

# Appendix Section 4

## *Program Income Planning Tools*

## Planning Tools by Activity Type

The following are three planning tools for local governments pursuing use or re-purposing of program income based on activity type. Each tool provides a basic framework, details are found within the relevant sections of the CDBG Manual. Address your specific questions to your DED CDBG Program Representative.

### Reuse Plan for Community Development Activities

The following outline is a planning tool for local governments pursuing use or re-purposing of program income for **community development activities**. This is effectively a one-time use of funds as there is no revolving loan component.

#### *Part I: Type of Plan (Geographic area where funds can be used)*

Projects must be located within community's limits or zoning jurisdiction ("service area").

#### *Part II: Goals and Objectives of the Plan*

- A. National Objective Compliance: Local governments must document that each project meets the National Objective of benefit to low- and moderate-income (LMI) persons within the subcategories of:
  - 1. Area Benefit (LMA). Beneficiaries must be LMI residents within the defined service area that is at least 51% LMI according to census or income survey data.
  - 2. Limited Clientele (LMC). Beneficiaries must be those classified as LMC, see CDBG Manual for definition.
- B. Local Objectives (examples). Based on the local needs assessment (formal or informal), identify priorities.
  - 1. Example LMA objectives:
    - a) To cost-share CDBG-eligible priorities identified within the local capital improvement plan, including public infrastructure and facilities.
    - b) To conduct feasibility, special studies, or other such planning studies. See the CDBG Planning Application Guidelines for eligible examples.
  - 2. Example LMC objectives:
    - a) Removal of architectural barriers in public facilities, including outdoor public spaces, sidewalks, and municipal buildings.
    - b) Improvements or new construction of senior centers.
    - c) Improvements or new construction of daycare centers.
    - d) Improvements or new construction of homeless facilities.

#### *Part III: Elements of the Plan*

- A. Eligible Activities (examples): public infrastructure (e.g., streets, roads, water wells, storage and distribution systems, storm sewers, sanitary sewer and treatment systems), public facilities, daycare centers, etc.
- B. Guidelines for Assistance:
  - a) Minimum and maximum dollar amounts
  - b) Matching funds requirements, if applicable and as determined by the local government

**NOTE:** if the local unit of government is funding public infrastructure and/or facilities, this section may be limited to items “a” through “b”. If providing assistance to a non-profit (e.g., offering grants to daycare centers or medical clinics), the reuse plan must include these additional items:

- c) Types of assistance
- d) Terms of assistance (must comply with change in use requirements)
- e) Amounts of assistance

#### *Part IV: Administration of the Plan (Describe operating procedures)*

Implementation of plan requires a certified administrator. See Chapter 8 for more information, including maximum allowable costs associated with general administration and, where applicable, supporting project costs.

- A. Administration procedures, i.e., identify internal controls for payment to vendors.
- B. Recordkeeping and reporting procedures, i.e., identify who is responsible for reporting required semi-annual reporting to DED.
- C. CDBG compliance process (e.g., procurement, environmental review, DBRA, civil rights, etc.).
  - 1. How are contractors selected, agreements signed between the selected contractor(s) and local government, and payments approved and disbursed to those contractor(s)?
  - 2. Who is responsible for monitoring requirements?
  - 3. Who is responsible for CDBG compliance process (e.g., procurement, environmental review, civil rights, etc.)?
- D. Amendment procedures (must include provision for DED approval).
- E. Verification of the plan’s approval by the local government and DED (see part V).

#### *Part V: Reporting to DED*

Where a new or existing RLF account is being tapped for community development activities, DED must approve of the plan prior to implementation. Use of CDBG program income requires progress reporting on the proposed and actual beneficiaries. Be sure to identify the principal local contact for matters related to program income; typically, this person is responsible for submitting:

- Semi-annual Program Income reports,
- Annual public benefits report,
- Notification of Annual Audit, etc.

#### Reuse Plan for Economic Development Activities

The following outline is a planning tool for local governments pursuing use or re-purposing of program income for **economic development activities**. See the CDBG Economic Development Application Guidelines for definitions of terms.

#### *Part I: Type of Plan (Geographic area where funds can be used)*

Projects must be located within community’s limits or zoning jurisdiction (“service area”).

## *Part II: Goals and Objectives of the Plan*

- A. National Objective Compliance: Local governments must document that each project meets the National Objective of benefit to low- and moderate-income (LMI) persons within the subcategories of:
1. Job Creation/Retention (LMJ). At least 51% of the jobs created or retained must be held by or available to LMI persons.
  2. Area Benefit (LMA). Beneficiary must be a for-profit business that provides essential goods and services to LMI residents within the defined service area that is at least 51% LMI according to census or income survey data.
  3. Limited Clientele (LMC). Beneficiaries must be those classified as LMC, see CDBG Manual for definition.
- B. Local Objectives (examples)
1. Example LMJ objectives:
    - a) To provide financing for start-up and existing businesses that cannot obtain conventional financing or to attract new business to the community.
    - b) To create and retain jobs principally for low-moderate income persons.
    - c) To diversify the local economy by assisting businesses which are not presently in the community.
    - d) To promote entrepreneurship and new business development.
    - e) To stop “leakage” of dollars from leaving the community.
    - f) To provide necessary public infrastructure to businesses.
    - g) To assist businesses with job training cost for new employees or to upgrade skills of existing employees.
  2. Example LMA objectives:
    - a) To provide financing for start-up and existing businesses that provide essential goods and services, including succession of ownership and/or management.
    - b) To promote entrepreneurship and new business development to for-profit businesses that provide essential goods and services.
    - c) To provide financing for improvements addressing ADA-accessibility where the proposed property for improvements is owned by an eligible business. Under LMA, an eligible business is one that provides essential goods or services.

## *Part III: Elements of the Plan*

Several options are described below; give careful consideration when determining capacity to operate. For example, some eligible activities and types of assistance are challenging in terms of compliance with CDBG regulations. Local governments are responsible for compliance.

- A. Eligible Businesses (examples): Industrial, manufacturing, food processing, agricultural processing, commercial, service, telecommunication, transportation, retail, tourism, etc. Non-profit businesses are not eligible.

- B. Eligible Activities (examples): Acquisition of real estate, land and buildings, fixed assets, machinery and equipment, renovations, remodeling, site preparation, working capital, public infrastructure that benefits an eligible business (e.g., streets, roads, water wells, storage and distribution systems, storm sewers, sanitary sewer and treatment systems), and job training costs, etc.
- C. Types of Assistance (examples): Grants; direct loans; deferred loans; performance-based, forgivable loans; loan guarantees; etc.
- D. Guidelines for Assistance (examples):
  - 1. Minimum or maximum dollar amounts
  - 2. What percentage of total project cost will community finance?
  - 3. What percentage of equity injections is required from owners or business?
  - 4. Interest rate of loans
  - 5. Loan terms (must not exceed useful life of assets financed); the following are recommended term limits by type:
    - a) Working capital 1-3 years,
    - b) Machinery and equipment 3-7 years,
    - c) Land and buildings up to 15 years.

*Part IV: Administration of the Plan (Describe operating procedures)*

RLF accounts require a certified administrator. See Chapter 8 for more information, including maximum allowable costs associated with general administration and, where applicable, supporting project costs.

- A. Application Process
  - 1. Where can businesses get an application?
  - 2. Who is on the application review committee?
  - 3. Who makes the final determination on an application (e.g., review committee, village or county board, city council, etc.)?
- B. Project Implementation, Loan Closing, and Project Monitoring
  - 1. Who prepares the legal documents and security instruments (e.g., loan agreements, promissory notes, guarantees, contracts, deed of trust, mortgage, financing statement, U.C.C. form, etc.)?
  - 2. How are funds disbursed to the business?
  - 3. Who is responsible for loan servicing and monitoring job creation/retention requirements?
  - 4. Who is responsible for CDBG compliance such as the environmental review for each project and Labor Standards-Davis Bacon compliance if applicable?
- C. Describe amendment procedures (must include provision for DED approval of any changes to the plan/program guidelines).
- D. Verification of the plan's approval by the local government and DED.

*Part V: Reporting to DED*

Use of CDBG program income requires progress reporting on the proposed and actual beneficiaries. Be sure to identify the principal local contact for matters related to program income; typically, this person is responsible for submitting:

- Semi-annual Program Income reports,
- Annual public benefits report,
- Notification of Annual Audit, etc.

## Reuse Plan for Housing Activities

The following outline is a planning tool for local governments pursuing use or re-purposing of program income for *housing activities*.

### *Part I: Type of Plan (Geographic area where funds can be used)*

Projects must be located within community's limits or zoning jurisdiction ("service area").

### *Part II: Goals and Objectives of the Plan*

- A. National Objective Compliance: Local governments must document that each project meets the National Objective of benefit to low- and moderate-income (LMI) persons within the subcategory of Housing (LMH). Beneficiaries must be those classified as LMI, see CDBG Manual for definition.
- B. Local Objectives, example LMH objectives:
  - 1. Provide decent housing
  - 2. Provide a suitable living environment
  - 3. Expand economic opportunity
  - 4. Improve availability/accessibility
  - 5. Improve affordability
  - 6. Improve sustainability

### *Part III: Elements of the Plan*

Several options are described below; give careful consideration when determining capacity to operate. For example, some eligible activities and types of assistance are challenging in terms of compliance with CDBG regulations. Local governments are responsible for compliance.

- A. Eligible Applicants: Homeowners and Homebuyers at 80% AMI or less.
- B. Eligible Activities:
  - 1. Owner Occupied Rehabilitation.
  - 2. Homeownership Assistance, which may include one or more of the following:
    - a) Down Payment Assistance (maximum 50% of required);
    - b) Closing Costs;
    - c) Mortgage Insurance; etc.
- C. Types of Assistance (examples): Grants, direct loans, deferred loans, or forgivable loans.
- D. Guidelines for Assistance (examples):
  - 1. Minimum or maximum dollar amounts;
  - 2. Affordability Period (minimum of five (5) years) and methods of ensuring compliance thereof;
  - 3. Interest rate of loans;
  - 4. Loan terms;
  - 5. Standards for assistance; etc.

*Part IV: Administration of the Plan (Describe operating procedures)*

RLF accounts require a certified administrator. See Chapter 8 for more information, including maximum allowable costs associated with general administration and, where applicable, supporting project costs.

A. Application Process/Selection Criteria

1. Where can a homeowner get an application?
2. Who makes the final determination on an application (e.g., review committee, village or county board, city council, etc.)?
3. Is there a priority ranking system? (If applicable, such ranking system cannot contain discriminatory criteria.)
4. What is the notification process for approval, notice to proceed, acceptance of work, etc.?

B. Project Implementation and Monitoring

1. Who prepares the legal documents and security instruments (e.g., loan agreements, promissory notes, guarantees, contracts, deed of trust, mortgage, financing statement, etc.)?
2. How are contractors selected, agreements signed between the selected contractor(s) and homeowner(s), and payments approved and disbursed to those contractor(s)?
3. Who is responsible for loan servicing and monitoring requirements under the program?
4. Who is responsible for CDBG compliance process (e.g., procurement, environmental review, civil rights, etc.)?
5. Who is responsible for recordkeeping?

C. Describe amendment procedures (must include provision for DED approval of any changes to the plan/program guidelines).

D. Verification of the plan's approval by the local government and DED.

*Part V: Reporting to DED*

Use of CDBG program income requires progress reporting on the proposed and actual beneficiaries. Be sure to identify the principal local contact for matters related to program income; typically, this person is responsible for submitting:

- Semi-annual Program Income reports,
- Annual public benefits report,
- Notification of Annual Audit, etc.

# COMMUNITY DEVELOPMENT BLOCK GRANT

## **PROGRAM INCOME:**

### RE-PURPOSING REVOLVING LOAN FUND AND REUSE ACCOUNTS

## *Frequently Asked Questions*

**NEBRASKA**

Good Life. Great Opportunity.

DEPT. OF ECONOMIC DEVELOPMENT

CDBG Manual, February 2020

HOUSING AND COMMUNITY DEVELOPMENT

Appendix Section 4 | pg. 8



**CDBG Program Income: Re-purposing Revolving Loan Fund and Reuse Accounts**  
*Frequently Asked Questions*

**Contents**

**General..... 11**

- What is “re-purposing” of CDBG Program Income Revolving Loan Funds? ..... 11
- What are the local government options with this re-purposing effort? ..... 11
- What types of CDBG project categories are best?..... 11
- What is the status of my RLF? ..... 11
- We have idle funds. Can we keep them and decide what to do later? ..... 11
- We have idle funds. Can we return them now?..... 11
- If we decide to discontinue our program income account, what are the steps?..... 12
- If a community discontinues their program income RLF account, returns the balance to DED, but still has accounts receivable, how should we handle scheduled repayments from beneficiaries?..... 12
- How do we begin the re-purposing process?..... 12
- What are some re-purposing critical considerations? ..... 12
- What is included in a good Project Description?..... 13
- What is to be included in the publication notice and public hearing? ..... 14
- Is there an example publication notice for the public hearing?..... 14
- What should be included in the project description for a public hearing? ..... 14
- To begin the re-purposed project, what do we need to have completed? ..... 14
- Can we re-purpose the RLF and move dollars into an existing/ongoing or new CDBG project/grant?..... 15
- What is involved with amending or updating our RLF’s Re-Use Plan? ..... 15
- Are we required to utilize a Certified Administrator?..... 15
- What is the difference between a Housing Reuse Account and a Housing Revolving Loan Fund? ..... 16
- Are matching funds required for projects funded by Program Income? ..... 16

**Project Eligibility & Fundability ..... 17**

- What can we do if our community is not 51% or more LMI?..... 17
- How does our 504 Transition Plan help?..... 17
- How do we re-purpose or approach a Public Works project? ..... 17
- What National Objective do we use for a Public Works project?..... 17
- How does LMC meet the National Objective?..... 17
- How is LMC used as a National Objective for Senior or Day-Care Centers?..... 17
- Do safety improvements such as fire systems (sprinkler, alarm, etc.) qualify as an eligible activity for LMC? ..... 17
- How is LMC used as a National Objective in a Public Works project?..... 18
- What kinds of ADA improvements are allowable? ..... 18
- Do sidewalks and ADA improvements need to be in census blocks with at least 51% LMI? ..... 18
- Is there a size limit on the sidewalks we build? Can they be 10 feet wide? ..... 18
- What are some examples of activities not allowed?..... 19
- What are jurisdictional issues with using CDBG funds and waivers from DED? ..... 19
- Are county-wide Housing programs permitted if the county holds program income?..... 19
- If re-purposing to a Housing activity, are Revolving Loan Fund (RLF) accounts permitted?..... 19
- Can a community re-purpose their CDBG program income for housing activities other than owner-occupied rehabilitation (OOR)?..... 20
- Where can I learn more about the national objective and what is an eligible activity?..... 20

**Project Management & Reporting..... 21**

- Upon project completion, what will my project file contain? ..... 21
- Is a new bank account required? ..... 21
- How much Administration expense can I budget for? ..... 21
- Can we include our City Engineer's time for designing the projects? ..... 21
- Can we include costs pertaining to Davis-Bacon and Related Acts (DBRA) and/or procurement costs? ..... 22
- Does using municipal or county employees trigger DBRA wages and other Labor Compliance items? ..... 22
- Do we have to submit a Semi-Annual Project Status Report for a Public Works project? ..... 22
- For reporting purposes, how are the beneficiaries counted? ..... 22
- What is the Public Benefit Standard test and how do I document it for our project? ..... 22

**For More Information ..... 22**

- What if we have more questions about re-purposing?..... 22

## General

### *What is “re-purposing” of CDBG Program Income Revolving Loan Funds?*

Your community (e.g., local government -- county, city or village) has Community Development Block Grant (“CDBG”) Program Income funds that could be “re-purposed”. See *DED’s Policy Memo 19-03* for re-purposing details and an outline of a Re-Use Plan. Funds previously held for Housing or Economic Development Revolving Loan Funds (RLF) and/or Housing Reuse Accounts can be “re-purposed” and used for other CDBG eligible activities, such as Public Works type projects, or funds can be moved from one funding category to another with this process.

**Re-purposing applies to all CDBG program income accounts.** For purposes in this document, “Housing Reuse” and “RLF” are used interchangeably, as both types of accounts are CDBG program income.

### *What are the local government options with this re-purposing effort?*

The following options are open to the local government for its CDBG RLF Program Income:

1. Retain the RLF (actively) and update the existing Re-Use Plan(s).
2. Discontinue the RLF, but continue servicing the existing loan portfolio, and making periodic remittances to DED.
3. Re-purpose the RLF fund to eventually conduct other CDBG-eligible activities.

### *What types of CDBG project categories are best?*

DED encourages projects which involve Public Works or Economic Development. In contrast, DED discourages consideration of using the RLF for Housing PRR (Purchase/Rehab/Resell), Tourism, Downtown Revitalization, Disaster Recovery, Emergent Threat, or Planning.

### *What is the status of my RLF?*

The status of your RLF depends on several factors, most notably recent activity. There are three basic types of accounts:

1. **Idle.** Idle accounts are those having been inactive for 12 months or more.
2. **Discontinued.** Discontinued accounts are those that are “closed” to new activity.
3. **Active.** Active accounts are those consistently dispensing and receiving funds for approved activities.

For additional definition and discussion of “idle account”, how to discontinue an account, and how to maintain an active account refer to *CDBG Manual Chapter 8 – Program Income*.

### *We have idle funds. Can we keep them and decide what to do later?*

No. With *Policy Memo 19-03*, DED is requiring funds in Idle Accounts be returned to DED by June 30, 2020 and annually thereafter. To activate your idle accounts, projects need to be committed well before that date. DED shall not grant extensions where activity underway cannot be demonstrated.

### *We have idle funds. Can we return them now?*

Yes. It is OK and preferred to return balances promptly. Many accounts may hold small balances thus it may be impractical to use the funds responsibly, efficiently, and/or without incurring an inordinate amount of costs.

### *If we decide to discontinue our program income account, what are the steps?*

To discontinue our program income account, the *CDBG Manual Chapter 8 – Program Income* details the steps, which are summarized here:

1. Hold a public hearing to amend and “discontinue” the current (CDBG RLF) Re-Use Plan and return the funds to Nebraska Department of Economic Development (DED).
2. Send a copy of the (local government hearing) certified minutes and a letter from the Chief Elected Official stating that the funds are being returned due to discontinuance.
3. Write a check for the balance payable to DED.
4. Continue to report and periodically send the accumulated balance to DED (if loan repayments will occur in the future), until the fund and future repayments are exhausted.

### *If a community discontinues their program income RLF account, returns the balance to DED, but still has accounts receivable, how should we handle scheduled repayments from beneficiaries?*

Accounts receivable include loans being repaid or other program income. Repayments are considered program income. The program income account and the ED or Housing program is officially “closed” (i.e., discontinued). The grantee must continue servicing the loans and collecting payments. As a best practice, the community makes periodic payments to DED, corresponding with the submission of semi-annual program income reports. Ideally this involves returning the funds on a semi-annual basis. For planning purposes, future repayments can be applied to the proposed project(s) and included in planned expenditures.

**NOTE:** You must keep reporting program income until all outstanding repayment balances are exhausted.

### *How do we begin the re-purposing process?*

1. **Review existing plans** for Capital Improvements or Housing, making a list of viable projects.
2. **Discuss with DED or your Certified Administrator** -- CDBG eligibility of your project.
3. **Develop a project description** -- subject to approval by DED.
4. **Draft a Re-Use Plan, and Housing Program Guidelines, if applicable**– consult with DED who must approve your Plan.
5. **Develop a publication notice for the public hearing** -- include the project description and notice of re-purposing in the public notice.
6. **Conduct a public hearing** -- ratification by local government (with certified minutes).
7. **Create the Environmental Review Record**– subject to approval by DED before beginning.
8. **Begin the project**– with the goal of using the funds within two years.

### *What are some re-purposing critical considerations?*

*Policy Memo 19-03* details critical considerations. A brief summary is included below:

- **Funds held in an Idle Account** will be required to be returned to DED by June 30.
- **Re-purposed funds are federal and must follow all CDBG regulations**, including:
  - Creating an Environmental Review Record
  - Following Davis-Bacon and Related Acts and using a procurement process
  - **Be an eligible CDBG activity**
  - **Meet the LMI National Objective** benefiting low- and moderate-income (LMI) persons, subcategories include:
    - LMC (Limited Clientele considered to be LMI persons)
    - LMA (LMI on an area basis with 51%+ LMI)
    - LMJ (LMI jobs creation or retention)
    - LMH (LMI Housing)

- Not all National Objectives are allowed. **NOT allowable** are the following:
  - SBA (Slum/Blight Area Basis)
  - SBS (Slum/Blight Spot Basis)
  - UN (Urgent Need)

### *What is included in a good Project Description?*

Develop a project description ready to go for the Environmental Review Record (ERR) and public hearing (publication notice), including:

- Purpose/need for project with a summary of the surrounding area
- Geographic footprint of actions (with common language), disclosing actual locations of work (e.g., “downtown and public areas”, “City Memorial Park”, etc.).
- Project specifics (reasonably known or use broad estimates)
  - Describe the activities to be done; define all acronyms.
  - Demolition, acquisition, construction, rehabilitation, etc.
  - Time frame for completion if beyond two years.
- Budget for overall costs – identify costs as “approximate”
  - Disclose estimated overall project costs
    - Engineering is considered a project cost (like “streets”)
  - Identify funding sources:
    - Matching or leverage requirements set by local government, if any
    - Note any controversial funding sources such as LB 840, sales taxes, etc.
  - Identify Supporting Project and Administration Costs in actual dollar amounts, define limit of:
    - Activity 0181 General Administration costs.
      - For ED RLFs, administration costs are limited to 5% of program income received. This restriction may not be reasonable where funds are re-purposed for, say, a Public Works project. DED can waive that limit.
      - DED will consider any reasonable proposal exceeding normal restrictions.
      - Local government may consider paying for costs over the budgeted amounts.
      - Administration costs relate to administration of the grant and project file.
      - Activity 0380 Construction Management costs.
      - Costs must be reasonable and are limited to \$10,000.
      - These costs are associated with labor standards compliance, including Davis-Bacon and related acts documentation. For a detailed explanation of eligible costs, refer to *CDBG Manual Chapter 9 – Construction and Labor Standards*.
    - Activity 0580 Housing Management costs.
      - Costs must be reasonable.
      - Costs are limited to 12% of the total project or, at DED’s discretion, higher amounts may be allowable depending on the situation.
- Identify ownership of the property (e.g., owned by municipality, county, public, etc.).
- ERR Tier II, if applicable.
- Residential Anti-Displacement clause (“*there will be no displacement of persons or businesses*”)
- State that the project “*will primarily benefit low- and moderate-income persons*”
- Discussion of any unusual public affect (e.g., temporary, permanent, or construction related dust, noise, street closures, cranes, etc.).

### *What is to be included in the publication notice and public hearing?*

Include re-purposing and the project description in the public notice. As they are two separate actions, you must identify the project and the action of re-purposing. Given the purpose of the public hearing is to inform and allow the public to discuss the project and its impact, include all or most of the project description in the publication notice. **IMPORTANT:** Solicit DED's approval prior to publication of notice of public hearing.

Re-purposing would include phrases that indicate that:

1. The existing Re-Use Plan(s) pertaining to Housing and/or ED RLFs are being amended,
2. The plans are being re-purposed (as these are not part of your original plan),
3. The RLFs are being discontinued,
4. Any leftover amounts would be returned to DED, and
5. Future cashflows would still be reported and possibly used in the project – that is, future program income should be addressed (estimated and included in funding budgets) for the 2-3 years of the project's implementation schedule.

### *Is there an example publication notice for the public hearing?*

Review the public notice template found on the CDBG website, under *Application Guidelines/Exhibits*. The sample notice may be modified to meet your plans:

- Edit references of “grant application” to “project file and description.” Similar to a grant application, the re-purposing project file must be made available for public inspection.
- The notice must address “re-purposing of RLF funds” and “discontinuance of the RLF” as an “amendment to the existing Re-Use Plan,” along with the project description.

### *What should be included in the project description for a public hearing?*

Be clear about the action being undertaken and include relevant information to inform the public. This should be comprised of clear language to:

- Address specifics of the actual project (i.e., have a viable plan ready to go ahead of the hearing and be prepared to share that plan, including timeline and anticipated costs).
- Include most of the project description, such that the public is aware of the project and changes.
- State the goal of using the funds within 2 years (or a reasonable plan).
- Use grants or forgivable (performance-based loans) and avoid lending.
- Include changes to your Re-Use Plan address re-purposing.
- Be specific about the use of program income:
  - State the intention to discontinue the RLF.
  - State that future Program Income is to be used for the re-purposed activity(ies).
  - State that future program income, if any is unused, will be returned to DED.

### *To begin the re-purposed project, what do we need to have completed?*

A number of steps in the re-purposing process require DED's approval before proceeding with your re-purposing project. Your file must include the following items:

1. Project description.
2. Public hearing documentation, including:
  - a. Copy of public hearing notice,
  - b. Proof of publication, and
  - c. Meeting minutes, including public comments, if any.
3. Amended Re-Use Plan, if applicable.
4. Amended Housing Program Guidelines, if applicable.
5. Environmental Review Record.

### *Can we re-purpose the RLF and move dollars into an existing/ongoing or new CDBG project/grant?*

While it is difficult to apply CDBG funds to an existing project, it may be allowed in certain instances. It is better to begin a new project and go from there. Generally, if the local government has a (pending or newer) project that the funds could be re-purposed to, then that project may qualify and should be considered strongly as a candidate activity for the funds.

### *What is involved with amending or updating our RLF's Re-Use Plan?*

Review the existing Re-Use Plan, and, in many cases, little will need to be done to update the old plan. By having a “re-purposing” and “discontinuance” hearing, that is often all that is needed. The old Re-Use Plan will continue to operate and apply to existing projects (as amended for discontinuance or re-purposing).

- If you are **discontinuing** the RLF, conduct a public hearing that covers an “amendment” to the existing plan to “discontinue” the plan (provide certified minutes of the hearing). No additional work is required.
- If you **re-purpose** your RLF program income (e.g., from Housing or ED to a Public Works project, and discontinue the old), then the public hearing would cover the “re-purposing” and can be combined with the new project’s public hearing (for your Public Works or other eligible project/program).
- If you **continue** your existing RLF, then an updated Re-Use Plan will be needed to reflect all current CDBG rules and State policies, and to show its approval by DED. Housing RLFs will likely need to provide an update to the Housing Program Guidelines. You must submit your modified Re-Use Plan and/or Housing Program Guidelines for DED approval. See *CDBG Manual Chapter 4- Developing Program Guidelines*.

### *Are we required to utilize a Certified Administrator?*

A Certified Administrator is required to administer a RLF. If hiring a Certified Administrator (CA), regulations require a Professional Services Contract (which supports paying CDBG administration costs). Be sure your CA billings are not a flat amount or percentage (i.e., follow 2 CFR 200, which by today’s standards requires billing to show hours worked and what actions were taken). A sample Professional Services contract can be found within the *CDBG Manual*. Additionally, the Monitoring Checklist, available on DED’s website, includes all the required items to be included in the Professional Services contract.

### *What is the difference between a Housing Reuse Account and a Housing Revolving Loan Fund?*

A **Reuse Account** is a separate fund established to carry out specific activities that do not generate payments to the account. For example, a community's OOR program's terms of assistance is a forgivable loan after a 5-year affordability period is fulfilled. That community was not intending on receiving any CDBG dollars back from the project. However, if a beneficiary does not maintain primary residence of the assisted house for the full affordability period/terms of the grant, the CDBG money is returned to the grantee as recaptured funds off the sale of the house. At the end of the calendar year, if the recaptured funds received within the year is less than \$35,000, those funds are deobligated to the unit of local government. NOTE: The \$35,000 threshold applies to the program income *received* in the calendar year, not the total balance of the account.

A **Revolving Loan Fund (RLF)** is a separate fund – with a set of accounts that are *separate* from other program accounts – established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. For example, a community's OOR program's terms of assistance is a 10-year fifty percent forgivable loan, fifty percent repayable loan at 1% interest. The community's Housing RLF will be *receiving monthly principal and interest payments* from the homeowner with the intention of growing the RLF and completing more OORs in the future. Affordability period and recapture would still apply. All funds received in an RLF account is considered "program income" and is **never deobligated**.

Re-purposing applies to both Housing Reuse and Housing RLF program income accounts.

### *Are matching funds required for projects funded by Program Income?*

Local governments can decide match requirements, if any. While the CDBG State Program overseen by DED requires match, when re-purposing program income, local governments can determine the match percentage, if any. The local government may opt for no matching requirement when projects are funded via locally held program income.



## Project Eligibility & Fundability

### *What can we do if our community is not 51% or more LMI?*

To meet the LMI national objective subcategory of LMA, your service area must be 51% or greater LMI. Current census or income survey data must show the service area to be 51% or greater LMI. As with applying to the CDBG program, you may complete an income survey if you believe the census data is inaccurate. Income surveys can be costly, time consuming, and may not result in the desired outcome.

For more information about income survey methodology and recordkeeping requirements, see the *CDBG Manual*.

### *How does our 504 Transition Plan help?*

Your 504 Transition Plan describes what the city will plan to do to address ongoing ADA improvements. This plan may offer a map for Public Works (e.g., public infrastructure and facility) needs in your community.

### *How do we re-purpose or approach a Public Works project?*

Most re-purposing projects would be categorized as Public Works. For project activity ideas, review the current *CDBG Public Works Application Guidelines*. Carefully consider the same Guidelines -- Section 3.02, 3.03 and 3.04 -- Special Policies and Eligible and Ineligible Activities. For an overview of eligible and ineligible activities, refer to *CDBG Manual Chapter 3 – National Objectives and Fundability*. You are restricted to the LMI National Objective only, i.e., the activity must benefit LMI persons.

### *What National Objective do we use for a Public Works project?*

Use the LMC or LMA national objective depending upon your community's LMI percentage and project activities.

### *How does LMC meet the National Objective?*

LMC (Limited Clientele) are specifically defined groups (e.g., elderly or disabled) that are *presumed* low- and moderate-income persons. Activities meeting LMC must benefit those identified persons, not the general public.

### *How is LMC used as a National Objective for Senior or Day-Care Centers?*

Most public facilities and Privately-Owned Utilities improvements are intended to benefit all of the residents of an area. *Highly specialized facilities, such as senior centers and day-care centers, are an exception.* LMC is allowed when the improvement will be used for an activity designed to benefit a particular group of persons at least 51% of whom are LMI persons. To document the LMC national objective, follow these guidelines:

- Require information on family size and income so that it is evident that at least 51% of the clientele are persons whose family income does not exceed the LMI limit.
- Include intake applications from families on income and family size (comparable to qualifying a person under LMJ) to determine LMI status, or applicant family demonstrates receiving benefits from a federal/state program which requires meeting a similar or more restrictive LMI test.

### *Do safety improvements such as fire systems (sprinkler, alarm, etc.) qualify as an eligible activity for LMC?*

No, these types of activities can only be done under the slum/blight national objectives. The beneficiaries of such safety systems (in publicly owned buildings) are all citizens, and does not benefit solely LMC persons. Slum/blight is not allowed for RLF projects.

### *How is LMC used as a National Objective in a Public Works project?*

If any part of the project involves ADA accessibility (e.g. removing barriers, etc.), then the improvements for that part of the project could be LMC. Be sure to itemize the project budget and the related actual invoices for this (ADA) portion of the overall project. A community that is not LMA may re-purpose these funds for ADA improvements to meet the LMI National Objective on the subcategory of LMC.

In addition to removal of architectural barriers, there are other activities that may meet LMC. For more discussion, refer to the 2023 CDBG Public Works Application Guidelines. [2023-CDBG-Application-Guidelines final.pdf \(nebraska.gov\)](#)

### *What kinds of ADA improvements are allowable?*

Consider projects that provide public safety and ADA improvements, such as:

- Replacing brick sidewalks or addition of sidewalks where none exist.
- Replacement of “coal chute” (hollowed) sidewalks.
- Addition of ADA park or playground equipment.
- Install ADA access to public park or other public facility.
- Reconstruct public park restroom facilities for ADA compliance, including replacement of an existing non-ADA accessible bathroom with an ADA-accessible bathroom.
- Install sidewalk crossing cuts for pedestrians that are barriers for the elderly.
- Improvements to government buildings for removal of architectural barriers and materials that restrict access and used by the elderly and adults disabled (LMC). This may include restrooms, drinking fountains, parking, exterior walks, ramps, counter heights, stair rails, lighting, automatic doors, seating, benches, and other improvements or enhancements meeting American with Disabilities Act (ADA).
- Removal of the architectural barriers and material that restrict ADA access:
  - There must be an existing facility or infrastructure (for barrier removal) to meet a LMC national objective. Generally, LMC is met by improvements or reconstruction to an existing structure.
  - LMA projects may include new construction.

### *Do sidewalks and ADA improvements need to be in census blocks with at least 51% LMI?*

Not if the community-wide census data meets the LMA threshold. If that is not the case, there are some restrictions and considerations. Where benefit can be adequately demonstrated, LMC projects can be carried out in communities that have census tract(s) or block group(s) that are 51% or more. However, you must be able to meet “the smell test”:

- *Where the improvements benefit the entire community, you cannot assign benefit to block groups meeting the 51% threshold.*
- *You must be able to demonstrate and document that the improvements are for LMC.* For example, installing ADA-accessible parking at a public park is likely eligible under LMC. In contrast, costs associated with paving the rest of the parking lot is a benefit to all in the community and not predominately those with a disability.
- A census tract or block group can be used to justify improvements targeted to that area (e.g., paving a residential street in an area that is LMI), but not necessarily a street that is proximal or auxiliary to that LMI area (e.g., arterial or main road used by all residents).
- There must be clear correlation between the census tract or block group benefitting and the project activities.

### *Is there a size limit on the sidewalks we build? Can they be 10 feet wide?*

There are no DED-imposed limits on sidewalk design. You must follow your engineering plans.

### *What are some examples of activities not allowed?*

Funds generated from CDBG-funded activities are subject to CDBG regulations. Ineligible are:

- Repair or “maintenance” type activities (e.g., filling potholes, mowing weeds, etc.).
- Expenses associated with “repairing, operating, or maintaining public facilities, improvements, and services”.
- Activities meeting non-LMI purposes, including those that may otherwise meet the Urgent Need and Slum and Blight National Objectives. Only activities meeting LMI are allowable.
- Examples of ineligible projects include, but are not limited to:
  - Swimming pool improvements, including re-painting, new covers for drain and jets or new lights
  - Ball Field improvements including new updated lighting (e.g., a complete overhaul, poles, fixtures, wiring)
  - Grandstands repaired and covered
  - Shelter House with sidewalks and electric outlets, lights and a camera/security system
  - Portable ice skating rink (e.g., a portable electric system with mats that you plug in to keep the ice froze)
  - RV Park with sewer hookups, electrical and water hookups, and a lift station
  - Park improvements involving Construction, improvements, or replacement of a non-ADA accessible bathroom with a non-ADA accessible bathroom.

### *What are jurisdictional issues with using CDBG funds and waivers from DED?*

CDBG funds are restricted to benefitting persons primarily within the jurisdictional control of the local government on the account, i.e., if the city is the account owner, then city’s residents must be the beneficiaries of funds. A complete discussion of jurisdictional limits can be found in the *CDBG Economic Development Application Guidelines*. If the local government provides a compelling basis for waiving the jurisdictional requirement, DED may issue a waiver when this restriction may block an otherwise reasonable and responsible proposal.

Examples of jurisdictional issues:

- Assisting a business located just outside of town (that falls in the County’s jurisdiction) but primarily benefits citizens of the town, or
- A County assisting a business or housing project within the jurisdictional boundary of a town.

### *Are county-wide Housing programs permitted if the county holds program income?*

A jurisdictional waiver may be requested from DED to use county program income in individual communities within that county. However, each community within the county must be contacted and made aware of the program. The county must collect Memorandums of Understanding from each community to ensure the program is being marketed and administered fairly and indiscriminately throughout the county, benefiting no one community at the peril of another.

### *If re-purposing to a Housing activity, are Revolving Loan Fund (RLF) accounts permitted?*

A community should assess the total dollar amount available for the program, terms of the program, and if a RLF would be sustainable without becoming an idle account in the future.

*Can a community re-purpose their CDBG program income for housing activities other than owner-occupied rehabilitation (OOR)?*

In general, no. If the community has in place an existing purchase, rehab, resell (PRR) program and can demonstrate it is in compliance with all CDBG rules and regulations, DED may allow re-purposing for this purpose. Bearing in mind the timeline for re-purposing, a community must demonstrate need for and capacity to operate the program, develop program guidelines, and assess if the program will avoid becoming an idle account in the future. When evaluating capacity to operate the program, the local government must assess their current available housing stock. As with all programs, close consultation with DED is required.

*Where can I learn more about the national objective and what is an eligible activity?*

Refer to the *CDBG Manual* and HUD's *Guide to National Objectives and Eligible Activities for State CDBG Programs*, <https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/>.

## Project Management & Reporting

### *Upon project completion, what will my project file contain?*

Maintain your project file as any other CDBG-funded project. As with a grant, your project file is **subject to compliance monitoring**. Your file must include clear evidence of following CDBG rules and regulations, including, but not limited to:

- Public hearing documents including minutes of ratification of amendments to existing plans and projects
- National Objective documentation;
- Environmental Review Record;
- Financial Management records, including costs incurred and paid invoices.
- Procurement and Labor Standards documentation;
- Civil Rights, including Affirmatively Furthering Fair Housing;
- Program Guidelines, if Housing;
- Second Public Hearing documentation; and,
- Client files, if applicable, including:
  - Acquisition and/or relocation documentation,
  - Housing rehabilitation, etc.

### *Is a new bank account required?*

If you plan to discontinue the RLF, a new bank account may not be required – just make periodic remittances to DED. If you continue the RLF, then the RLF funds must be kept in a separate bank account (for each Housing and ED funds).

### *How much Administration expense can I budget for?*

There is a limit of 5% of Program Income received for administrative costs on current CDBG ED RLFs. For example, if \$60,000 was received in a six month period, then you could charge up to \$3,000 for administration (provided your invoices amount to that much, etc.). There may be instances where the local government may have to contribute more funds (outside of RLF funds).

In some limited instances, where demonstration of need is met, DED may consider a request to waive that limit – i.e., if you need more than 5% to reasonably conduct your servicing (especially the cost burden of discontinuance or other actions), submit a proposal to DED. DED will review such proposals on a case-by-case basis.

In particular, where funds are re-purposed for a Public Works project, the 5% restriction may not be reasonable. DED will consider any reasonable proposal exceeding normal restrictions. Local government may consider paying for costs over the budgeted amounts.

### *Can we include our City Engineer's time for designing the projects?*

Yes. Be sure that timecards (which are inspected in an audit of these costs) specifically address time spent on this aspect of the project. Engineering costs can be part of the activities.

For example, if the city engineer designs the project for Activity 03K Streets, then those costs and the actual, physical construction costs can be charged against 03K Streets.

### *Can we include costs pertaining to Davis-Bacon and Related Acts (DBRA) and/or procurement costs?*

Yes. This would fall under *Activity 14E Construction Management* and is limited to reasonable costs and a maximum of \$10,000. Construction Management costs should be separated from “general administration” costs. It should also not be included as a part of the project activity costs. Costs associated with 14E are those of DBRA compliance and typically completed by the Labor Standards Compliance Officer.

### *Does using municipal or county employees trigger DBRA wages and other Labor Compliance items?*

CDBG requires compliance with DBRA. If the local government makes use of “forced labor” (e.g., city employees), this would be in compliance and does not require procurement or DBRA wages. If forced labor is used, you must maintain complete records, including timesheets showing hours worked on the project.

### *Do we have to submit a Semi-Annual Project Status Report for a Public Works project?*

No; however, you must be able to provide key components of data as required for reporting your results. For instance, the number of persons benefitted must be calculated and reported, along with other CDBG requirements.

### *For reporting purposes, how are the beneficiaries counted?*

For non-Housing project activities, consult the Application Guidelines Exhibits for the applicable national objective subcategory (e.g., LMA, LMC, LMJ). Additional guidance is found within DED’s *CDBG Manual*.

For Housing project activities, beneficiaries are reported by head of household under the subcategory LMH.

### *What is the Public Benefit Standard test and how do I document it for our project?*

Public Benefit Standards ONLY apply to Economic Development projects assisting for-profit businesses that:

- provide goods or services needed by and affordable to LMI residents of an LMI residential area (LMA)
- provide employment support services such as training
- involves the creation or retention of jobs which benefit LMI persons

Public Benefit Standards are part of the federal limitations described in 24 CFR 570.482(f). There are certain activities that are prohibited -- no CDBG funds are allowed to be used for, including, but not limited to: assistance to professional sports organization, acquisition of land where the proposed use is not identified, and activities that assist privately owned recreational facilities that primarily cater to higher-income users.

LMJ projects cannot use more than \$35,000 per job created (or a lesser amount if your Re-Use Plan calls for such a limit). Projects assisting businesses which provide goods and services are limited to \$350 per LMI person benefitted within the target area of the project.

## For More Information

### *What if we have more questions about re-purposing?*

Re-purposing is a nuanced effort. For Housing questions, contact Nick Dropinski at 402-471-2095, [nick.dropinski@nebraska.gov](mailto:nick.dropinski@nebraska.gov). For Community and Economic Development questions, contact Tom Stephens at 402-471-6587, [tom.stephens@nebraska.gov](mailto:tom.stephens@nebraska.gov).