work authorization.**

Payment for change orders must be made with the final construction draw.

## *Inspections*

During the course of the project, the Rehabilitation Specialist is expected to undertake inspections at least weekly. These may include:

- Progress inspections;

- Payment inspections;

- Complaint inspections;
- LBP inspections;
- Final HQS inspection; and
- Punch list.

All inspections must be documented by reports signed by the Rehabilitation Specialist and submitted to the Program Administrator.

**Progress Inspections**

Visits to the construction site occur either on a set schedule or when critical construction elements must be approved before the project can proceed.

☑ At these inspections, the Rehabilitation Specialist should document whether or not Lead Safe Work Practices were observed.

**Payment Inspections**

The Rehabilitation Specialist must base his or her approval of contractor invoices on a documented payment inspection. These inspections should be made promptly so as not to delay the processing of the contractor's payment. The report should reflect the type of payment procedures adopted by the program, usually 50%, 95% and 100%. A predetermined percentage of completion procedure would merely require a Summary of Work Completed and the inspector's certification that the completed work has met or exceeded that percentage. A payment for actual work accomplished not tied to a percentage would necessitate a detailed listing with cost figures of all work to be included in the payment and possibly invoices.

**Complaint Inspections**

In the event that a complaint is received from the homeowner regarding the work of the contractor, the Rehabilitation Specialist must inspect the validity of the complaint and document his or her determination. See Chapter 4: Grant Management for more details about the required written complaint and appeals process.

**LBP Inspections**

At the completion of "interim controls" or before the homeowners return to their home, the Risk Assessor must complete a clearance examination. A written Clearance Report and the Lead Hazard Reduction Activity Notice must be submitted to the Program Administrator and the beneficiary within fifteen (15) days of the Clearance Examination.

**Final DHCD HQS Inspection**

When work is nearing completion, the contractor should notify the Rehabilitation Specialist of the date when the property will be ready for final inspection. Both the Program Administrator and the Rehabilitation Specialist are required to do final DHCD HQS inspections. They should proceed through the house with the work write-up in the same deliberate manner in which the initial inspection was made, ascertaining that each work item has been totally completed to his or her satisfaction.

☑ The Program Administrator and the Rehabilitation Specialist can use

their initial HQS inspection form, using a second ink color in the last column of each page to show that failing items are now passing inspection. The inspection form is to be signed, dated and placed in the client rehabilitation file.

The Rehabilitation Specialist should also verify that the homeowner has received all warranties and instruction booklets for installed equipment and appliances.

**Punch List**

Any unfinished or omitted items should be noted and written down on a punch list. A punch list is a listing of items written as specifications, which constitute the work necessary to complete the contract. No other work items other than those written on the punch list should be required of the contractor after receipt of the punch list. Upon completion of the punch list items, the Rehabilitation Specialist should check those items and if all have been completed satisfactorily, completion should be certified.

## *Role of Local Building Code Official*

The local building official must inspect all relevant rehabilitation work e.g., electrical, plumbing, mechanical, and structural).

✱ **It is required that electrical upgrades be inspected by a certified electrical inspector.**

Houses being rehabilitated with CDBG funds do not have to totally conform to USBC code, rather only to DHCD HQS. However, all construction that is performed to alleviate HQS must conform to USBC code.

The Rehabilitation Specialist should consult with the local building inspector before doing any work to assure that the local official understands the scope and objectives of the program. The local building inspector should be viewed as a resource to the program.

☏ Any problems encountered with local building officials should be brought to the attention of your Community Development Specialist. DHCD's Division of Building Regulation is aware of the objectives of the CDBG program and is willing to mediate any misunderstanding with local building code officials.

## *Certification of Final Completion and Acceptance*

The Rehabilitation Specialist should submit a *Certification of Final Completion and Acceptance* to the Program Administrator. Either the Rehabilitation Specialist or Program Administrator must visit the homeowner and obtain a signed certification of final acceptance.

## *Final Payment*

Before authorizing final payment to the Contractor, the Program Administrator must obtain the following paperwork the contractor and Rehab Specialist:

- Signed and dated Final DHCD HQS Inspection form;
- Final Blower Door Test Report;

- Exterminator Inspection and Treatment Reports;
- Electrical Inspection Report;
- Affidavit of Release of Liens;
- Affidavit of Payment of Debts and Claims;
- Register of Assigned Employees as found in Appendix 54;
- Register of Contractors, Subcontractors and Suppliers as found in Appendix 56;
- Chimney Inspection Report, if applicable;
- Building and/or Health Permits, if applicable;
- Building Code Inspection Report per USBC, if applicable; and
- Certificate of Occupancy, if applicable.

# Housing Production

In housing production projects, CDBG funding is generally limited to the design and construction of public site improvements necessary to support the development of single- and multi-family housing units targeted for low- and moderate-income households. These activities are conducted in accordance with the requirements outlined in Chapter 6: Design and Construction Management.

CDBG funds may also be used for housing production costs where a neighborhood-based non-profit has primary responsibility for the development of the new housing and for property acquisition or down payment assistance.

✱ **Generally, offsite improvements are treated as a grant to the applicant. Some onsite costs and other development costs may be passed on to the homeowners in the form of a secured forgivable loan. Contact your Community Development Specialist to discuss how CDBG are to be handled in your project.**

Housing production projects are administered according to a Housing Production Program Design, Project Management Plan and a Relocation Plan, as appropriate, which were developed during the Pre-contract Activities Phase. These documents should be based upon specific products which were completed either before the submission of CDBG application or during the Pre-contract Activities Phase.

- A Preliminary Engineering Report with cost estimates and construction schedule for public and private infrastructures, environmental corrections, and housing activities;
- Control of the proposed project area, confirming the property cost by appraisal, and identification of any zoning or subdivision issues;
- A marketing analysis or housing needs assessment for the project;
- An implement plan based upon the analysis or assessment. It

should identify the project area, anticipated rental or purchases prices, income levels of the target market, the marketing activities designed to reach the target market, and documents the existence and interest of targeted beneficiaries;

☑ Grantees are encouraged to create development and marketing strategies that will result in the development of a mixed-income neighborhood, not simply a LMI homeownership creation opportunity. DHCD will allow up to 20 percent of the units developed within an affordable housing subdivision to be sold at market rate.

- Firm financing commitments, especially for construction financing and homebuyer's mortgage assistance needed to enable potential beneficiaries to be able to purchase new homes given the expected selling price, and a list of potential beneficiaries who are either pre-qualified or who have started the process;

- Fees, such as developer fees and builder fees, must be documented, reasonable, and fully disclosed;

- Home purchase prices and the purchasing power of the potential LMI homebuyers must reflect the underwriting criteria approved by DHCD prior to the CDBG grant application's submission;

- A formal home ownership training curriculum conducted by a certified housing counselor. It should include at least the following: homeowner education, pre-purchase counseling, post-purchase counseling, predatory lending, money/debt management, mortgage delinquency and default resolution; and

☑ Housing Program Administrators interested in becoming a certified housing counselor can check out various websites including the Virginia Association of Housing Counselors at www.virginiahousingcounselors.org. Grantees can locate HUD-approved Housing Counseling Agencies at www.hud.gov . Click on "At Your Service," "Talk To Housing Counselor," "Find A Housing Counselor," and "Search Online."

- A Home Maintenance Education Program.

The thoughtful and thorough completion of these products indicates the readiness of a project to move forward.

**Adaptive Reuse**

CDBG funding is applicable to most project costs, including final design and construction costs, in projects which will adaptively reuse existing structures. These projects are ones where new rental units are created in previously unoccupied space with no residential rental history. Unless otherwise required by a tax credit program, affordable rent

guidelines must be established through an objective approved by DHCD. Rents must be reasonable for the market and for the amount of subsidy.

☑ Close consultation with your Community Development Specialist during the early stages of any adaptive reuse project is strongly encouraged.

### *Project Administration*

Housing production projects must observe the same application, cost limits, construction, and loan servicing policies as those listed above for housing rehabilitation projects. Close reading of them and Appendix 17: Housing Program Design is recommended.

☑ Call your Community Development Specialist if you have any question.

The rare exception would be tax-credit projects which may be administered according to superseding terms and conditions negotiated during project development.

✱ **Grantees may provide first-time LMI homebuyers with financial assistance as outlined in their Housing Production Program Design. This may include down payment assistance up to 50%, reasonable closing costs normally associated with the purchase of a home (including paying discount points to the lender), principal write-down assistance, and mortgage insurance.**

✱ **Single construction contracts for eight (8) or more units are subject to FLS and must be conducted according to the requirements outlined in Chapter 6: Design and Construction Management**.

✱ **Any necessary acquisition, including exercising options and relocation activities must be administered according to the requirements outlined in Chapter 7: Acquisition and Relocation**.

## Upper-Story Housing

The policies that apply to upper-story housing depend upon how a unit was classified at the time the CDBG Agreement was executed: Investor-owner unit or housing production. See the appropriate section of this chapter for more information.

## Recordkeeping

Housing projects require extensive documentation. The Grantee must maintain a separate client file for each household assisted. See Appendix 25: Rehab File Checklist for more details.

Grantees must maintain records available to the public that indicate rating criteria and justification for assistance for all applicants.

All application and verification information, especially social security numbers, must be kept confidential except to appropriate officials.

For all projects, applicants and beneficiaries must be tracked by income, race and ethnicity as categorized by HUD, as well as by owner-occupied or tenant status, female-head of household (occupied by one or more children under the age of 18), elderly household (62

years of age or older), and disabled household.

Grantees must set up a file for each household that receives housing rehabilitation assistance. At a minimum, the client file must contain all of the information outlined in Appendix 24.

☑ For each household, set up a three-ring binder with a tab for each of the numbered items in the Rehab File Checklist.

In addition, Grantees must track housing construction contracts awarded by contract value, number of houses, and business names for minority contractors, for local contractors and for low bidders.

☎ Call your DHCD Community Development Specialist for a sample tracking form.

If property was acquired with CDBG funds, the Grantee must maintain a separate acquisition file for each parcel of land purchased. Generally speaking, each separate acquisition file must document that the owner received the *Preliminary Acquisition Notice*, the brochure *When a Public Agency Acquires Your Property*, an invitation to accompany the appraiser, a written offer to purchase, a *Statement of Settlement Costs*, etc. See Appendices 24 and 43 for more details.

All project files must be maintained for at least five (5) years after Final Closeout.

# CHAPTER 10: ECONOMIC DEVELOPMENT

This chapter outlines the requirements specific to economic development projects. These projects assist Grantees in creating job and business opportunities for LMI persons and eliminating blighting conditions in deteriorated areas as a means for creating better environments for future economic activities.

For purposes of clarity, this chapter is divided into the following sections:

- Job Creation and Retention;
- Development Readiness;
- Site Development;
- Downtown (Business District) Revitalization;
- Telecommunications Infrastructure; and
- Microenterprise and Other Financing Projects.

✱ **A Data Universal Numbering System (DUNS) number is now a requirement for any business that receives CDBG assistance. If a business does not have one, it should call the DUNS number request line at 1-866-705-5711 to obtain a number. The process is free and takes about ten minutes. More information can be found at http://www.whitehouse.gov/omb/grants/duns_num_guide.pdf.**

## Job Creation and Retention

CDBG funding is awarded to Grantees in support of the creation or retention of permanent, full-time equivalent (FTE) jobs where at least 51% of the jobs involve the employment of LMI persons. Each CDBG Agreement, however, will specify the percentage threshold particular to that project.

CDBG funding is available for both off-site assistance and on-site assistance.

### *Off-site Assistance*

CDBG funds may be invested in the installation or expansion of off-site public infrastructure that is serving the site at which an industry is locating or expanding. This infrastructure must be documented as necessary to allow the Industry to locate at the site or expand at the site. CDBG funds that are utilized for off-site assistance improvements are generally offered in the form of a grant.

### *On-site Assistance*

CDBG funding is available for certain on-site improvements in support of a business creating jobs and completing private investment in an eligible locality. On-site CDBG assistance is offered to localities in the form of a loan. The loan terms are established

by an independent underwriter, and the locality receiving CDBG funding for on-site improvements must repay DHCD in accordance with the established terms. There are no circumstances under which DHCD will waive this repayment. The locality is responsible, in turn, to make the CDBG assistance available as a loan to the assisted business and to make arrangements with the assisted business to make regular payments.

For projects seeking on-site assistance, an ***Appropriate Determination*** package must be completed. This package will provide detailed information on the background, financial position, and local development plans of the business to be assisted, and will be submitted to independent underwriters for review.

## *Job Creation and Retention Requirements*

In addition to the regular pre-contract activities required for all CDBG projects, job creation and retention projects must provide a form of irrevocable security for the entire CDBG award, an Industry Agreement, job creation/retention start-up documentation and documentation of job creation/retention achievement.

**Industry Agreement**

Before an industry is assisted a DHCD approved Industry Agreement must be signed by the Grantee and the industry.

By signing an approved Industry Agreement, the industry and Grantee make the following commitments:

- Commitment by the industry to create or retain a specific number of jobs, per the VCDBG Program Design and as identified in the Grant Proposal;
- Commitment by the industry to create or retain jobs that are made available to or held by a majority (at least 51%) of LMI persons as defined by HUD and as identified in the Grant Proposal;
- Commitment by the industry of a certain amount of private investment, per the VCDBG Program Design and as identified in the Grant Proposal;
- Commitment of local leverage funds, per the VCDBG Program Design and as identified in the Grant Proposal; and
- Commitment to economic sanctions to be levied against the industry should it fail to meet its investment or job creation/retention commitments in a timely manner.

The Grantee must also ensure that any additional industries other than those identified in the beginning as beneficiaries which locate into the project area and use CDBG funded activities prior to administrative closeout, sign a DHCD-approved Industry Agreement and comply with CDBG-related job benefit requirements. See Appendix 12 for more details and a sample agreement.

❋ **For all projects where the benefit is the creation of jobs, there can only be one single point of entry for the submission of said job**

**applications. Any job created where the application did not come through the agreed upon single point of entry as noted in the executed Industry Agreement will be classified as a non-LMI job.**

**Irrevocable Security for CDBG**

All Grantees must provide an irrevocable Letter of Credit, bond or other guaranteed form of security for the amount of the CDBG award in cases where private industry are benefiting from the grant. The security will be held by DHCD until all program requirements are satisfactorily met. If unable to provide the required security, the Grantee may choose to Escrow the entire grant award or draw grant funds on a reimbursement basis once the required job creation/retention benefits are realized.

**Start-up Documentation**

At the start of the project, the Industry must provide the Grantee with the following documentation:

- A listing of current employment by numbers and job classifications;
- A listing of specific jobs to be created by numbers and Economic Development Administration (EDA) job classifications as defined in Appendix 21);
- Determination that over one-half of the jobs which will be filled require no more than a high school degree and no special skills or training as a requirement for employment; and
- The industry must provide a post-probationary wage of at least 1.5 times the minimum wage for 90% of all new employees and provide an employment benefits package that includes, at a minimum, basic medical coverage and insurance (of which at least 50 percent is employer-paid), to all employees. The post-probationary period must not exceed six months. (These wage requirements do not apply to commercial job creation.)

**Documenting Job Creation or Retention**

Federal regulations allow one of two methods to be used to document that the Grantee and Industry have met the requirements. They are:

- Held-by LMI persons; and
- Made available to LMI Persons.

Regardless of the method used, job creation *must* occur within two (2) years of the date of completion of the private investment. The private investment must occur within two (2) years of the commencement date of the CDBG Agreement. Job counting must be recorded until construction is completed and the project is administratively closed out. If at the time of administrative closeout the industry has not fulfilled its job creation commitment, counting must continue until commitment has been met. If the commitment has not been met within two years after the date of

administrative closeout, the industry must explain why.

✱ **Regardless of the process used, the Grantee must actively monitor the industry's progress in reaching hiring goals and documenting the LMI status of referrals as the industry's failure to create or retain the number of LMI jobs specified in the CDBG Agreement could result in the Grantee returning CDBG funds to DHCD.**

## *Held-by LMI Persons*

With this job counting process, the industry must agree, as part of the Industry Agreement, to allow the Grantee or an agent of the Grantee to document that the Industry has employed LMI persons in at least 51% of all new positions created. Guaranteeing that at least 51% of all new positions are held by LMI requires rigorous documentation related to start-up and industry compliance.

**Held-By Industry Compliance**

An industry will be deemed to have met its threshold requirements for hiring when:

- The Grantee receives a listing by numbers and Economic Development Administration (EDA) job classifications as defined in Appendix 21;
- The Grantee receives a listing of the name and income status of the person who filled each position. Only the first person hired into each identified job is counted. Subsequent persons hired into that identified job due to turnover are not counted;
- CDBG-funded activities are complete; and
- Documentation of the industry's investment is accepted by DHCD:
    - After DHCD staff has reviewed all payment documents; or
    - The industry submits a letter from a Certified Public Accountant verifying the private investment amount.

Counting continues until all net positions are filled and documentation on the first person to fill each position satisfies the Industry Agreement.

✱ **If the total number of jobs created exceeds the total number of jobs specified in the CDBG Agreement, the *percentage* of LMI persons to be hired or referred, as outlined in the CDBG Agreement, requires an increase in the *total number* of LMI persons hired or referred regardless of the number listed in the CDBG Agreement.**

☏ If the total number of LMI persons to be hired drops below 51%, the project becomes unfundable and the Grantee may be required to return all expended CDBG funds. Contact your Community Development Specialist immediately if the percentage of LMI referrals or hires is in danger of dropping below 51%!

## *Made Available To LMI Persons*

✱ **Unless approved by DHCD, the Grantee is expected to use the "made available to" process described below.** With this job counting process, the industry must agree to only hire from a pool of applicants, of which at least 51% are LMI, which is referred to the industry by a third-party referring agency such as VEC. Guaranteeing that the hiring pool is at least 51% LMI requires rigorous documentation related to start-up, referrals and industry compliance.

**Referrals**

In order for an industry to demonstrate that it gave first consideration to LMI persons, it must agree to consider only referrals through the following process:

- Prospective employees are referred from the local Virginia Employment Commission Office (VEC) or, with DHCD approval, another independent office that will perform a similar function (the "referring agency");

- The referring agency agrees to refer individuals who have completed a self-certification of their household income. See Appendix 72 for a sample *Income Certification for Job Benefit* form. An individual does not have to be LMI to be referred, but he or she must complete the self-certification;

- The Industry considers and hires only those individuals who have been referred by the referring agency; and

- The industry notifies the referring agency and Grantee as to which individuals have been hired.

Referring agencies must provide this information to the Grantee and the Grantee must maintain these records for a minimum of five (5) years from Final Closeout.

The applicant pool referred to the industry must comprise at least 51% LMI persons. The referring agency must refer all qualified applicants, regardless of income. To ensure that this requirement is met, the Grantee must monitor each month the number and characteristics of individuals referred to the industry.

Any person referred from programs related to the *Workforce Investment Act of 1998* will be accepted as LMI because of the known income restrictions of that program.

Applicants that are not referred as described above and for which there is no income-certification form will be considered non-LMI.

The industry must continue to receive referred applicants until the benefit numbers are achieved, CDBG and private investments are achieved and the Grant is administratively closed.

**Made Available To Industry Compliance**

An industry will have met its threshold requirements for hiring when:

- There is, on a given company payroll, the number of people and positions the industry

promised to hire with each job slot counted only with the initial hiring. The date of the payroll may not be prior to the construction of the CDBG-funded improvements;

- The industry informs the referring agency and the Grantee of whom it has hired;
- All people on the payroll can be confirmed to have been referred by the referring agency;
- The applicant pool referred is at least 51% LMI although referrals are not based on income but on qualifications for the position;
- CDBG-funded activities are complete; and
- Documentation of the industry's investment is accepted by DHCD:
    - After DHCD staff has reviewed all payment documents; or
    - The industry submits a letter from a Certified Public Accountant verifying the private investment amount.

✱ **If the total number of jobs created exceeds the total number of jobs specified in the CDBG Agreement, the *percentage* of LMI persons to be hired or referred, as outlined in the CDBG Agreement, requires an increase in the *total number* of LMI persons hired or referred regardless of the number listed in the CDBG Agreement.**

☏ If the total number of LMI persons to be hired drops below 51%, the project is no longer eligible for funds and the Grantee may be required to return all expended CDBG funds. Contact your Community Development Specialist immediately should the percentage of LMI referrals or hires be in danger of dropping below 51%!

### *Commercial Business Requirements*

Generally the same job creation/retention terms for basic industry projects discussed earlier apply for commercial business ventures. The assisted business is required to commit in writing to creating or retaining a projected number of jobs, and of those jobs, at least 51% would need to be held by or made available to LMI persons. Documentation of these efforts can be accomplished as discussed above in the "Job Creation and Retention Requirements" section of this chapter.

## Development Readiness

Development Readiness projects allow for the completion of improvements which will result in the future creation of business and job opportunities that provide a primary benefit to LMI individuals. All CDBG funding, except for administrative costs, must be recovered upon sale or long-term lease of the site or building to a private sector entity that will create the required number of jobs when CDBG improvements are made on-site. CDBG funds for off-site improvements under this project category do not need to be repaid.

## *Barrier Removal*

The focus of Development Readiness projects is the removal of barriers to economic development, such as:

- The existence of previously used sites and structures for which reuse for economically beneficial activities is not cost effective in comparison to development or construction on a new site; and
- The lack of building space to accommodate business location or expansion and the prohibitive cost of constructing or adaptively reusing space, especially for small businesses.

## *Repayment of CDBG Funds*

Only under the Development Readiness category are somewhat speculative physical improvements permitted since these improvements are treated as loans to the locality and must be secured by a Letter of Credit issued by the locality. Full recovery of the funds must occur within two (2) years of the completion of construction activities. Failure to secure a private sector entity to purchase or lease the improvements within the required time period will result in the administrative *and* construction costs being repaid by the Grantee.

**Letters of Credit**

Cases in which private industry are benefiting from grant expenditure, but are unwilling to commit to a formal, binding financial liability, the participating locality must assume this liability in one of three ways:

- Escrow entire grant award; or
- Draw grant funds on reimbursement basis once required benefit is realized; or
- Execute a non-recourse letter of credit.

Without one of the above, no grant contract will be executed.

## *Marketing*

The Grantee must identify an entity with the capability and willingness to administer a formal marketing program, and all requests for funding should be accompanied by a comprehensive marketing strategy for growing and/or attracting businesses and creating employment, primarily through basic industries. The strategy must identify one or more sectors or industries at which marketing efforts will be aimed, and the CDBG assisted site or building should have a prominent position in the strategy.

## *Job Creation Counting and Documentation*

In the case of a Development Ready economic development project, future jobs will have been projected in the Grant Proposal and incorporated into the CDBG Agreement. At least 51% of these jobs created by the future business must be LMI. The same requirements apply to those jobs as discussed above in the “Job Creation and Retention” section of this chapter.

# Site Redevelopment

Projects funded under this category option target sites which have been rendered unmarketable or unusable by previous uses and which have conditions having an impact beyond the boundaries of the site. Grants must detail the conditions and demonstrate local consensus that the conditions, real or perceived, exist and that addressing these conditions is a local priority. Treatment of these conditions must result in increased potential for investment on this site and surrounding this site.

## *Eligible Activities*

Site Redevelopment projects generally meet the slum and blight National Objective. Accordingly, activities that may be undertaken with CDBG resources include:

- Modification to or demolition of structures existing on these sites; and

- Targeting efforts to more than one site under a single project if it can be demonstrated that the accumulation of these sites has a single identity and/or each individual site has conditions which impact beyond its boundaries.

Eligible activities beyond elimination of blighting conditions may include real property acquisition and future use planning.

# Downtown (Business District) Revitalization

Projects funded under this category are most frequently covered by the National Objective of removal of slums and blight which threaten the health, safety and welfare of the community as a whole, and adversely affects community wealth. Downtown projects may also include benefit to LMI individuals.

As part of the application process, the Grantee determines whether it is seeking funding for only elimination of physical blight, for elimination of physical and economic blight, or for elimination of physical and economic blight and for provision of business district amenities. During the Pre-contract Activities Phase, the Grantee will create and adopt a *Blight Identification and Removal or Remediation Plan*. See Appendix 15 for more details.

Downtown projects designed to eliminate physical blight require the identification and correction of all deteriorated conditions or states of disrepair of business district infrastructure, buildings and other physical elements which detract from the overall appearance and identity of the business district and, in turn, from the ability to attract and retain investment. Grantees ascertain, building by building, or block by block, each structure or property that detracts from the overall appearance of the downtown. These structures are then eligible for CDBG investment. Note that the Grantee is obligated to eliminate all blight in the project area and must define what "blight" constitutes in their locality.

## *Façade Renovations*

Downtown projects generally incorporate a façade renovation loan program. As part of the *Blight Identification and Removal or Remediation Plan*, Grantees develop criteria which define what constitutes blight for downtown structures.

DHCD has certain requirements for façade renovation projects, including:

- Grantees must adopt design guidelines for the project area and include them in the Program Design;
- All CDBG- and leverage-funded building improvements must be *completed* in a manner consistent with the established design guidelines;
- All CDBG- and leverage-funded building improvements from the time of the CDBG Agreement's execution forward must be *maintained* to the established design guidelines for a period of ten (10) years;
- A five (5) year lien must be placed on the building by the Grantee requiring maintenance of the façade. The lien amount will be repaid or transferred if the property is sold. The lien amount may be forgiven by one-fifth each year;
- CDBG assistance can only be used for improvements to the exterior of the building;
- CDBG assistance on non-street façades must receive DHCD's prior written approval;
- All buildings receiving CDBG investments must be free of blight once the construction is complete;
- Some level of private investment matched with the CDBG investment is strongly encouraged. Private investment may be used for interior improvements or a share of exterior improvements;
- If a property owner of a blighted structure will not participate in the façade program, the Grantee must make at least minimal improvements e.g., painting to the structure using CDBG or leverage funds. The Grantee must commit to enforcement of property maintenance standards if the property owners do not consent to participate. CDBG funding may <u>not</u> be used in the taking of private property (eminent domain) for economic development purposes;
- CDBG improvements must be bid out by the Grantee and a three-party contract must be executed between the Grantee, the contractor and the building owner before work begins;
- All Federal Labor Standards requirements apply for construction contracts over $2,000 using any CDBG funds. See Chapter 8: Federal Labor

- Standards and Equal Opportunity Requirements for more details;

- For building owners who opt to use their own time and labor as match, the Grantee must utilize standard wage rates for job classifications. DHCD will provide the wage information based on federal wage rates. The amount claimed as match must be less than the cost of contractor-installed improvements;

- Building owners may choose to have a contractor of their own choosing perform the construction work. If the building owner is a contractor, the building owner may have his own company perform the work. In either incidence, CDBG funds can be used for documented material costs only;

- A committee must review and approve all applications;

- A design professional must participate in the development and the implementation of the renovations to be made;

- Appropriate procurement and contracting procedures must be followed; and

- The Grantee must adopt a DHCD-approved Program Design to govern its façade renovation program. See Appendix 18 for more details.

Issues to be covered in the Program Design include but are not limited to:

- Whether CDBG funds are disbursed as loans or grants;

- Whether building owners are required to supply a cash "match" and if so, what percentage and for what purpose;

- Whether and how a building owner may provide a "match" with something other than cash; and

- How the design professional will interact with and accommodate the design preferences of the individual property owners.

☑ Grantees must have defined "blight" and use this definition through the project. Assigning categories of blight or deterioration such as "high," "medium" and "low" to buildings and structuring façade grant levels so that a greater amount of CDBG funds is allowed for "high" deterioration and less is allowed for "low" deterioration will allow the needs of buildings to be better addressed.

☑ The bidding of certain façade items collectively across many buildings may increase contractor availabilities and decrease bid price. For example, a Grantee may want to bid the awning work for several buildings together and award it as one contract.

**Façade Renovation Financing**

Although a façade grant program is allowable, the advantage of a loan program is that it provides the Grantee with Program Income. The program income is then available to do additional

work according to an approved program income plan. The maximum amount that can be loaned out will be negotiated between the Grantee and DHCD. It will be based upon project area, need and budget constraints.

The Grantee should work with local banks to create a low-interest loan pool to be used for privately-funded improvements that will be matched with CDBG resources.

**Façade Program Soft Costs**

Application intake, legal, administrative work, architectural work related to individual building façade conceptual plans, construction drawings and other architectural services necessary for façade improvement can be paid with CDBG funds in an amount not to exceed 10% of the CDBG-funded construction budget for façade improvements.

**Design-Related Requirements**

DHCD will allow up to $15,000 or 5% of the CDBG-funded construction budget for façade improvements, whichever is less, to be used to develop design guidelines for the downtown district if the locality enacts and enforces an ordinance that requires all CDBG- and leverage-funded building improvements from the time of the CDBG Agreement's execution forward to be done in a manner consistent with the established design guidelines. The ordinance must be in effect for a minimum of 10 years**.**

## *Using CDBG Funds for a Business Loan Program in Business District Revitalization Projects*

**Job Creation – 51% LMI**

The Grantee will set up a Revolving Loan Fund program design which outlines how the funds will be made available, the terms and conditions of the loan funds, who is eligible to apply for loan funds, and how the program income from the loans will be handled. The program design will also establish a loan fund advisory board, which must include at least two local bankers, to review and approve all applications. When a business owner determines they want to apply for loan funds through the grant, they will complete an application for assistance. Once approved, the business owner can use the loan funds on eligible activities, as outlined in the program design. Such activities may include: matching funds for façade work; purchase of equipment; interior renovations; working capital, etc.

**Loan Funding Per Job Created**

As a requirement of the loan, the owner must insure that they will create, at a minimum, one full-time equivalent job per $10,000 borrowed. However, <u>all</u> jobs created by the owner, regardless of the amount borrowed, are considered to be beneficiaries of the project and must be documented until the administrative closeout of the CDBG grant. Fifty-one percent of the jobs created should be available to persons with only a high school education on the condition that specialized on-the-job training will be available.

When documenting job creation or retention, federal regulations allow one of two methods to be used to document that the Grantee has met the requirements for job creation or retention benefits for LMI persons:

- Held-by LMI persons; and
- Made available to LMI Persons.

These two processes and the thresholds that must be met are discussed in detail on pages 150-155.

When documenting job creation or retention with the made-available-to standard, 51% of the entire applicant pool, for any number of jobs, must be LMI. It is critical that each borrower of loan funds follow the proper procedure to ensure that the 51% LMI requirement is not jeopardized. If at anytime the owner does not follow the outlined process, the loan terms will be violated and the Grantee can ask the owner to pay off the loan in full immediately.

When the owner advertises for a position they are creating, they will need to work with a third party referring agency (such as VEC; any other third party arrangement must be pre-approved by DHCD). This third party referring agency will witness, certify and collect income verification forms for all applicants. Business owners will be given a list of all applicants who have completed the income verification form and must hire an applicant from that list. Once the owner has determined the applicant to employ, he or she will report the name of the new employee to the third party referring agency.

After prior consultation with DHCD, Grantees may elect to use the held-by standard for determining the 51% LMI requirement. The held-by standard requires that 51% of the jobs created will be held by an LMI person. Documentation of this requires each person hired to complete an income verification form in the presence of a witness.

Depending on the specific circumstances of the project, there also may be additional contractual requirements for the revolving loan fund.

See Appendix 46: Sample Downtown Business Loan Fund Process.

## *Elimination of Physical and Economic Blight*

Downtown projects in this category include all requirements, expectations and activities required for downtown projects in the “Façade Renovations” category, plus activities that eliminate economic blight. These projects would include addressing vacant, disinvested or underutilized buildings and parcels which represent unrealized commercial potential and project a negative image that harms efforts to attract new investment. CDBG funding may be used for real property acquisition and demolition or other transformational activities linked to the designation of a Redevelopment or Conservation area under Virginia law. Please note that demolition is always considered a last resort.

**Unimproved Areas**

All unimproved properties in the downtown that contribute to blighting

conditions must be addressed during the project. Grant funds may be used for landscaping and infrastructure improvements e.g., paving and lighting. They may not be used for improvements related to the intended community or private uses e.g., stadiums, unless they contribute to the removal of blighting conditions and receive prior DHCD approval.

**Virginia Main Street**

Projects eliminating physical and economic blight must coordinate with Virginia Main Street, implementing the Main Street Four-Point Approach™, as a registered DHCD Commercial District Affiliate. This approach includes:

- Design: Enhancing the physical appearance of the commercial district by rehabilitating historic buildings, encouraging supportive new construction, developing sensitive design management systems, and long-term planning;

- Organization: Building consensus and cooperation among the many groups and individuals who have a role in the revitalization process;

- Promotion: Marketing the traditional commercial district's assets to customers, potential investors, new businesses, local citizens and visitors; and

- Economic Restructuring: Strengthening the district's existing economic base while finding ways to expand it to meet new opportunities and challenges from outlying development.

Any project funded at this level must pursue at least an affiliate status in the Virginia Main Street program. For more information, go to www.dhcd.virginia.gov and click on Main Street's quick link.

## *Provision of Business District Amenities*

Projects funded under this category must comply with all requirements identified in the previous categories, and when those activities are underway and moving toward completion, may use CDBG funds for beautification efforts such as decorative sidewalks, installation of benches, streetlamps, gateways, signage and overhead utility relocation. Moving forward in this way is allowed on a negotiated performance basis. All activities that relate to eliminating blight must be under contract, fully funded, or completed, prior to initiation of any enhancement activities commencing, unless otherwise approved by DHCD. All appropriate procurement and contracting requirements apply.

## *Stakeholder Involvement*

Even more so than with other community development projects, success in downtown revitalization projects is largely dependent upon the level of stakeholder involvement and public participation. Since façade renovations involve private property owners, this becomes an important stakeholder group. Improvements to the fronts of buildings include design and financial decisions that should not be taken casually by business and property

owners, and it is imperative that efforts to communicate frequently and clearly to this group be made throughout the project.

Downtown districts are public places, meaning all residents and organizations in a community potentially have an interest in what happens there. Consequently, efforts should be taken to include representatives of parties with an obvious interest; since the Management Team must be limited to a practical number, other means of participation should be sought and progress reports should be made available to the public to maintain positive enthusiasm. Examples of stakeholder involvement could include assisting in the development of the Program Design, assisting in the creation of, or reporting to, a Downtown Business Owners Association, serving on the Loan Review Committee for façade activities, or serving on one of the Main Street committees to capture the momentum from this very visible project and carry related activities forward.

# Telecom Infrastructure

To be eligible for funding, telecommunications infrastructure projects primarily provide benefits to LMI persons through job creation. However, projects may be eligible under the National Objective of slum-and-blight removal within pre-established redevelopment areas. Consultation with DHCD staff is required at the project development stage, prior to funding approval, to determine the applicable National Objective.

For projects that will provide benefits to LMI persons through job creation the process for documenting, and the policies that define, benefits are outlined on pages 150-155. However, there are some important differences, which are summarized below:

- Before a project can be approved, all businesses in the project area must submit:
    - A listing of current employment by numbers and job classifications;
    - A completed survey that documents any telecommunications needs; and
    - A signed agreement for every business that intends to utilize the infrastructure to be installed, including an agreement that, when hiring new employees, those businesses will follow the approved job documentation process or face sanctions. Businesses that decline initially due to lack of interest in the future services may be subject to a penalty before receiving services after the installation.
- If a telecom project is approved under the LMI National Objective (e.g. benefit to LMI persons through direct job creation), then before that project can be approved, the grantee must submit:
- A job documentation process for approval by DHCD. The process

must include the use of an independent verifying agency, such as Virginia Employment Commission (VEC), or an alternative that includes independent review of income verification.

## *Benefits to be Delivered*

Federal regulations allow one of two methods to be used to document that the Grantee has met the requirements for job creation or retention benefits for LMI persons. They are:

- Held-by LMI persons; and
- Made available to LMI Persons.

These two processes and the thresholds that must be met are discussed in detail on pages 150-155.

✱ **It is very important that the Grantee ensure the cooperation of all project area businesses in the job counting process.**

If the grantee is attempting to meet the *made available to* standard, several things must occur before a position is advertised.

- Each business must submit a listing of jobs to be created by numbers and Economic Development Administration (EDA) job classifications (as defined in Appendix 21);
- The new positions must receive a job order number and be advertised by the VEC, as well as in local newspapers;
- Determination by the VEC as to whether the jobs to be filled will require no more than a high school degree and no special skills or training as a requirement for employment. At least 51% of the jobs created must meet this criteria; and
- Businesses must agree to consider only those applicants for which income verification forms have been completed and approved by the independent verifying agency.

Each hire for a new position must be reported to the VEC. Those new hires must be from the list of applicants that have been approved by VEC. Any that are not will automatically be considered non-LMI. The overall applicant pool for all jobs created must be at least 51% LMI. The grantee must also document that project area businesses have met the required number of jobs to be created or retained.

If the grantee is attempting to meet the *held-by* standard, there must be an income verification form for each person hired into a new position in the project area. Grantees must consult with DHCD prior to utilizing the held-by standard.

Regardless of the method used, job creation *must* occur within two (2) years of the date of completion of the construction. Job counting must be recorded until construction is completed and the project is administratively closed out. If at the time of administrative closeout the grantee has not fulfilled its job creation commitment, counting must continue until commitment has been met. Failure to create or retain the

number of LMI jobs specified in the CDBG Agreement could result in the Grantee returning CDBG funds to DHCD.

If additional businesses move into a project area during the construction phase of CDBG-funded activities and they will benefit from the CDBG activities, these businesses are also subject to the above benefit requirements. They must sign agreements to follow the approved documentation process.

Depending on the specific circumstances of the project, there may be additional contractual requirements.

# Microenterprise Projects and Other Financing Projects

Microenterprise loans are loans that are typically targeted to businesses with 5 or fewer employees; average loan amounts are $8,000-$10,000 and never exceed $50,000.

Microenterprise projects must meet the national objective of providing benefit to low- and moderate-income households through job creation at the benefit level identified in the Grant Proposal and in the CDBG Agreement. Assistance is available to projects that establish clear performance targets and project outcomes, are innovative, demonstrate a true need for CDBG assistance, and are replicable and sustainable.

To this end:

- At least 51% of the individuals who receive the training and capital must be documented as LMI; or
- The individual who receives the training and capital must commit to creating jobs that could be held by or made available to documented LMI individuals (see earlier discussion of "held by" or "available to" LMI persons).

This is accomplished through business skills training, technical assistance, provision of microloans and follow-up or post-loan assistance.

## *Business Skills Training*

Basic business principles are covered by qualified instructors with expertise in microenterprise development, usually in a classroom setting. Entrepreneurs are provided with a foundation of the skills needed to operate a business. The range of topics should include economic literacy, bookkeeping, marketing, financing, insurance, and personnel management. Microenterprise programs have flexibility in assessing their clients' training needs. Training is customized for each individual, and the goal of all training is a completed business plan.

## *Technical Assistance*

One-on-one counseling should be provided to help clients evaluate their business concept. This technical assistance helps guide the entrepreneur through the business planning process. If the concept proves to be feasible, the entrepreneur will be assisted in preparing documents to package a loan proposal. Where beneficial, entrepreneurial networks can be

established to target business creation or expansion in specific business sectors or to develop peer-to-peer relationships among entrepreneurs in similar businesses.

## *Microloans*

CDBG-funded programs focus on those potential borrowers who may not be able to access capital from a traditional lending institution. Note that any real property or equipment acquired with CDBG-funded loans must be collateralized, but that borrowers may not use their primary residences as collateral. The maximum loan amount will be agreed upon by the Grantee and DHCD. Loan approval and repayment terms are decided by a Loan Review Committee that must include bank partners. See also pages 150-152.

## *Follow-Up or Post Loan Assistance*

There are many challenges that face microbusinesses, especially those just starting. Therefore, microenterprise programs must continue providing assistance to its participants once they are in business. Follow-up or post loan assistance must be conducted on a regular basis and be responsive to the immediate needs of the entrepreneur.

The Grantee must identify an acceptable delivery system through a DHCD-approved Program Design. See Appendix 19 for more details.

The Grantee is encouraged to develop relationships with local banks to provide business startup loans to credit-ready individuals. Note that CDBG funds may be used to establish a loan loss reserve to minimize the risk to traditional lenders. The Grantee must establish an effective benefit tracking process. This includes job creation/retention documentation and tracking of business viability, such as if the assisted businesses are still in business after two (2) years, or five (5) years, or the extent of business growth or expansion.

## *Microenterprise Program Soft Costs*

CDBG funds may be used for grant administration costs not to exceed 10% of the total grant amount. Eligible training costs will be negotiated.

☎ Grantees having been awarded other types of economic development financing projects, such as Community Development Venture Capital, loan/loss reserve, or direct loan assistance to a private business, should contact their Community Development Specialist for direction on administration and compliance.

## *Microenterprise Program Design*

Recipients of CDBG monies to finance microenterprise projects must prepare and adopt a Program Design setting forth the policies and program guidelines for implementation of their program. The Program Design must be approved by DHCD prior to adoption by the Grantee's local governing body.

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# CHAPTER 11: COMMUNITY SERVICE FACILITIES

This chapter outlines the requirements for Community Service Facility projects. These projects help Grantees improve the availability and adequacy of community service facilities by providing financial and technical support for the construction, rehabilitation or improvement of facilities. These facilities provide new or expanded community services to LMI persons and the greater community. These projects must also follow the requirements outlined in Chapter 6: Design and Construction Management.

For purposes of clarity, this chapter is divided into the following sections:

- Types of Services Eligible;
- Facility Ownership;
- Facility Operation;
- Ownership or Operation by Faith-based Organizations; and
- Recordkeeping.

## Types of Services Eligible

Community Service Facilities must improve the availability and adequacy of community service facilities by providing financial and technical support for the construction, rehabilitation or improvement of facilities for the provision of new or expanded community services to LMI persons and the greater community. Such facilities may offer the following types of community services:

- Acquisition and/or development of facilities for vocational education or distance learning facilities;
- Acquisition and/or development of facilities for sheltered workshops for persons with disabilities;
- Child and/or adult day care facilities;
- Facilities designed to provide direct services to those presumed to be LMI: abused children, battered spouses, elderly persons, the severely disabled, homeless persons, illiterate persons, persons living with AIDS and/or migrant workers;
- Facilities related to improving or providing community services such as dental clinics, health clinics, and mental health facilities; and
- Skill-building facilities for youth and the unemployed.

## Facility Ownership

Typically, the Grantee must own or control the use of the facility for at least twenty (20) years and commit to delivering the service(s) as indicated in the CDBG Agreement for twenty (20) years. However, the facility may be managed by public or private agencies other than the Grantee.

If the ownership of the facility is transferred or leased to another entity providing the service(s), this entity will be responsible for the operation, maintenance and upkeep of the building and the program.

DHCD requires the Grantee to execute lien restrictions on property that is either purchased or improved, in whole or in part, with CDBG funds. The following lien restrictions must be attached to the deed or lease:

- Property must deliver the benefits as described in the CDBG Agreement for a minimum of twenty (20) years;

- If the building is no longer needed to serve the original purpose or population, or the ownership or management is no longer active, the building must revert to the Grantee. With the prior approval of DHCD, the facility may be used in another capacity as long as the beneficiary rate is similar; and

- The services and facility must be open and available for use by the general public during all normal hours of operation. No use of the facility for the conduct of local government business is allowed.

✱ **DHCD must approve any sale, transfer or change in use from the original approved purpose. Proceeds from a sale must be returned to DHCD or be used for an eligible activity approved by DHCD.**

Any property or structure acquired using CDBG funds must be done so in compliance with the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*. See Chapter 7: Acquisition and Relocation for more details.

## Facility Operation

The facility must be designed, constructed, equipped, and managed to facilitate sustained delivery of services. See Appendix 14: Staffing and Operations Plan for more information.

Built-in equipment and machinery and furnishings essential for the operation of the facility can be included in the construction or renovation costs, subject to prior DHCD approval.

CDBG funds shall not be used for operating costs.

The Grantee must provide oversight on the continued eligible use, maintenance and disposition of the facility at least annually.

The Grantee and any service providers must initiate and sustain provision of the proposed service(s) to the target population after the acquisition and construction phases of the project is completed for the period specified in the

CDBG Agreement which is usually twenty (20) years.

Services must be provided in a manner to achieve a measurable, positive change in individually identified persons consistent with the CDBG Agreement, *Staffing and Operations Plan*, and the *Project Management Plan*.

The facility must be operated in a manner consistent with the *Staffing and Operations Plan*. See Appendix 14 for more details.

All agreements pertaining to the provision of services to beneficiaries must be completed, reviewed by DHCD and executed according to a negotiated schedule, usually during the Pre-contract period.

Affordable service fees may be charged to LMI individuals or households for the use of the facility, but access fees (fees not related to actual services) which will have the effect of precluding LMI persons from using the facility, are not permitted.

Any funds returned to the Grantee as repayment or revenue earned as a result of expenditure of grant funds is program income and will necessitate the development of a *Program Income Plan*. See Appendix 16 for a copy of the plan.

All private investment funds counted as leverage must be expended for eligible activities and costs that were identified in the project proposal and accepted by DHCD.

# Ownership or Operation by Faith-based Organizations

CDBG funds shall not be used to acquire, construct, rehabilitate or furnish properties to be used primarily for religious purposes or to promote religious interests regardless of the use of the property. Therefore, in the event that a religious organization either owns the facility or operates the program, the religious organization shall not:

- Discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

- Discriminate against any person applying for services on the basis of religion and will not limit such services or give preferences to any person on the basis of religion; and

- Provide any religious instruction or counseling, conduct religious services, engage in any proselytizing, and exert any religious influence in the provision of such services.

# Recordkeeping

Demographic data must be kept for all persons who are applicants for, participants in, or beneficiaries of the program. These persons must be identifiable by name, residence, income status, race, ethnicity, age, sex, national origin, disability status, and the nature of

the benefit. This information must be maintained by the Grantee. If the Grantee is not providing the services directly, the service provider(s) must submit this information to the Grantee at least annually in a format consistent with DHCD requirements.

Beneficiaries' status as LMI persons or protected populations must be documented through referrals, verified client income/intake forms, police reports (domestic violence), and other records developed and maintained by the facility for this purpose.

For medical services facilities, the Grantee is to adhere to the following procedures: When a facility is at or near normal operation (generally two to four months after start-up if it is a new facility), the Grantee is responsible for conducting LMI surveys of *all patients* for two months (unless otherwise directed by DHCD) in order to develop a profile of LMI status and other pertinent demographic data required for HUD reporting. The percentage results of said LMI surveys will be extrapolated and applied to the final benefit number for reporting purposes. The Grantee is responsible for documenting all *unduplicated* persons served until the total benefit number is met. This can begin at anytime after the CDBG-funded improvements are substantially complete.

All records relating to the project must be maintained for a period of five (5) years from Final Closeout of the CDBG Agreement and shall be available during regular business hours for inspection and audit.

# CHAPTER 12: GRANT CLOSEOUT PROCEDURES

This chapter outlines the grant closeout process. Upon completing CDBG-funded activities and/or fully expending the CDBG funds, the Grantee enters the final phase in the grant management process: grant closeout.

For purposes of clarity, this chapter is divided into the following sections:

- Letter of Conditions;
- Final Closeout Reports;
- Administrative Closeout;
- Conditional Closeout;
- Final Closeout; and
- Final Audit Requirements.

## Letter of Conditions

Once DHCD, in consultation with the Grantee, has determined that the CDBG funded activities are completed and/or all CDBG funds have been expended in conformance with program guidelines, a Letter of Conditions (LOC) is issued. This Letter suspends the grant contract and informs the Grantee of what items are necessary for Administrative Closeout of the grant.

Upon issuance of the Letter of Conditions, DHCD has determined that no further draws on the grant account are needed and no further requests for funds will be accepted. Due to this policy, the Grantee should submit a drawdown request for all remaining funds less the five percent (5%) administrative retainage when they are advised that the LOC is being prepared or when they receive it and submit it with the completed Final Closeout Reports.

The Letter of Conditions identifies conditions necessary to resolve grant issues and to become administratively closed. These may include the resolution of any Findings identified in the final compliance review, submission of a program income plan, or other administrative requirements. In all cases, the LOC transmits the Final Closeout Reports or "the blue forms," which must be completed and submitted as a condition of Administrative Closeout.

## Final Closeout Reports

The Final Closeout Reports usually consist of the following six forms: a *Final Financial Report*, a *Final Construction Report*, a *Final Evaluation Report*, a *Program Income Report*, a *Leverage Report, and* a *Contract and Subcontract Activity (HUD 2516) Report*. Samples of the "blue forms" are available, if requested, after the execution of the CDBG Agreement.

All reports in the *Final Closeout Report* package must be returned to DHCD, along with the final drawdown for the

five percent (5%) administrative retainage.

The *Final Financial Report* (and the *Program Income Report*, if applicable) must be complete with final data and certified by the local official who executed the CDBG Agreement. Information may not be available to allow completion of the Leverage, Construction and Evaluation Reports at the time of submittal; *if* data is incomplete, information current to the report date *must* be submitted. DHCD requires re-submittal of incomplete report forms every six (6) months until final information has been reported.

## *Final Financial Report*

The *Final Financial Report* is an end-of-project summary of all CDBG expenditures.

In Section I of the *Final Financial Report*, information is to be provided per activity as identified in the Grantee's current, approved Program Budget**.** If program income was expended for project activities, it must be included as part of the amount shown in the CDBG expended column.

Section II requests detailed expenditures including program income by program activity categories in order to fulfill federal reporting requirements.

Section III is a computation of the grant balance and identifies the status of these funds. When applicable, program income, as reported in Section II on the *Program Income Report*, is reported on line b. The Balance on Hand (funds drawn but not expended) is to be returned to DHCD by a check made payable to the "Treasurer of Virginia." The remaining grant funds that have not been drawn are referred to as the Undrawn Grant Funds and will be cancelled by DHCD and re-appropriated.

With prior concurrence by DHCD, the Grantee may be allowed to encumber grant funds to cover appropriate final audit expenses. The authorized amount is to be shown as expended on the *Final Financial Report*.

✱ **Funds encumbered for the CDBG share of the final audit must be drawn, via a Request for Payment, prior to the issuance of the LOC and placed in a non-interest bearing escrow account. DHCD will require follow-up assessments of expenditures of these funds.**

The Chief Executive Officer who holds the title of the individual who signed the CDBG Agreement must sign the *Final Financial Report, the Leverage Report and the Program Income Report.* See Appendix 73 for a sample of the *Final Financial Report*.

## *Final Construction Report*

This report requests a description of all construction activities completed under the CDBG Agreement. Specifics *must* be provided to indicate the scope of the work accomplished. This information must be consistent with the Grant Proposal and CDBG Agreement.

Special attention should be given to the certification under Section II. By signing this Certification, the Grantee is indicating that a Certification of Final Completion and Acceptance has been issued for all construction activities and

that they are on file with the Grantee. DHCD accepts this certification as indication that all grant funded construction activities have been satisfactorily completed.

In some cases, all project construction will not be complete at closeout. In these cases, the Grantee must continue to maintain data after project closeout and resubmit this report at six-month intervals until all construction has been completed.

## *Final Evaluation Report*

This report requests specific information about project impact. The Grantee must maintain adequate records throughout the project to successfully complete this report. The Grantee will complete one report for each project activity. This will allow DHCD to report to HUD on the number of benefits by activity. The documentation of benefits is discussed in detail in Chapter 3: Benefits.

DHCD recognizes that in some cases the full level of benefits sought by the project will not have been achieved at the end of construction. In these cases, the Grantee must continue to maintain data after project closeout and resubmit this report at six-month intervals until the full level of benefits has been achieved.

Section I of the *Final Evaluation Report* lists the project specific activity measures determined by DHCD as being applicable to a given project. Grantees are requested to provide up-to-date cumulative information on each measure.

The measures include requests for demographic and income data on applicants, participants, and direct benefit recipients per the revised federal regulations governing the State CDBG Program. Projects funded under the "Elimination of Slums and Blight" objective do not need to report on the numbers of LMI beneficiaries.

Section II is a statement of benefits on applicants, proposed and actual number of total households, female-headed households, elderly persons and disabled persons.

Section III addresses the total number of proposed and actual number of households receiving first-time indoor plumbing, becoming first-time homeowners and receiving substantial reconstruction. See Appendix 74 for samples.

## *Program Income Report*

Any funds returned to the Grantee as repayment or revenue earned as a result of expenditure of grant funds is Program Income. Use of program income is determined by timing of its receipt by the Grantee. See "Types of Program Incomes," as found on page 56, for more details.

In Sections I and II of the *Program Income Report*, DHCD requests information on expenditures from program income earned from allowable sources which was accrued and expended during the project up to submittal of the report to DHCD. The total from Section II should then be transferred to Section III, line b of the Final Financial Report.

Section III asks for data on unallowable interest income that MUST be returned to DHCD.

Section V is a summation of the DHCD approved Program Income Plan. If a plan has to be prepared as part of the closeout process, see Appendix 16 for a copy of the plan.

It is important to remember that all program income earned prior to Administrative Closeout must be spent in conformance with the Program Income Plan and Title I of the *Housing and Community Development Act* and in compliance with all applicable Federal laws. Program Income earned prior to DHCD's acceptance of the Program Income Plan must be returned to DHCD. See Appendix 75 for a sample report.

### *Final Leverage Report*

This report requests information on non-CDBG funds that were part of your project and which were counted as leverage in the project rating. Shaded areas are completed by DHCD. All private monies expended as leverage *must* be documented with an Independent Public Accountant's Certification or with copies of invoices and cancelled checks. See Appendix 76 for a sample report.

### *Annual Contract and Subcontract Activity (HUD 2516) Report*

This report requests information on all contract and subcontract awards that exceeds $10,000. At project closeout, the Grantee must submit a final annual Contract and Subcontract Activity (HUD 2516) Report which covers only the contracts awarded during the months since the previous report was submitted.

☏ Call your DHCD Community Development Specialist if you would like an electronic version of the report form.

## Administrative Closeout

In some cases, projects will be closed financially although leverage, construction or benefit has not been completed. This may occur, for example, in the case of a public facilities project involving large amounts of leverage funds budgeted for project construction activities, or with economic development projects in which employment benefits will occur after production begins. In order to accommodate these cases, DHCD may issue an Administrative Closeout.

The Grantee will only be issued Administrative Closeout status when all CDBG funds have been expended, when all CDBG-funded construction activities are complete, when all compliance review findings are cleared, and when the original submittal of the *Final Closeout Reports* have been accepted.

To document completion of benefits after Administrative Closeout, DHCD will continue to ask that updated *Final Evaluation Reports* be submitted at six (6) month intervals from Administrative Closeout for the two (2) year tracking period or until benefits are achieved. The report forms will be transmitted to Grantees, by DHCD, for completion and return.

The Final Leverage and Construction Reports, if incomplete, will also require re-submittal at six (6) month intervals until determined complete by DHCD.

## Conditional Closeout

Conditional Closeout will be issued when the achievement of the National Objective of benefit to low- and moderate-income persons has been assured. In order to become Conditionally Closed under this system, all proposed benefits e.g., new jobs, water and/or sewer hook-ups, and rentals of housing units that have been physically achieved must be documented. If the achievement of benefits occurs at the same time as full expenditure of CDBG funds, a project can become both administratively and conditionally closed simultaneously.

Should the project be completed, or the two-year tracking period expire without meeting the National Objective, persuasive documented evidence that good faith efforts were exhausted by the Grantee and/or third parties must be submitted to DHCD before Conditional Closeout will be provided. If the project, or the two-year period, expires without meeting the National Objective, appropriate sanctions may be imposed. These could include payback of grant funds, ineligibility for consideration of future grants, or withholding of drawdowns on a new grant until compliance with the National Objective is met.

## Final Closeout

To achieve Final Closeout, the Grantee must satisfy the condition(s) of the Conditional Closeout. In almost all cases, the completion of the final audit, if one is required, and reconciliation of any audit findings will be the only conditions that will need to be satisfied. Any remaining conditions and/or citizen complaints must also be resolved before Final Closeout can be achieved.

## Final Audit Requirements

In any year in which more than $500,000 of federal funds are received and spent by a Grantee, an OMB Circular A-133 audit must be performed, submitted to DHCD, reviewed and approved.

In most cases the final OMB Circular A-133 audit will not be performed until conditional closeout has been achieved. It is expected that the Grantee will take responsibility for seeing that an OMB Circular A-133 audit is undertaken when the Grantee has its annual audit performed. If an audit is required, a copy of the audit must be sent to DHCD.

If the final audit report includes findings affecting CDBG funds, the Grantee must respond to those findings in a letter to DHCD. Should these findings necessitate that the Grantee adjust the Final Financial Report, an amended report must be sent to DHCD with a refund made payable to the "Treasurer of Virginia" for any repayments required.

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# INDEX FOR 2012 CDBG MANUAL

## A


*Ability-to-pay Worksheet*.....130
*Acknowledgement of Receipt of ECOA Notices and Disclosures* .....121
Acquisition.....63, 78
Adaptive Reuse .....152
Administrative Costs.....50
Advisory and Counseling Services .....92
*Affidavit of Payment of Debts and Claims* .....151
*Affidavit of Release of Liens*.....151
*Annual Activity and Beneficiary Report*.....26, 33
Annual Expenditure Report.....34, 40
Anti-displacement Plan.....15
Appraisals .....81
Apprentices and Trainees.....108
Appropriations .....47
Asbestos.....141
Audit Requirements .....57


## B


Basic Requirements .....150
Benefit Requirements.....20
Bid Opening.....65, 146
*Bidder Compliance Statement Certification Regarding EEO* .....67, 114
Blight Identification and Removal or Remediation Plan.....16, 149
Blower Door Test.....141
Books .....46
*Budget Revision Worksheet*.....54
Budget Revisions .....54
Business District Amenities .....166


## C


Certificate of Occupancy .....151
*Certificate of Satisfaction*.....135
*Certification of Final Completion and Acceptance*..75, 150
*Certification of Signatures and Address* .....50
Certified General Appraiser .....82
Certified Residential Appraiser.....82
Change Orders .....69, 72, 148
Closeout, Administrative .....180
Closeout, Conditional.....181
Closeout, Final .....181
Commercial District Affiliate .....166
Community Facilities.....21
*Community Improvement Grant Disclosure Report* 147
Community Service Facility .....25, 55, 173
Complaints.....36, 73, 100
Compliance Reviews.....40
Comprehensive Projects.....26
Condemnation ..... 85
*Confirmation of Receipt of Lead Pamphlet* ..... 133
Conflict of Interest ..... 31
Contract Amendments ..... 39
Contract Award ..... 147
Contract Compliance Officer ..... 104
Contract Execution ..... 17
Contract Negotiations ..... 9
*Contract Work Hours and Safety Standards Act* .... 103
Contracts and Agreements..... 131
*Copeland "Anti-Kickback" Act* ..... 103
Cost Estimating ..... 144
Cost Limits ..... 124, 125


## D


**Data Universal Numbering System**..... 156
*Davis-Bacon Act*..... 103
*Deed-of-Trust* .....122, 129, 131, 133
*Deed-of-Trust Note*..... 129, 131, 135
Definitions..... 5, 20, 43
Delinquent loans..... 131
Demolition..... 125
Development Readiness ..... 149
DHCD HQS .....123, 140, 142, 148, 149, 150
**DHCD HQS Inspection Checklist and Certification** ..... 139
Disaster Relief Projects ..... 26
Displaced Renters..... 95
DOL Posters ..... 105
*Donation and Waiver Statement*..... 88
Donations ..... 88
Downtown (Business District) Revitalization ... 24, 55, 149
DPOR license ..... 82, 136, 141
Drawdown Request ..... 50
*Drawdown Support Form*..... 50
Dual Wage Decisions ..... 105


## E


Easements..... 63, 87
Economic Development ..... 23
Electronic Transfers of CDBG Funds..... 52
Eminent Domain ..... 149
Employee Interviews ..... 112
Environmental Review Record..... 11
*Equal Employment Opportunities Checklist*..... 71, 115
Equal Employment Opportunity..... 70
*Equal Opportunity Checklist* ..... 68
Exceptions ..... 124
Expendable Personal Propert..... 39


## F


Façade Renovations..... 149

Facades, non-street.....149
Facility Operation .....174
Facility Ownership.....174
Fair Housing .....15, 34
Fair Market Value.....81, 82, 87
Faith-based Organizations.....175
Federal Construction Contract Language.....62, 133
Federal Equal Credit Opportunity Act .....121
Federal Identification Number .....50
Federal Labor Standards .....70, 103, 149
Fee Simple .....63, 78
Final Audit Requirements .....181
Final Closeout Reports.....34, 177
Final Construction Report.....178
Final Design.....61
*Final Evaluation Report*.....26, 179
*Final Financial Report*.....98, 178
Final Leverage Report.....180
*Final Wage and Compliance Report*.....114
Financial Management Requirements.....44
Foremen .....106
*Freedom of Information Act*.....66

## H

Heir Properties .....123
Helpers and Assistants .....109
Home Maintenance Education Program..120, 125, 126
*Housing and Community Development Act*.....14, 22
*Housing and Community Development Act of 1974*.77, 95
Housing and Urban Development Act of 1968 ...12, 74
*Housing and Urban Development Act of 1974*.....5
Housing Cost Differential .....94
Housing Production .....151
Housing Projects.....22, 117
Housing Rehabilitation .....55
HUD Handbook 1378 .....77, 84, 89, 98, 100

## I

*Income Certification for Job Benefit*.....149
Industry Agreement .....16, 150
Inspection.....74, 75, 111, 139, 141, 148
Investor-Owner Rental Commitment.....134
*Invitation To Accompany* .....82

## J

Job Classifications .....106, 149
Job Creation and Retention .....55, 156
Just Compensation .....83

## L

*Labor Standards Checklist*.....68, 70, 104
LBP.....140
Lead Safe Work Practices .....141, 149
Letter of Conditions .....177
Letter of Credit.....149
Leverage Funds.....6, 10, 15, 33, 44, 60, 78
Life estate ownership..... 122
Life Estates..... 123
life-rights ..... 123
LMI Beneficiaries, Direct..... 21
LMI Households..... 20
LMI Persons ..... 20, 25
LMI Persons, Held-by ..... 149
Loan Fund ..... 165
loan pool..... 165
*Loan Repayment Worksheet* ..... 131
Loan Review Committee..... 166
Loan Servicing ..... 131
Log for Reviewing Employees on Payrolls ..... 110
Log of Payroll Reports ..... 110

## M

Made Available To LMI Persons ..... 149
Main Street Four-Point Approach™,..... 166
Master Specifications ..... 142
Microenterprise ..... 17, 24, 166
Microenterprise Program..... 166
Microloans..... 166
Minority- and Female-owned Businesses, Contractors and Suppliers..... 14
Mobile Home ..... 123, 126
Monthly Updates..... 33
Moving and Related Expenses ..... 94

## N

National Objectives ..... 19
National Objectives, CDBG ..... 125
Ninety-Day (90) Notice to Vacate..... 97
Non-discrimination Policy..... 14
Nonexpendable Personal Property..... 38
Notice of Award ..... 67
Notice of Intent Not to Acquire..... 86, 89
*Notice of Lead-Based Paint Presumption*..... 133
*Notice of Relocation Eligibility* ..... 84, 91, 99
*Notice of Right to Cancel* ..... 134, 135
*Notice of Right to Continue in Occupancy* ..... 84, 91
*Notice to Proceed* ..... 69, 71, 131

## O

OMB Circular A-133..... 57
Oversight Boards..... 10, 36
Owner-occupied Properties ..... 123

## P

Partial Rehabilitation..... 127
*Payroll Reports* ..... 109, 115
Payroll Reviews..... 109
Periodic Inspection..... 72
Personal Property ..... 37
Pre-Bid Conference ..... 65, 146
Pre-Construction Conference ..... 67, 147
*Preliminary Acquisition Notice* .80, 82, 86, 88, 89, 154
Prior Authorized Costs ..... 9

Procurement ....16
Program Design ....118, 151, 164, 166
Program Design, Façade Renovations....17
Program Design, Housing Rehab ....*See*
Program Design, Microenterprise ....17
Program Income....54, 164
Program Income Plan....16, 175, 180
Program Income Report ....179
Program Income, Active ....56
Program Income, Inactive ....57
Progress Reports ....33
Project Budget....11, 47, 53
Project Management Plan ....16, 30, 62, 175
Project Management Team ....10, 30, 36, 62
Project Sign....32, 69, 145
Property Ownership and Control....122

## R

*Real Estate Settlement Procedures Act* ....85
Real Property ....37, 56
Real Property Acquisition ....63
Recordkeeping .... 26, 32, 59, 89, 101, 116, 153, 175
Referring agency....149, 166
Register of Assigned Employees.....110, 112, 115, 151
*Register of Contractors, Subcontractors and Suppliers* ....115, 151
Regulation Z ....135
Rehab Board ....121, 132, 147
Rehab File Checklist ....154
*Rehabilitation Act of 1973* ....14
Relocation Assistance ....89, 93
*Relocation Assistance to Displaced Homeowners*.....91
*Relocation Assistance to Displaced Tenants*....91
Relocation of Businesses, Farms and Non-Profit Organizations....99
Relocation of Mobile Home Residents ....99
Relocation Payments....98
Relocation, Permanent ....126
Relocation, Temporary....125, 142
Rental Assistance Payment ....94
Rental Properties....123
*Request for Donation of Land Parcel or Easement*...88
*Request for Waiver of Appraisals*....87
Resident Inspection....72
Residential Anti-Displacement and Relocation Assistance Plan ....16
*Residential Moving Expense and Dislocation Allowance Payment Schedule* ....94
Review Appraisals ....81, 83
Risk Assessor....140

## S

Section 3 ....12
Section 504 ....14
Section 8 Income Guidelines ....21
Site Redevelopment ....149
Soft Costs, Construction-related ....125
Soft Costs, Façade Program ....165
Soft Costs, Microenterprise Program .... 166
Staffing and Operations Plan.... 16, 175
*Statement of Compliance*.... 109
*Statement of Settlement Costs*.... 79, 85, 89, 154
*Statement of the Basis for the Determination of Just Compensation* .... 84, 88
*Statements of Compliance* .... 103
Subcontractors.... 108
Substantial Reconstruction .... 127
Substantial Reconstruction Worksheet .... 128
Survey of Displaced Persons .... 90

## T

Title Searches .... 81, 122
Total Annual Income.... 21
Truth-in-Lending Disclosure Statement ..... 134, 135

## U

*Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* ..... 64, 77, 174
Upper-Story Housing .... 153
User agreements .... 16
*Utility Fee Schedule* .... 95, 129, 130

## V

Vacant Property.... 123
Virginia Department of Accounts.... 51, 52
Virginia Department of Labor and Industry .... 106
Virginia Department of Minority Enterprise .... 64
Virginia Employment Commission Office .... 149
Virginia Main Street.... 166
*Virginia Public Procurement Act* ..... 64, 66, 81, 145
Voluntary Acquisition .... 86

## W

Wage .... 62
Wage Decisions.... 104, 107
Waiver of Appraisal .... 87
*Waiver of Just Compensation* .... 88
*Wavier of Right to an Appraisal* .... 88
Willing Seller .... 85
*Workforce Investment Act of 1998*.... 149
*Written Offer to Purchase* .... 84, 91
www.aarp.org/universalhomes .... 143
www.buildinggreen.com .... 143
www.dhcd.virginia.gov .... 7, 9, 29, 166
www.dmbe.virginia.gov .... 64
www.doa.state.va.us .... 53
**www.dpor.virginia.gov**.... 82, 136, 141
www.energystar.gov.... 143
www.fhwa.dot.gov .... 94
www.hud.gov .... 98, 152
www.huduser.org .... 21
www.virginiahousingcounselors.org .... 152

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# APPENDICES
# TABLE OF CONTENTS

**APPENDIX**


1. Request for Prior Authorization
2. Environmental Review
3. Project Budget
4. Local (Section 3) County Business and Employment Plan and Notice
5. Minority- and Female-Owned Business Notice
6. Non-Discrimination Policy
7. Section 504 Requirements
8. Residential Anti-displacement and Relocation Assistance Plan
9. Fair Housing Certification
10. Procurement and Contracting Process
11. User Agreements
12. Industry Agreements
13. Project Management Plan
14. Staffing and Operations Plan
15. Blight Identification and Removal or Remediation Plan
16. Program Income Plan
17. Housing Program Design
18. Façade Renovations Program Design
19. Microenterprise Program Design
20. CDBG Agreement Sample
21. Record of Employees Hired and Referred
22. Annual Activity and Beneficiary Report and Section 3 Summary Report
23. Project Sign Requirements
24. Model Filing System

25. Rehab File Checklist
26. CDBG Drawdown Request and Support Form
27. Certification of Signatures and Address
28. Budget Revision Worksheet
29. Construction Contract Documents
30. Notice of Award Sample
31. Notice to Proceed with Construction Sample
32. Preliminary Acquisition Notice and HUD Brochure *When a Public Agency Acquires your Property*
33. Invitation to Accompany an Appraiser
34. Review Appraisal Report Sample
35. Statement of the Basis for the Determination of Just Compensation
36. Written Offer to Purchase
37. Statement of Settlement Costs
38. Notice of Intent Not to Acquire
39. Request for Wavier of Appraisals
40. Request for Donation of Land Parcel or Easement and Waiver of Right to an Appraisal
41. Donation and Waiver Statement
42. Waiver of Just Compensation
43. Acquisition File Checklists
44. Utility Fee Schedule
45. Labor Standards Checklist
46. Sample Downtown Business Loan Fund Process
47. Certified Payroll Report and Certification of Subcontractors on Site
48. Log of Payroll Reports
49. Log for Reviewing Employees on Payrolls
50. Authorization of Payroll Deductions
51. Record of Employee Interview
52. Bidder Compliance Statement
53. Equal Opportunity Checklist

54. Register of Assigned Employees

55. *What You need to Know About Housing Rehabilitation* Brochure

56. Monthly CDBG Register of Contractors, Subcontractors, and Suppliers

57. DHCD Housing Quality Standards, DHCD HQS Inspection Checklist and Certifications

58. Acknowledgement of Receipt of ECOA Notices and Disclosures

59. Substantial Reconstruction Worksheet

60. Ability-to-Pay and Loan Repayment Worksheets

61. Federal Construction Contract Language for Housing Rehab

62. Deed-of-Trust Sample

63. Deed-of-Trust Note Sample

64. Notice of Right to Cancel

65. Truth in Lending Disclosure Statement

66. Housing Rehabilitation Contractor's Qualification Statement

67. This Appendix is Reserved for Future Use

68. Lead-Based Paint Requirements, Sample Forms and *Renovate Right* Brochure

69. Asbestos and Asbestos Abatement

70. Energy Efficiency "Green Building"

71. Community Development Block Grant Disclosure Report

72. Income Certification for Job Benefit

73. Final Financial Report – CDBG

74. Final Evaluation Reports

75. Program Income Report

76. Leverage Report

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