

CHAPTER 8 – PROGRAM INCOME

Program income for the CDBG program is regulated by the provisions of 24 CFR 570.489(e). This regulation should be consulted for definitions and for other guidance concerning program income.

Broadly, program income is defined as gross income received by a State, a unit of general local government, or a subgrantee of the unit of general local government generated from the use of CDBG funds regardless of when the CDBG funds were appropriated and whether the activity has been closed out, except in limited circumstances [See also 24 CFR 570.489(e)(2)]. When program income is generated by an activity that is only partially assisted with CDBG funds, the income must be prorated to reflect the percentage of CDBG funds used.

The State CDBG objective for program income is to provide adequate financing for local development to ensure Nebraska's economic prosperity and to use all resources in a timely manner. The State is seeking to provide a policy for use of program income that coordinates local and State resources to the fullest extent possible. The State is responsible for ensuring that program income at the State and local levels is used in accordance with applicable federal laws and regulations.

PROGRAM INCOME FURTHER DEFINED

Per 24 CFR 570.489(e), program income includes, but is not limited to, the following:

- 1) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds except in instances where the proceeds are received more than 5 years after expiration of the grant agreement between the state and the unit of general local government. [See also 24 CFR 570.489(e)(2)(v)];
- 2) Proceeds from the disposition of equipment purchased with CDBG funds;
- 3) Gross income from the use or rental of real or personal property acquired by the unit of general local government or subgrantee of the unit of general local government with CDBG funds, less the costs incidental to the generation of the income;
- 4) Gross income from the use or rental of real property, owned by the unit of general local government or other entity carrying out a CDBG activity that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;
- 5) Payments of principal and interest on loans made using CDBG funds, except in instances where “Payments of principal and interest made by a subgrantee carrying out a CDBG activity for a unit of general local government, toward a loan from the local government to the subgrantee, to the extent that program income received by the subgrantee is used for such payments;” [See also 24 CFR 570.489(e)(2)(iii)];
- 6) Proceeds from the sale of loans made with CDBG funds, less reasonable legal and other costs incurred in the course of such sale that are not otherwise eligible costs under sections 105(a)(13) or 106(d)(3)(A) of Title I of the Housing and Community Development Act of 1974 (as amended);
- 7) Proceeds from the sale of obligations secured by loans made with CDBG funds, less reasonable legal and other costs incurred in the course of such sale that are not otherwise eligible costs under sections 105(a)(13) or 106(d)(3)(A) of Title I of the Housing and Community Development Act of 1974 (as amended);
- 8) Interest earned on funds held in a revolving fund account;
- 9) Interest earned on program income pending disposition of the income;
- 10) Funds collected through special assessments made against nonresidential properties and

- properties owned and occupied by households not of low- and moderate-income, if the special assessments are used to recover all or part of the CDBG portion of a public improvement; and
- 11) Gross income paid to a unit of general local government or subgrantee of the unit of general local government from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

REVOLVING LOAN FUNDS DEFINED

Per 24 CFR 570.489(f), A revolving loan fund (RLF), for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the RLF are program income and must be substantially disbursed from the RLF before additional grant funds are drawn from the U.S. Treasury for RLF activities.

CDBG STATE REVOLVING LOAN FUND (STATE RLF)

CDBG program income returned to the Department is deposited within the State RLF. The State awards funding from the State RLF through the CDBG Economic Development (ED) Category. Following a successful application, these funds are awarded to local governments to provide a direct loan to a business either through the NDO process or direct loan from the local unit of government.

Projects funded with the State RLF must meet CDBG requirements, including meeting a CDBG National Objective. The national objectives include:

- Benefit Low and Moderate Income Persons
 - LMI persons through the subcategory of job creation/job retention (LMJ), or
 - LMI persons through the subcategory of limited clientele (LMC), or
 - LMI persons through the subcategory of on an area basis (LMA).
- Aid in the Prevention or Elimination of Slum or Blight
- Urgent Need

CDBG Allocation vs CDBG State RLF

When a community applies through the CDBG Economic Development (ED) category or the CDBG Emergent Threat (EM) category, the Department determines whether or not CDBG funds from the Annual Allocation or the State RLF are appropriate for the project.

- **Public and Private Infrastructure Projects:** The *CDBG Allocation* will be used when the community is requesting ED resources for the purposes of infrastructure development. Projects for infrastructure development include public infrastructure (i.e., activities for community owned or controlled infrastructure) and private infrastructure (i.e., streets, and other infrastructure improvements located on privately owned property). Infrastructure projects provide resources utilizing performance-based loans which may include both forgivable loans that are not paid back if a business complies with a CDBG National Objective and other CDBG requirements and grants to communities where no CDBG funds are paid back.
- **Non-Infrastructure Projects:** The *State RLF* will be used when an Economic Development project includes non-infrastructure related activities that utilize a business loan consistent with the NDO process, or a direct loan to a business by a community.
- **Emergent Threat Projects:** The *State RLF* will be used to assist local units of government that

pose a serious and immediate threat to public health, safety or welfare that requires immediate assistance and to cities and counties that see an opportunity to demonstrate sustainable community activities.

Additional policy discussion can be found in the CDBG Application Guidelines, Economic Development Category, and Emergent Threat Category.

PROGRAM INCOME – IDLE ACCOUNTS MUST BE RETURNED

Program Income, including those funds held in an RLF and/or reuse account, cannot be held in perpetuity. Where a local government has Program Income within such an account, if funds are not actively revolving, it may meet the definition of an Idle Account. Funds that are held for 12 months or more without accomplishment or beneficiaries is considered an “idle” account.

PI/RLF accounts are defined as “idle” if one or more of the following is true:

- 1) Local government, or its agent(s), did not identify an eligible project during a 12-month period.
- 2) Local government has funds obligated/awarded but not disbursed within 12 months of the date of the commitment and/or award (i.e., “failed project”).

Active accounts have active projects with a letter of commitment/award that is dated and signed by an authorized official (i.e., the chief elected official). Account activity for determining an “idle” status does not include “non-project” activities such as transferring (or repurposing) funds, charging administrative costs or collecting program income from past transactions (e.g., interest, loan repayments, etc.), etc.

Local government must return Idle Account funds to DED beginning on June 30, 2020, and annually thereafter. Returned funds will be deposited into the State’s RLF. Funds held in an Idle Account must be returned in a timely manner (i.e., 60 days of the state’s fiscal yearend) or the local government will not be considered in “good standing” and additional sanctions may apply, including de-obligation/termination of existing open grants and/or ineligibility to apply for DED resources. This includes CDBG, HOME, HTF and state programs such as CCCFF and NAHTF. For additional information about “good standing”, please see Chapter 2 – Administrative Overview.

HOW TO REPURPOSE LOCAL PROGRAM INCOME

Local Governments are able to amend their Reuse Plans/RLFs, including making amendments due to Emergency/ Disaster Declarations (i.e., communities have the option to repurpose their local program income). As community needs change, program income reuse plan activities may be expanded to include eligible CDBG activities and must meet the low-and moderate income (LMI) national objective. Below is additional guidance:

- Eligible CDBG Activities
Refer to the CDBG Administration Manual, Chapter 3 for the list of eligible CDBG Activities that Nebraska has identified as priority activities.
- Eligible National Objective:
Benefit low- and moderate-income (LMI) persons within the subcategories of
 - 1) Area Benefit (LMA);
 - 2) Limited Clientele (LMC);

- 3) Housing (LMH); and
- 4) Job Creation/Retention (LMJ).

NOTE: local PI/RLF must use the LMI national objective; therefore, are **not allowed** to use the national objectives of 1) aid in the prevention of slums or blight nor 2) urgent need. At the discretion of DED and in very limited circumstances, waivers may be granted. HUD regulations require a majority of program income funds – including those held by local governments – to meet the National Objective of benefitting LMI persons. For activities meeting an Urgent Need, local governments may apply under the CDBG Emergent Threat category.

▪ Amending Reuse Plan

If Local Government determines a need to amend their Reuse plan, they need to contact the Department regarding the process and proposed changes. To amend the Reuse Plan, the Local Government must submit the following items to the Department:

- Letter from the Chief Elected Official identifying:
 - Reason for the change of the Reuse plan,
 - Certification of approval by the local governing body (meeting minutes)
- Copy of the proposed Reuse plan

The Department will notify the local government of the results of their review for the proposed amended Reuse Plan. **The Department must approve the proposed amended Reuse Plan prior to implementation.**

For additional guidance and resources, reference the *Other Resources & Planning Tools for Re-Purposing Program Income* section at the end of this chapter.

LOCAL ECONOMIC DEVELOPMENT (ED) PROGRAM INCOME

PROGRAM INCOME AND “CONTINUING THE SAME ACTIVITY”

The local government may retain program income if used to continue the activity from which it was derived, per Federal regulations; otherwise, the State may require the return of program income. The State is permitted to define “continuing the same project activity.”

For the purposes of program income, the State defines “continuing the same project activity” as:

- **Existing Local ED Revolving Loan Fund:** For local governments with existing program income in an existing Local ED Revolving Loan Fund, or who are currently utilizing the NDO process, continuing the same project activity will include providing assistance for the same CDBG eligible activities as defined in the grantee’s Department-approved Local Program Income Reuse Plan (also known as a Local Reuse Plan).
- **No Existing Local ED Revolving Loan Fund (e.g., local unit of government has not established a local ED Revolving Loan Fund):**
 - For ED grantees, program income that was generated from the use of CDBG funds for the awarded activities may utilize the NDO process. In the instance where the NDO process is utilized, continuing the same project activity is defined as providing assistance for the same CDBG eligible activities as defined in the grantee’s Department-approved Local Program Income Reuse Plan (also known as a Local Reuse Plan).
 - For ED grantees, program income generated from the use of CDBG funds awarded activities may be deposited into a newly created Local ED Revolving Loan Fund account. Any program income that is deposited through this process, continuing the same project activity is defined as providing assistance to the same business for the same activity for which it was originally funded.

Local Economic Development Program Income Revolving Loan Funds (Local ED RLF) Policy

The following general rules apply to Local Economic Development Program Income Revolving Loan Funds (RLFs):

- All Local ED RLF must be kept in a separate bank account (preferably interest-bearing).
- All Local ED RLF must employ or contractually retain a CDBG Certified Administrator.
- Administrative costs taken from the Local ED RLF cannot exceed 5% of the Program Income receipted during the semi-annual reporting period.
- Each Local Reuse Plan (including amendments) must be approved by the Department.
- Funds in a Local ED RLF are federal and are subject to all applicable CDBG rules and regulations.
- Funds held in a Local ED RLF, shall in no case, have a balance that exceeds \$750,000. Any amounts in excess of \$750,000 shall be returned to the State.
- Re-purposing (between ED, CD and Housing categories) is allowed, and requires special procedures and an approved Re-Use Plan by DED.
- DED requires funds held in an **Idle Account** be returned

Local Economic Development Program Income and Units of General Local Government

The unit of general local government (UGLG) has the following options for utilizing CDBG program income, including:

- Returning the program income funds to the Department;
- Using the program income within an existing Local ED RLF;
- Establishing a Local ED RLF; or
- Utilizing the NDO process.

Below are the specific requirements that relate to the options each unit of general local government have for their use of program income.

Returning Program Income Funds to the Department

The local government may return program income to the Department using one of the three processes described below.

Where **no Local RLF exists**, the process for returning program income funds includes:

- 1) Sending a cover letter that clearly notes the previous CDBG grant number where the funds originated and that these CDBG program income funds are being returned and
- 2) Sending a check payable to the “Nebraska Department of Economic Development” to the Department for the amount of CDBG funds that the community is returning. (check identifies CDBG grant origination)

Any future program income payments a community may receive, and will be returning to the Department, should be collected by the local government and those funds should be returned to the Department once there is a reasonable balance (e.g., returned every six months, or every year, depending on whether or not there is a reasonable balance).

Where there is an **existing Local RLF, if a local government wishes to return program income and to discontinue the Local RLF**, the process for returning program income funds includes:

- 1) Sending a cover letter that clearly notes that the funds being returned are from the community’s Local ED RLF and that the local government is discontinuing the Local ED RLF;
- 2) Information on any outstanding loans (including the amounts of those loans, copies of the amortizations schedules, etc.); and
- 3) Sending a check payable to the “Nebraska Department of Economic Development” to the Department for the amount of CDBG program income funds that the community is returning.

Any subsequent program income payments that the local government may receive would also be returned to the Department.

Where a local government wishes to **return program income that is in an Existing Local ED RLF and continue to operate the Local ED RLF**, the process for returning program income funds includes:

- 1) Sending a cover letter that clearly notes that the funds being returned are from the community’s Local ED RLF;
- 2) Information on any outstanding loans (including the amounts of those loans, copies of the amortizations schedules, etc.); and
- 3) Sending a check payable to the “Nebraska Department of Economic Development” to the Department for the amount of CDBG program income funds that the community is returning.

Any subsequent program income payments that the local government may receive would be deposited in the Existing Local ED RLF.

Use of Program Income – Existing Local ED Revolving Loan Fund

In order to retain CDBG program income, and the local government chooses to utilize an existing Local ED RLF, the local government will do so by completing the following steps:

- 1) The local government must provide the Department with a written Notice of Intent to use a Local Economic Development Revolving Loan Fund (Local ED RLF) in order to reuse program income for CDBG eligible activities which are consistent with the definition of “continuing the same project activity” as defined above.
- 2) The local government must administer the Local ED RLF locally and employ the services of a Nebraska CDBG Certified Administrator to administer the Fund.
- 3) The local government will develop and adopt a Revised Local Reuse Plan. The Local Reuse Plan must include:
 - a. A detailed description of the unit of local government;
 - b. A description of who will administer the Local ED RLF, and certify that the entity administering the Local ED RLF has CDBG Certified Administrators;
 - c. A description of the priorities of the program income projects that may be approved by the unit of local government which will be consistent with the definitions of “continuing the same project activity”;
 - d. A Certification that the local government will comply with the Local Reuse Plan that must include, but will not be limited to, the following:
 - i. The local government who is retaining the CDBG program income within a Local ED RLF will comply with all applicable CDBG rules and regulations;
 - ii. The local government understands that the Local ED RLF funds are federal and subject to all applicable CDBG rules and regulations;
 - iii. The local government must complete the proper resolution, public hearings, and environmental review for each additional project funded through the Local ED RLF;
 - iv. The local government understands that funds must be used to significantly benefit the residents of the community that previously received the initial CDBG grant;
 - v. The local government understands that Local ED RLF funds from a community are solely for the benefit of the community that established the Local ED RLF and that these funds cannot be provided to any regional ED program that would assist other communities;
 - vi. The local government understands that all projects will consist of ED activities that benefit low-to-moderate income persons, specifically meeting the national objectives through LMJ, LMC, or LMA.
 - vii. The local government understands that the Department must approve their Local Reuse Plan.

At any time, local governments will have the option to discontinue operating the Local ED RLF and return the program income funds to the Department. The Department will apply the funds to the State CDBG RLF.

The local government will also be required to comply with the following CDBG requirements that include:

- 1) If the initial activity, which generated the program income and is defined as “continuing the same

project activity”, has not been completed prior to the first receipt of program income, all program income received must be applied to the current grant activity prior to requesting additional CDBG funds.

- 2) Miscellaneous program income, generated by activities that are not defined as “continuing the same project activity”, must be applied to an open CDBG ED grant prior to requesting additional CDBG funds, or returned to the State.
- 3) Program income funds used from the Local ED RLF must be consistent with the requirements of Revised Local Reuse Plan that must be approved by the Department prior to the local government approving any new applications for activities.
- 4) All program income within the Local ED RLF must be locally monitored and the amount of program income within the Local ED RLF must be reported to the Department. Status updates concerning the outstanding loans or leases shall be submitted on a semi-annual basis. This semi-annual reporting includes, but is not limited to, loans made, payments received, proposed and actual jobs created (or retained) beneficiary data, and amendments to the original loan or lease agreement, as required by the Department.
- 5) All program income earned, as a result of CDBG grant activities, is subject to all requirements of Title I of the Community Development Act of 1974 (as amended) regardless of whether the original grant is open or closed when the program income is received. In addition, all program income expended from the Local ED RLF is subject to all requirements of Title I of the Housing and Community Development Act. This includes all second and subsequent generation loans made from the Local ED RLF.
- 6) Local governments that are currently operating a Local ED RLF and choose to discontinue the operation of the Local ED RLF can return the funds to the Department by following the requirements for “Returning the program income funds to the Department” as noted above.

In addition, the State schedules monitoring with all local governments who have operated or continue to operate a Local ED RLF. At its discretion, the **Department will conduct monitoring**. The State will review loans from previous Program Years. The monitoring will be conducted either via desktop monitoring or onsite monitoring. The State will review local projects for compliance with all CDBG rules and regulations. Findings of non-compliance will result in the State taking appropriate corrective actions for the specific compliance issues discovered.

The Department enters into a CDBG Contract with the local government for each new (original, State-funded) CDBG Project. The Contract includes a process for handling program income generated by the project. The Contract details the procedures for the expected Program Income that is unique to that project.

Establishing a Local ED Revolving Loan Fund

In order to retain CDBG program income, and the local government chooses to establish a Local ED RLF it will do so by completing the following steps:

- 1) The local government must provide the Department with a written Notice of Intent to use a Local Economic Development Revolving Loan Fund (Local ED RLF) in order to reuse program income for CDBG eligible activities which are consistent with the definition of “continuing the same project activity” that is defined for new ED projects as noted above and includes “providing assistance to the same business for the same activity for which it was originally funded.”
- 2) The local government must administer the Local ED RLF locally and employ the services of a

Nebraska CDBG Certified Administrator to administer the Fund.

- 3) The local government will develop and adopt a Local Reuse Plan. The Local Reuse Plan must include:
 - a. A detailed description of the unit of local government;
 - b. A description of who will administer the Local ED RLF, and certify that the entity administering the Local ED RLF has CDBG Certified Administrators;
 - c. A description of the priorities of the program income projects that may be approved by the unit of local government which will be consistent with the definitions of “continuing the same project activity”;
 - d. A Certification that the local government will comply with the Local Reuse Plan that must include, but will not be limited to, the following:
 - i. The local government who is retaining the CDBG program income within a Local ED RLF will comply with all applicable CDBG rules and regulations;
 - ii. The local government understands that the Local ED RLF funds are federal and subject to all applicable CDBG rules and regulations;
 - iii. The local government must complete the proper resolution, public hearings, and environmental review for each additional project funded through the Local ED RLF;
 - iv. The local government understands that funds must be used to significantly benefit the residents of the community that previously received the initial CDBG grant;
 - v. The local government understands that Local ED RLF funds from a community are solely for the benefit of the community that established the Local ED RLF and that these funds cannot be provided to any regional ED program that would assist other communities;
 - vi. The local government understands that all projects will consist of ED activities that benefit low-to-moderate income persons, specifically low- to- moderate jobs.
 - vii. The local government understands that all projects funded through the Local ED RLF must meet a CDBG National Objective; and
 - viii. The local government understands that the Department must approve this Local Reuse Plan.
- 4) The Department must approve Local Reuse Plan. If the Local Reuse Plan is not submitted to the Department as stated within the CDBG contract, the Department will require all program income be returned to the State.

At any time, local governments will have the option to discontinue operating the Local ED RLF and return the program income funds to the Department. The Department will apply the funds to the State CDBG Revolving Loan Fund.

The local government will also be required to comply with the following CDBG requirements that include:

- 1) If the initial activity, which generated the program income and is defined as “continuing the same project activity”, has not been completed prior to the first receipt of program income, all program income received must be applied to the current grant activity prior to requesting additional CDBG funds.
- 2) Miscellaneous program income, generated by activities that are not defined as “continuing the same project activity”, must be applied to an open CDBG ED grant prior to requesting additional CDBG funds, or returned to the State.
- 3) Program income funds used from the Local ED Revolving Loan Fund must be consistent with the requirements of the Local Reuse Plan that must be approved by the Department prior to the local government approving any applications for activities.

- 4) All program income within the Local ED Revolving Loan Fund must be locally monitored and the amount of program income within the Local ED RLF must be reported to the Department. Status updates concerning the outstanding loans or leases shall be submitted on a semi-annual basis. This semi-annual reporting includes, but is not limited to, loans made, payments received, proposed and actual jobs created, and amendments to the original loan or lease agreement, as required by the Department.
- 5) All program income earned, as a result of CDBG grant activities, is subject to all requirements of Title I of the Community Development Act of 1974 (as amended) regardless of whether the original grant is open or closed when the program income is received. In addition, all program income expended from the Local ED Revolving Loan Fund is subject to all requirements of Title I of the Housing and Community Development Act. This includes all second and subsequent generation loans made from the Local ED RLF.
- 6) Local governments that are currently operating a Local ED Revolving Loan Fund and choose to discontinue the operation of the Local ED Revolving Loan Fund can return the funds to the Department by following the above requirements for “Returning the program income funds to the Department” noted above.

In addition, the State will schedule monitoring visits with all local governments who have operated or continue to operate a Local ED RLF. The State will review loans from previous Program Years. The monitoring visits will be conducted either via desktop monitoring or onsite monitoring. The State will review local projects for compliance with all CDBG rules and regulations. Findings of non-compliance will result in the State taking appropriate corrective actions appropriate for the specific compliance issues discovered, including returning of funds to the State.

Utilizing the NDO Process

A local government may seek to form a subgrantee relationship with a local nonprofit organization to carry out the CDBG activities on behalf of the local government. The local government funded by the State for an ED project, or a local government with an existing Local ED RLF, would grant the CDBG funds awarded to a Nonprofit Development Organization (NDO), such as a community development organization or a local economic development corporation. The NDO must be recognized (through an application process) by the State according to the requirements of 24 CFR 570.204 to carry out funded activities through a contract with the local government grantee for activities in which it retains a direct and controlling involvement and responsibilities for the provision of financial assistance to the community's ED project.

The activity carried out by the NDO must meet the requirements of Section 105 (a)(15) of the Housing and Community Development Act (HCDA). Section 105 (a)(15) provides the provision, which allows as eligible assistance to neighborhood based nonprofit organizations, local development corporations, and nonprofit organizations serving the development needs of communities in non-entitlement areas to carry out neighborhood revitalization and community economic development projects.

The NDO process includes, but is not limited to, the following:

- The local government, which is a recipient of CDBG Allocation, wishes to make a loan to a for-profit business for economic development activities in accordance with the State's program requirements.
- The local government executes an agreement with the NDO, which executes the loan agreement for the CDBG funds loaned to the for-profit business. The NDO, the local nonprofit organization, would use the repayment of the funds from the for-profit business to make additional loans, such

as for economic development activities.

- The repayment of the CDBG loan is made to the NDO, and not to the local government, and the NDO retains the payments for future use through a Revolving Loan Fund (RLF), which includes a NDO Reuse Plan approved by the Department through the NDO designation application process. The approved NDO Reuse Plan must ensure that activities funded by the RLF meet broad based economic development investments. The funds repaid to the NDO to continue economic development activities would not be considered program income.
- The NDO reinvests in the community through its established RLF, which can fund additional loans in the service area of the NDO.

For new CDBG Economic Development grants, the local government grantee and the NDO must submit a proposal to the State authorizing the approval of an arrangement between the local government and the NDO for the NDO to carry out the funded activities on behalf of the local government and for repayments to go to the NDO's RLF. The designated NDO must have already received approval from the Department and will have an approved NDO Reuse Plan in place.

Overall, the NDO would carry out the activities of the grant awarded to the local government for assistance to the for-profit business. During this period, the local government would ensure that all CDBG rules and regulations were followed for this initial loan. The repayments from the business to the NDO would not be considered program income, provided that a National Objective has been achieved. Subsequent loans by the NDO using those funds repaid to the RLF would only have to meet those requirements in the Department approved NDO Reuse Plan established by the NDO. The NDO would reinvest funds in broad-based economic development activities.

Local governments currently operating a Local ED RLF may choose to enter into an agreement with a designated NDO to carry out activities with the Local ED RLF. The NDO must be designated by the Department and operate the RLF with a Department-approved NDO Reuse Plan. The NDO must also include the local government in its service area. Once the funds are repaid to the NDO, provided that a national objective has been achieved, the funds would no longer be subject to the CDBG federal rules and regulations, thus providing a pool of Revolving Loan Fund dollars subject only to the requirements of the NDO Reuse Plan.

It will be the responsibility of the local government, in coordination with the NDO, to determine the entity responsible for carrying out the activities of the ED project and the entity who will be responsible for administering the project. In some instances there may be one entity carrying out the project activities and a separate entity administering the grant. Grant administration and carrying out CDBG activities on behalf of the local government grantee are two separate activities.

LOCAL HOUSING PROGRAM INCOME

The unit of general local government (UGLG) has the following options for utilizing CDBG housing program income that unit of local government may receive. These options include:

- 1) Returning the program income funds to the Department;
- 2) Retaining the program income and using it to continue the same CDBG eligible housing activities;
- 3) Using the program income within an existing Local Housing Revolving Loan Fund (RLF) on CDBG eligible housing activities; or
- 4) Establishing a Local Housing RLF to be used on CDBG eligible housing activities.

PROGRAM INCOME AND “CONTINUING THE SAME ACTIVITY”

Federal regulations also allow the State to require the return of program income provided the local government has an opportunity to retain the program income if the program income will be used to continue the activity from which it was derived. For the purposes of program income, the State defines “continuing the same project activity” as owner occupied rehabilitation and homeownership assistance.

LOCAL HOUSING REVOLVING LOAN FUND VS. REUSE ACCOUNT

Per 24 CFR 570.489(f), a **Revolving Loan Fund (RLF)**, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the RLF are program income and must be substantially disbursed from the RLF before additional grant funds are drawn from the Treasury for RLF activities. Such program income is not required to be disbursed for non-revolving fund activities.

A **Reuse Account** is a separate fund established to carry out specific activities that do not generate payments to the account. Per 24 CFR 570.489(e)(3)(ii)(B), if the grant between the State and the unit of local government that generated the program income is still open when it is generated, it will be considered part of the unit of local government’s grant that generated it and must be disbursed before additional grant funds are drawn down from the Treasury for grant activities. If the grant is closed out, the program income will be considered to be part of the unit of general local government’s most recently awarded open grant, regardless of activity.

HOUSING PROGRAM INCOME FUNDS POLICY

The following general rules apply to CDBG Housing Program Income Reuse Accounts and Revolving Loan Funds (RLFs):

- All housing program income must be kept in a separate bank account (preferably interest-bearing).
- All housing program income accounts must employ or contractually retain a CDBG Certified Administrator.
- 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 receipted during the semi-annual reporting period. See Chapter 4 for details.
- Each Local Reuse Plan (including amendments) must be approved by the Department.
- Funds in a housing program income account are federal and are subject to all applicable CDBG rules and regulations.
- Funds held in a housing program income account, shall in no case, have a balance that exceeds \$750,000. Any amounts in excess of \$750,000 shall be returned to the State.
- Re-purposing (between ED, CD and Housing categories) is allowed, and requires special

- procedures and an approved Re-Use Plan by DED.
- DED requires funds held in an **Idle Account** be returned

Below are the specific requirements that relate to the option that the unit of general local government has chosen for its use of program income.

Returning Program Income Funds to the Department

The local government may return program income to the Department using one of the three processes described below.

No Local Housing RLF exists

Where **no Local Housing RLF exists**, the process for returning program income funds includes:

- 1) Sending a cover letter that clearly notes the previous CDBG grant number where the funds originated and that these CDBG program income funds are being returned; and
- 2) Sending a check payable to the “Nebraska Department of Economic Development” to the Department for the amount of CDBG funds that the community is returning. (check identifies CDBG grant origination)

Any future program income payments a community may receive, and will be returning to the Department, should be collected by the unit of local government and those funds should be returned to the Department once there is a reasonable balance (e.g., returned every six months, or every year, depending on whether or not there is a reasonable balance).

Existing Local Housing RLF and Discontinuing Operation

If a unit of local government wishes to **return program income that is in an Existing Local Housing RLF and discontinue the Local Housing RLF**, the process for returning program income funds includes:

- 1) Sending a cover letter that clearly notes that the funds being returned are from the community’s Local Housing RLF and that the local government is discontinuing the Local Housing RLF;
- 2) Information on any outstanding loans (including the amounts of those loans, copies of the amortizations schedules, etc.); and
- 3) Sending a check payable to the “Nebraska Department of Economic Development” to the Department for the amount of CDBG program income funds the community is returning.

Any subsequent program income payments that the local government may receive that were intended to be deposited would also be returned to the Department.

Existing Local Housing RLF and Continuing Operation

If a unit of local government wishes to **return program income that is in an Existing Local Housing RLF and continue to operate the Local Housing RLF**, the process for returning program income funds includes:

- 1) Sending a cover letter that clearly notes that the funds being returned are from the community’s Local Housing RLF;
- 2) Information on any outstanding loans (including the amounts of those loans, copies of the amortizations schedules, etc.); and
- 3) Sending a check payable to the “Nebraska Department of Economic Development” to the Department for the amount of CDBG program income funds that the community is returning.

Any subsequent program income payments that the local government may receive would be deposited in the Existing Local Housing RLF.

Retaining the Program Income and Using it to Continue the Same CDBG Eligible Housing Related Activities

In order to retain CDBG program income that is not in an existing Local Housing RLF, the unit of local government will maintain their program income in a Local CDBG Program Income Account and adopt a Local Reuse Plan that includes a detailed description of the local government, and includes administration and priorities of the program income projects to be approved by the local government which are consistent with the definition of “continuing the same project activity” as described above.

A local government’s Local Reuse Plan must state that all projects will consist of activities that benefit low-to-moderate income persons, specifically low-to-moderate income housing as defined within the local government’s Department-approved Local Reuse Plan, as part of the local government’s contractual requirements with the Department.

At any time, a local government will have the option to discontinue utilizing the housing program income and return it to the Department. The Department will apply the funds to the State CDBG Economic Development Revolving Loan Fund (also known as the State Revolving Loan Fund).

At the end of the calendar year, if the total amount received in a Reuse Account by the unit of local government is less than \$35,000, that amount is no longer reported as program income (24 CFR 570.489(e)). That amount should be removed from the Local CDBG Program Income Reuse Account and de-obligated to the unit of local government. This applies to Reuse Accounts only. All program income received within a Local Housing Revolving Loan Fund never loses its identity as program income and should be reported to the Department.

The local government will also be required to comply with the following CDBG requirements that include:

- 1) If the initial activity, which generated the program income and is defined as “continuing the same project activity”, has not been completed prior to the first receipt of program income, all program income received must be applied to the current grant activity prior to requesting additional CDBG funds.
- 2) Miscellaneous program income, generated by activities that are not defined as “continuing the same project activity”, must be applied to an open CDBG housing grant prior to requesting additional CDBG funds, or returned to the State.
- 3) Program income funds used for additional activities must be consistent with the requirements of the Local Reuse Plan that must be approved by the Department prior to the local government approving any new applications for activities.
- 4) All program income within the Local Housing RLF or Local Housing Reuse Account must be locally monitored and the amount of program income within that account must be reported to the Department. Status updates concerning the program income funds shall be submitted on a semi-annual basis. This semi-annual reporting includes, but is not limited to, grants/loans made, payments received, housing activities, beneficiary data, and amendments to the original loans, as required by the Department.
- 5) All program income earned, as a result of CDBG grant activities, is subject to all requirements of Title I of the Community Development Act of 1974 (as amended) regardless of whether the original grant is open or closed when the program income is received. In addition, all program

income expended from the Local Housing RLF or Local Housing Reuse Account is subject to all requirements of Title I of the Housing and Community Development Act. This includes all second and subsequent generation loans made from the Local Housing RLF or Local Housing Reuse Account.

- 6) Local governments that are currently utilizing a Local Housing RLF or Local Housing Reuse Account and choose to discontinue the operation of that Local Account can return the funds to the Department by following the above requirements for “Returning the program income funds to the Department” noted above.

In addition, the State will schedule monitoring visits with all local governments who have operated or continue to utilize a Local Housing RLF or Local Housing Reuse Account. The State will review project activities from previous Program Years. The monitoring visits will be conducted either via desktop monitoring or onsite monitoring. The State will review local projects for compliance with all CDBG rules and regulations. Findings of non-compliance will result in the State taking appropriate corrective actions appropriate for the specific compliance issues discovered.

Using Program Income – Existing Local Housing Revolving Loan Fund

In order to retain CDBG program income that is in an existing Local Housing RLF, the unit of local government will have to certify and ensure that the Local Housing RLF is properly established in order to meet the Department requirements. This Local Housing RLF would be utilized for the purposes of retaining CDBG program income, and reusing that program income, for the purposes of carrying out specific housing activities, which in turn, generate payments to the RLF for use in carrying out additional housing activities.

If the local government chooses to utilize an existing Local Housing RLF it will do so by completing the following steps:

- 1) The unit of local government must provide the Department with a written Notice of Intent to use a Local Housing Revolving Loan Fund (Local Housing RLF) in order to reuse program income for CDBG eligible activities which are consistent with the definition of “continuing the same project activity” as defined above.
- 2) The local government must administer the Local Housing RLF locally and employ the services of a Nebraska CDBG Certified Administrator to administer the Fund.
- 3) The local government will develop and adopt a Revised Local Reuse Plan. The Local Reuse Plan must include:
 - a. A detailed description of the unit of local government;
 - b. A description of who will administer the Local Housing RLF, and certify that the entity administering the Local Housing RLF has CDBG Certified Administrators;
 - c. A description of the priorities of the program income projects that may be approved by the unit of local government which will be consistent with the definitions of “continuing the same project activity”;
 - d. A Certification that the local government will comply with the Local Reuse Plan that must include, but will not be limited to, the following:
 - i) The local government who is retaining the CDBG program income within a Local Housing RLF will comply with all applicable CDBG rules and regulations;
 - ii) The local government understands that the Local Housing RLF funds are federal and subject to all applicable CDBG rules and regulations;
 - iii) The local government must complete the proper resolution, public hearings, and environmental review for each additional project funded through the Local Housing RLF;

- iv) The local government understands that funds must be used to significantly benefit the residents of the community that previously received the initial CDBG grant;
 - v) The local government understands that Local Housing RLF funds from a community are solely for the benefit of the community that established the Local Housing RLF and that these funds cannot be provided to any regional housing program that would assist other communities;
 - vi) The local government understands that all projects will consist of housing activities that benefit low-to-moderate income persons;
 - vii) The local government understands that all projects funded through the Local Housing RLF must meet a CDBG National Objective; and
 - viii) The local government understands that the Department must approve this Local Reuse Plan.
- 4) The Department must approve Local Reuse Plan. If the Local Reuse Plan is not submitted to the Department as stated within the CDBG contract, the Department will require all program income be returned to the State.

At any time, local governments will have the option to discontinue operating the Local Housing Revolving Loan Fund and return the program income funds to the Department. The Department will apply the funds to the State RLF.

All program income received in a Local Housing Revolving Loan Fund account never loses its identity as program income and should be reported to the Department.

The local government will also be required to comply with the following CDBG requirements that include:

- 1) If the initial activity, which generated the program income and is defined as “continuing the same project activity”, has not been completed prior to the first receipt of program income, all program income received must be applied to the current grant activity prior to requesting additional CDBG funds.
- 2) Miscellaneous program income, generated by activities that are not defined as “continuing the same project activity”, must be applied to an open CDBG housing grant prior to requesting additional CDBG funds, or returned to the State
- 3) Program income funds used from the Local Housing Revolving Loan Fund must be consistent with the requirements of Revised Local Reuse Plan that must be approved by the Department prior to the local government approving any new applications for activities.
- 4) All program income within the Local Housing Revolving Loan Fund must be locally monitored and the amount of program income within the Local Housing RLF must be reported to the Department. Status updates concerning the outstanding loans shall be submitted on a semi-annual basis. This semi-annual reporting includes, but is not limited to, loans made, payments received, housing activities, beneficiary data, and amendments to the original loan, as required by the Department.
- 5) All program income earned, as a result of CDBG grant activities, is subject to all requirements of Title I of the Community Development Act of 1974 (as amended) regardless of whether the original grant is open or closed when the program income is received. In addition, all program income expended from the Local Housing Revolving Loan Fund is subject to all requirements of Title I of the Housing and Community Development Act. This includes all second and subsequent generation loans made from the Local Housing RLF.
- 6) Local governments that are currently operating a Local Housing Revolving Loan Fund and choose to discontinue the operation of the Local Housing Revolving Loan Fund can return the funds to

the Department by following the above requirements for “Returning the program income funds to the Department” noted above.

In addition, the State will schedule monitoring visits with all local governments who have operated or continue to operate a Local Housing Revolving Loan Fund. The State will review project activities from previous Program Years. The monitoring visits will be conducted either via desktop monitoring or onsite monitoring. The State will review local projects for compliance with all CDBG rules and regulations. Findings of non-compliance will result in the State taking appropriate corrective actions appropriate for the specific compliance issues discovered.

Establishing a Local Housing Revolving Loan Fund

In order to retain CDBG program income, the local government may choose to establish a Local Housing RLF. The unit of local government will have to certify and ensure that the Local Housing RLF is properly established in order to meet the Department requirements. This Local Housing RLF would be utilized for the purposes of retaining CDBG program income, and reusing that program income, for the purposes of carrying out specific housing activities, which in turn, generate payments to the RLF for use in carrying out additional housing activities.

If the local government chooses to establish a Local Housing RLF it will do so by completing the following steps:

- 1) The unit of local government must provide the Department with a written Notice of Intent to use a Local Housing Revolving Loan Fund (Local Housing RLF) in order to reuse program income for CDBG eligible activities which are consistent with the definition of “continuing the same project activity” as defined above.
- 2) The local government must administer the Local Housing RLF locally and employ the services of Nebraska CDBG Certified Administrator to administer the Fund.
- 3) The local government will develop and adopt a Revised Local Reuse Plan. The Local Reuse Plan must include:
 - a. A detailed description of the unit of local government;
 - b. A description of who will administer the Local Housing RLF, and certify that the entity administering the Local Housing RLF has CDBG Certified Administrators;
 - c. A description of the priorities of the program income projects that may be approved by the unit of local government which will be consistent with the definitions of “continuing the same project activity”;
 - d. A Certification that the local government will comply with the Local Reuse Plan that must include, but will not be limited to, the following:
 - i) The local government who is retaining the CDBG program income within a Local Housing RLF will comply with all applicable CDBG rules and regulations;
 - ii) The local government understands that the Local Housing RLF funds are federal and subject to all applicable CDBG rules and regulations;
 - iii) The local government must complete the proper resolution, public hearings, and environmental review for each additional project funded through the Local Housing RLF;
 - iv) The local government understands that funds must be used to significantly benefit the residents of the community that previously received the initial CDBG grant;
 - v) The local government understands that Local Housing RLF funds from a community are solely for the benefit of the community that established the Local Housing RLF and that

these funds cannot be provided to any regional housing program that would assist other communities;

- vi) The local government understands that all projects will consist of housing activities that benefit low-to-moderate income persons;
 - vii) The local government understands that all projects funded through the Local Housing RLF must meet a CDBG National Objective; and
 - viii) The local government understands that the Department must approve this Local Reuse Plan.
- 4) The Department must approve Local Reuse Plan. If the Local Reuse Plan is not submitted to the Department as stated within the CDBG contract, the Department will require all program income be returned to the State.

At any time, local governments will have the option to discontinue operating the Local Housing RLF or Local Housing Reuse Account and return the program income funds to the Department. The Department will apply the funds to the State RLF.

All program income received in a Local Housing RLF account never loses its identity as program income and should be reported to the Department.

OTHER CDBG PROGRAM INCOME

Program income generated from other CDBG activities including those under the Community Development Priority (e.g., Comprehensive Development, Comprehensive Revitalization, Comprehensive Investment Stabilization, Public Works, Water/Wastewater, Planning, and Downtown Revitalization) would follow the above mentioned steps with the need for any necessary adjustments related to non-economic development or non-housing activities.

REPORTING PROGRAM INCOME

Local governments are required to report program income from all CDBG projects on a semi-annual basis. Reporting periods are:

- July 1 – December 31: **Report due January 30**
- January 1 – June 30: **Report due July 30**

Separate reporting forms are available for Local ED Program Income and Local Housing Program Income on the Department’s website, <http://opportunity.nebraska.gov/CDBG>. In order to report other program income from non-ED or non-housing projects, please contact your Program Representative.

Program Income Reports can be submitted to the Department via email. Follow the Instructions for the each type of report for guidance on reporting and timely submissions. Grantees must retain a copy of each Program Income Report in their files.

Note: Local governments, who retain Local ED Program Income, are also required to submit the “Job Creation/Retention Report” to the Department upon the project meeting the National Objective.

OTHER RESOURCES & PLANNING TOOLS FOR RE-PURPOSING PROGRAM INCOME

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

- **CDBG Policy Memo 19-03:** Program Income and Revolving Loan Fund Updates, including Technical Assistance and Guidance for Re-purposing, Definition of an Idle Account, and Repayment Instructions
- **Planning Tools.** There are three types of planning tools for local governments pursuing use or re-purposing of program income based on activity type. Each tool provides a basic framework, for Economic Development, Community Development, and Housing activities. These tools were originally drafted alongside and included in the abovementioned policy memo, the most current versions are located within the appendices at Appendix, Section 4.

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

- Chapter 2 – Administrative Overview
- Chapter 3 – CDBG National Objectives & Fundability
- Chapter 4 – Developing Program Guidelines
- Chapter 6 – Environmental Review
- Chapter 14 – Monitoring
- Appendix | Section 4