

## CHAPTER 4 – DEVELOPING PROGRAM GUIDELINES

Successful community, neighborhood, or downtown revitalization initiatives start with a sound redevelopment plan. The planning process is used to bring stakeholders together, with the specific purpose of assessing and analyzing the socio-economic dynamics in the targeted area (e.g., community-wide, neighborhood, or downtown), identifying its unique assets and challenges. The planning process results in a vision for the study area shared by most stakeholders. Once the vision is clear, it can guide all subsequent decisions about redeveloping the targeted area's physical infrastructure (i.e., housing, commercial buildings, transportation, and other public infrastructure), and coordination and delivery of community services. Many revitalization activities will be eligible activities under CDBG. Subrecipients should work with a DED Program Representative to determine which activities are appropriate for CDBG funding for any given project and under which funding category.

Typically, the redevelopment planning process results in a document or tool, such as a land use plan, that maps types of appropriate development (e.g., residential, commercial, industrial, open space, etc.) for the target area to thrive, and also where and when that development will occur. This document or tool is then used for developing effective program guidelines, directly or indirectly.

In residential neighborhoods, subrecipients may use CDBG to carry out a new or existing Housing Program, such as rehabilitation. There may be some restrictions on the eligible activities, consult CDBG Application Guidelines for additional information and/or procedures.

CDBG resources can also be used in downtown areas to carry out a new or existing Commercial Rehabilitation Program, including façade improvements, restoration, signage, etc. With very limited exceptions, eligible activities are limited to exterior improvements.

When implementing a Housing or Commercial Rehabilitation Program, it is necessary to develop and maintain Program Guidelines to ensure activities are carried out in accordance with the goals and objectives identified by subrecipient and its stakeholders. In general, the Program should further the initiatives derived from the planning process and incorporated in the redevelopment plan. For neighborhoods, this might be in the form of a supplement to or of the comprehensive plan itself. Eligible downtown business districts must have a discernable downtown revitalization plan; best practices involve a separate planning document from the comprehensive plan, as the study area is unique.

### Developing Program Guidelines

Program Guidelines should reflect the vision for the community as developed through formal and informal planning processes. Successful projects derive from and implementation undertaken through a redevelopment/revitalization plan. Listed below are requirements of program guidelines by program type, DED may also encourage best practices not specifically included.

Functionally a “rule book”, program guidelines describe how the program is implemented at the local-level and include provisions to ensure compliance with state and federal requirements.

Subrecipients provide a copy of the Program Guidelines to DED for review. Prior to approval by DED, the subrecipient or its agent must address any deficiencies in this review per the CDBG Application Guidelines or other guidance as provided by DED. Consult the Application Guidelines to determine timing of submission and review process. Best practices involve submission of a sample Application form for use by a local business or individual for consideration under the Program. **(NOTE: This is a requirement for programs involving commercial rehabilitation activities.)**

## SECTION 106 COMPLIANCE

Projects involving program guidelines often trigger the threshold for action related to National Historic Preservation Act of 1966 (16 USC 470 *et seq.*) and 36 CFR Part 800 “Protection of Historic Properties”. To ensure compliance, subrecipients are strongly encouraged to consult with the State Historic Preservation Office (SHPO) early on in the planning process. For additional information about SHPO, contact Nebraska State Historical Society at 402-471-3270, toll-free 800-833-6747, or on their website at <https://history.nebraska.gov/historic-preservation>. In addition, the Tribal Historical Preservation Officer (THPO) should also be consulted. For more information about Section 106 compliance, see Chapter 6.

### Approval of Program Guidelines

Following DED approval, Program Guidelines must be reviewed and approved via established local internal controls; typically, this involves adoption of a resolution by the City Council or Village Board. Submitted to DED is a copy of such adopted resolution, associated meeting minutes, and/or other relevant materials. Consult the CDBG Application Guidelines to determine timing of submission and review process.

### Implementation of Program Guidelines

In consideration of accountability and transparency, subrecipients follow the program set forth in their program guidelines. Where changes are necessary, subrecipients must follow the amendment process. Such process is a required component of any approved program guidelines.

Prior to closeout and throughout the life of the grant, DED monitors subrecipients for compliance and performance. This process includes a review of the Program Guidelines and any “client files” resulting from the implementation of the program. A program implemented in variation of the approved program guidelines (as amended) may result in a finding. For more information about monitoring, see Chapter 14.

### Commercial Rehabilitation Program Guidelines

This section includes required components of a subrecipient’s proposed Commercial Rehabilitation Program Guidelines (e.g., façade improvement programs) and, if applicable, Program Income Reuse Plan. DED encourages submission of these materials to DED at the time of application for CDBG resources. If not submitted at that time, these materials are a required special condition for release of funds, if awarded.

Where applicable to the proposed program, clearly identify the Program Income Reuse Plan and include after the last page of the Program Guidelines. Program Guidelines must include a table of contents and the following:

1. Statement of Purpose of the Program
2. Clearly defined Application process addressing at a minimum:
  - a. Applicant eligibility
    - i. Geographic boundaries where the properties must be located
    - ii. Historical standards, where applicable
  - b. Eligible Activities
    - i. Prioritized activities (optional)
    - ii. Selection priority ranking system, if applicable, cannot contain discriminatory criteria
    - iii. Use of established Design Guidelines or Design Standards (where applicable) NOTE: where municipality has established design guidelines, provision for compliance with those standards set forth
    - iv. Include list of ineligible activities, where appropriate
  - c. Formal notification of selection and non-selection policy
  - d. Application review process
    - i. Review committee identified
    - ii. Flowchart/timeline for review/approval by the identified committee
    - iii. Identification of Application Cycle, including deadlines. All projects must be complete prior to the CDBG subrecipient agreement end date.

NOTE: if application deadline dates are not explicitly listed, identify how this information is disseminated locally and maintain records thereof.

- iv. Required documentation/materials submitted by Applicant (BEST PRACTICE: include and require completion of an “Application Checklist”.)
    1. Property ownership documentation
    2. Federal compliance items, including submission of appropriate SAM verification, DBRA, etc. (For more information about procurement, see Chapter 7. For construction and labor standards, see Chapter 9)
    3. US Citizen Attestation Form, where appropriate
    4. Sketches, drawings, photographs, plans, etc.
  - v. Identification of ERR Tier II process and completion, including provision for
    1. Site inspection by subrecipient or its agents
    2. Compliance with SHPO/THPO and other provisions where identified in the ERR
  - e. Copy of Application Form and, where available, any associated “Application Checklist”.
  - f. Grant/Loan/Assistance Details, including matching requirements and maximum amounts.
  - g. Types and terms of funding/financial assistance provided
    - i. Financial management
    - ii. Amounts of assistance allowed, including CDBG funds and other sources
    - iii. Loan, deferred conditional grant, etc.
    - iv. Line of credit, where appropriate
  - h. Conflict of Interest clause
  - i. Grievance/Complaint procedures
3. Implementation of Program
    - a. Use of Pre-Qualified Contractor list (optional)
    - b. Procurement processes based on local standards, including provision for receipt of at least two bids for cost reasonableness
    - c. Construction processes
      - i. Permits
      - ii. Agreements and Contracting, including provision for appropriate SAM verification (For more information about procurement, see Chapter 7. For construction and labor standards, see Chapter 9)
      - iii. Notice to Proceed
      - iv. Davis Bacon requirements
    - d. Federal compliance items.
    - e. Provision to maintain before/after construction photographs
    - f. Property maintenance provisions and recapture clause
  4. Process for amending Program Guidelines, including DED approval of amendments
  5. Program Income Reuse Plan, if applicable

### Commercial Rehabilitation: Eligible Activities

Eligible activities under commercial rehabilitation are limited and subject to HUD requirements, including meeting of a national objective. Activities must meet a national objective and not all activities can meet the primary LMI national objective, including commercial rehabilitation with very limited exception where the benefit is distinctly on a limited clientele basis (LMC). The focus of activities under the Prevention/Elimination of Slums and Blight (SB) National Objective is a change in the physical environment of a deteriorating area. This contrasts with the LMI benefit national objective where the goal is to ensure that funded activities benefit LMI persons.

Façade improvements and commercial rehabilitation generally, principally serve the commercial development, benefiting property owners and alleviating conditions contributing to a slum and blight designation. Because improvements are generally limited to the exterior, a preponderance of commercial rehabilitation programs are façade improvement programs. This includes restoration, renovation, replacement, and reconstruction, all of which may include signage, awnings, windows, structural improvements, and painting. Painting is eligible for exterior façade improvements in combination with window replacement or facade restoration for bricks, stucco, and exterior surfaces for historic preservation that constrains deterioration of the exterior façade. Short of this standard, painting for the purpose to change colors (interior or exterior) is not considered restoration and is **ineligible** as it is considered maintenance. Other eligible painting that may be considered restoration:

- Painting of permanent signage (fixed to a structure) for restoration and historic preservation.
- Restoration and improvements for public safety and related to the structural integrity and roof restoration may include painting as a last or near last step in the restoration process.

Without qualifying as restoration and/or combined with other activities that contribute to restoration/rehabilitation/preservation, painting is treated as maintenance. CDBG funds may not be used for maintenance.

Under HUD regulations, where the beneficiary is a for-profit organization, rehabilitation is limited to exterior improvements. Interior improvements (e.g., electrical, plumbing, HVAC, etc.) are **ineligible** unless the activities address the correction of municipal code violations (i.e., public safety). Where improvements address a code violation, subrecipient must maintain documentation of the citation.

### Housing Program Guidelines & Program Income Reuse

For housing activities, the application process requires submission of Program Guidelines and Program Income Reuse Plan to DED. Program Guidelines must include a table of contents and clearly identify the Program Income Reuse Plan, which appears on the final page of the Program Guidelines.

Proposed Housing Program Guidelines (e.g., programs involving Owner-occupied Rehabilitation and, as allowed on a case-by-case basis by DED, Purchase/Rehabilitation/Resale) and Program Income Reuse Plan must contain the following information.

1. Statement of Purpose of the Program
2. Clearly defined Application process addressing at a minimum:
  - a. Applicant Eligibility
    - i. Conflict of Interest clause
    - ii. Income eligibility; persons assisted with CDBG funds must have incomes at or below 80% AMI. To calculate Anticipated Gross Annual Income, see 24 CFR 5.609 income determination.
    - iii. Application review process
    - iv. Priority Ranking System, if applicable, for selection that does not contain discriminatory criteria
    - v. Formal notification of selection and non-selection policy
  - b. Property Eligibility
    - i. Geographic boundaries where the properties must be located
    - ii. Historical standards, where applicable
    - iii. Identify methodology used to determine a property's economic feasibility for investment of federal and/or state resources.
  - c. Eligible Activities
    - i. Prioritized activities (optional)
    - ii. Use of established Design Guidelines
    - iii. Include list of ineligible activities, where appropriate

- d. Types and terms of funding/financial assistance provided
    - i. Amounts of assistance allowed, including CDBG funds and other sources (include minimum and maximum amount)
    - ii. Loan, deferred conditional grant, etc.
    - iii. Methods of ensuring affordability period and principle residence that include 1) program-wide recapture or resale provisions, and 2) legal instruments to be used. Deed restrictions or other enforcement mechanisms must reflect this occupancy requirement
    - iv. Method to ensure the first beneficiary and subsequent beneficiary (unless recapture provisions are used) must occupy property purchased by a new homebuyer as a principle residence for at least 5 years from the date that CDBG funds are invested in the property. Regardless if resale or recapture provisions are utilized, the Affordability Period for the project must be a minimum of 5 years
    - v. If recapture provisions are utilized for the Project, and program income is received, then the amount recaptured cannot exceed the net proceeds. Net proceeds are the sales price minus superior loan repayment (other than CDBG funds) and any closing costs
3. Implementation of Program
- a. Relocation policy for voluntary and involuntary acquisitions as per 49.CFR 24.101. Policy must include the statement, “In cases where either voluntary or involuntary acquisition is anticipated, DED will be contacted prior to any action.”
  - b. Use of Pre-Qualified Contractor list, where appropriate
  - c. Procurement processes based on local standards
  - d. Policy for compliance with HUD’s lead-based paint (LBP) regulations. Must include the statement, “It is the intent of the Housing Program to eliminate lead hazards and achieve lead clearance in affected homes in a manner consistent with the 2012 HUD Lead Paint Guidelines, to repair, restore, or remodel the home.”
  - e. Radon mitigation policy informing homeowners of radon risks and making them aware of level of exposure in their home. At a minimum, a test kit shall be provided to the homeowner. Additional items may include:
    - i. Testing conducted for homeowner
    - ii. Requiring mitigation (installation of a radon system) if levels are found high
    - iii. Mandatory education for the homeowner (informed consent to avoid mitigation, etc.)
    - iv. Discussion with builders and program administrators about transitioning to a more proactive engagement of radon issues
    - v. Collaboration with agencies such as Nebraska Department of Health and Human Services (<http://dhhs.ne.gov/Pages/Radon.aspx>)
  - f. Policy to ensure all units assisted will meet DED Rehab Standards, for minimum standards for single-family and multi-family rehabilitation, where applicable. See also “DED Rehab Standards” available on DED’s website.
  - g. Owner-occupied rehabilitation and Purchase/rehabilitation/resale programs must include rehabilitation procedures, including LBP procedures, in the guidelines
    - i. Agreements and Contracting, including appropriate SAM verification (For more information about procurement, see Chapter 7. For construction and labor standards, see Chapter 9.)
    - ii. Notice to Proceed
    - iii. Davis Bacon requirements, if applicable
  - h. Federal compliance items
  - i. Property maintenance provisions, recapture clause

4. Policy to ensure compliance with the Fair Housing Act, including a narrative with specific reference to all areas of the Fair Housing Act applicable to the project
5. Affirmative marketing procedures including, but not limited to, marketing to local or regional residents & tenants of public housing and manufactured housing, other families assisted by public housing agencies, and households identified to be potentially eligible but least likely to apply.
6. Policy for collecting photographs of the project, including before, after, indoor, outdoor, and grounds photos. The policy must include a method for obtaining a voluntary release and authorization for publication of these photos from the owner or beneficiary.
7. Grievance Procedures
8. Process for amending Program Guidelines, including DED approval of amendments
9. Program Income Reuse Plan, if applicable and allowable. See also *Special Policies and Requirements for Housing Program Income*.

### Special Policies and Requirements for Housing Program Income

The subrecipient may retain program income from the project and utilize the funds for other CDBG-eligible activities, if the following items are met:

- a. The subrecipient wishes to retain program income funds and reuse those funds for additional housing related activities.
- b. The subrecipient creates a Program Income Reuse Plan that clearly notes:
  - 1) Whether the Program Income Account is either a Reuse Account or Revolving Loan Fund (RLF). See definitions in Chapter 8 – Program Income.
  - 2) The subrecipient will use program income directly generated from the use of CDBG funds to further affordable housing programs eligible under CDBG.
  - 3) Program Income funds are those funds returned to the subrecipient during the Affordability Period when the property is sold, is no longer the initial homeowner’s principal residence, or loan repayments made from the beneficiary back to the subrecipient.
  - 4) Program Income funds must be utilized for the current Project if the current Project has not been completed. This program income received must be applied to the current Project prior to requesting additional CDBG funds.
  - 5) The subrecipient understands that if program income is utilized for another housing related activity, other than for the same activity from the Project that generated the program income, then the subrecipient will be responsible for developing and utilizing new Program Guidelines for the new eligible activity.
  - 6) Certain administrative costs, including those associated with general administrative and housing management, taken from the housing program income account cannot exceed 10% of the program income **received** during a semi-annual reporting period, of that amount:
    - i. General Administration cannot exceed 5%.
    - ii. Housing Management cannot exceed 5%.
  - 7) Additional requirements for special circumstances, where applicable:
    - i. If resale provisions are utilized for the Project, and program income is received, then the subsequent purchasers of each unit will be eligible homebuyers and the original homebuyer will receive a fair return on investment.
    - ii. If recapture provisions are utilized for the Project and program income is received, then the amount recaptured cannot exceed the net proceeds. Net proceeds are the sales price minus superior loan repayment (other than CDBG funds) and any closing costs.

- 8) All program income will be returned to DED for reuse unless DED offers the option to the subrecipient to retain the program income or DED approves the subrecipient's Program Income Reuse Plan prior to receiving Release of Funds.

## **OTHER RESOURCES**

Provided below is a non-exhaustive listing of further reading related to the information provided within this chapter. Chapters specifically referenced in the above sections include:

- Chapter 2 – Administrative Overview
- Chapter 6 – Environmental Review
- Chapter 7 – Procurement
- Chapter 8 – Program Income
- Chapter 9 – Construction and Labor Standards
- Chapter 14 – Monitoring

For additional information, materials, and other resources to assist you in developing program guidelines, reference the following items:

- CDBG Policy Memo 16-01 (Revised): Recapture of Net Proceeds from Sale of Homebuyer and Homeowner Projects
- DED Rehab Standards