

CHAPTER 5 – CDBG Agreement

The CDBG Agreement is a contractual agreement between the Nebraska Department of Economic Development (DED) and the local unit of government (subrecipient). The CDBG Agreement contains a project description, time of performance, sources and uses of funds, conditions governing the use of CDBG funds and the special conditions for release of funds.

This section of the CDBG Manual provides guidance on the steps that must be fulfilled before a funded project is implemented and an overview of the requirements a subrecipient has as a result of signing a CDBG Agreement.

Caution:

- Prior to seeking any professional services or contractors, a subrecipient must understand and follow procurement processes required of CDBG funded projects. See Chapter 7 – Procurement.
- Prior to contracting for non-general administrative services, a subrecipient must receive a Notice of Release of Funds/Environmental Clearance from DED.

NOTICE OF APPROVAL

Every successful application for funding (i.e., awarded project) receives a Notice of Approval (NOA)¹ letter. The NOA specifies the award² amount, project description, national objective, and beneficiaries.

The NOA cautions the successful applicant (subrecipient) about incurring costs. Non-administrative costs incurred prior to receiving a Notice of Release of Funds (ROF)/Environmental Clearance cannot be reimbursed with CDBG funds unless a special pre-agreement is executed. A limited number of costs may be incurred prior to receiving a ROF/Environmental Clearance. Only costs associated with the general administration of a grant are allowable such as contracting for administrative services or hiring staff to administer the grant. Administrative costs include the related costs necessary for completing the Special Conditions requirements of the CDBG Agreement which includes the environmental review. Agreements for general administration services must be executed after the NOA date. All expenses incurred prior to the NOA cannot be reimbursed by CDBG funds or be considered as match.

The NOA also provides the subrecipient with their Program Representative's contact information. This is the staff person who is the principal contact for all matters concerning the grant.

The subrecipient is required to designate an employee of the local governmental entity to be the primary contact regarding the grant. The subrecipient is required to identify the designated CDBG Certified Administrator.

CDBG AGREEMENT

The CDBG Agreement contains a project description, time of performance, sources and uses of funds, conditions governing the use of CDBG funds and the special conditions for release of funds. In most cases, the special conditions of the agreement must be satisfied within three (3) months and the project completed within twenty-four (24) to thirty (30) months of NOA, or as otherwise identified by DED.

¹ At time of NOA, Environmental Clearance may also be issued depending on the nature of the project.

² The amount of the award may be different than the requested amount in the application.

Each subrecipient is responsible for adhering to all the terms of their CDBG Agreement. A substantial number of regulations, acts, and statutes apply to the grant.

Agreement Acceptance Process

Concurrently or following issuance of the NOA, the subrecipient reviews the CDBG Agreement for execution. The subrecipient, prior to execution, reviews the terms and conditions of the CDBG agreement. The subrecipient should contact the Program Manager with concerns or questions.

The Chief Elected Official³ is the individual recognized by DED authorized to sign and execute CDBG agreement documents and official correspondence. This applies to any agreement amendments involving changes in terms, conditions, and amounts.

The subrecipient has 30 days to review and return the executed CDBG Agreement to DED. DED uses the software system DocuSign for the execution of the agreement⁴. If the subrecipient is not able to use DocuSign, contact the DED Program Manager for an alternative method.

Upon receipt, DED will return the executed agreement for recordkeeping. An agreement includes signatures from the subrecipient and DED.

SPECIAL CONDITIONS FOR RELEASE OF FUNDS

CDBG Agreements include special conditions for release of funds; these are requirements the subrecipient meets prior to the availability of grant funds for the approved project. As described in the NOA, project activity (i.e., non-administrative) costs cannot be obligated or incurred prior to DED issuing a written Notice of Release of Funds/Environmental Review to the subrecipient.

Subrecipients are advised to carefully review the CDBG Agreement before implementing the funded project. The agreement includes a section titled “Special Conditions for Release of Funds.” The Special Conditions must be satisfied by the identified date⁵. DED reserves the right to cancel the agreement if these special conditions are not met.

Special Conditions

The items listed below represent special conditions for release of funds; however, all CDBG Agreements are tailored to the unique circumstances of a specific project. The subrecipient must satisfy Special Conditions prior to DED issuing the Notice of Release of Funds. Special Condition are submitted to DED within the grant management system. Forms and samples to assist in completing special condition requirements are available on DED’s website.

³ At the time of application, the subrecipient passed a resolution authorizing (CDBG Application - Exhibit B) the Chief Elected Official to sign agreements with the Nebraska Department of Economic Development. This allows the subrecipient to sign the CDBG Agreement at any point in time.

⁴ DocuSign was incorporated into the procedures in November 2021.

⁵ Subrecipients initially are provided three months from the NOA to complete the special conditions. Additional time may be provided on a case-by-case basis.

Subrecipient Information Sheet⁶. This form identifies the Chief Elected Official, the Local Contact, the Fair Housing Representative, Limited English Proficiency (LEP) Representative, the 504 Representative (if applicable), and the CDBG Certified Administrator. When a representative change occurs, a new form must be submitted.

Environmental Review. Documentation is required evidencing the subrecipient's completion of its responsibilities for environmental review, decision-making pertaining to the project, its compliance with the National Environmental Policy Act of 1969 (NEPA as amended), and other provisions of Federal law as specified in 24 C.F.R. Part 58, which furthers the purposes of NEPA. Refer to *Chapter 6: Environmental Review*.

Authorization to Request Funds. The form is available on DED's website. This form must be on the subrecipient's letterhead that identifies the subrecipient's representatives⁷ authorized to request funds from DED. When a representative change occurs, a new form must be submitted.

Financial Management. The subrecipient must evaluate their current financial system to ensure that it meets all requirements identified in 2 C.F.R. 200 for administering federal funding. The form is available on DED's website.

Procurement Standards and Code of Conduct. Documentation is required evidencing adoption of Procurement Standards and Code of Conduct equivalent to those established in 2 C.F.R. Part 200.300-345 and 24 C.F.R. Part 570.

Excessive Force Certification. Documentation is required that verifies the subrecipient has adopted a policy to prohibit the use of excessive force by law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations. The form is available on DED's website. To be accepted, the form must be on the subrecipient's letterhead or notarized.

Fair Housing. Documentation is required that the subrecipient has specifically provided a description of the actions it will take during the course of the grant to fulfill the requirements to affirmatively further fair housing.

Language Assistance Plan (Project Specific). Documentation is required by DED evidencing the subrecipient's completion of its responsibilities regarding Limited English Proficiency (LEP) persons, assignment of an LEP Representative, a Four Factor Analysis, and a description of the actions the subrecipient will take to fulfill the requirements to provide meaningful access to LEP persons.

CDBG Certified Administrator. Documentation is required that the subrecipient has selected a CDBG Certified Administrator. This includes a letter on the subrecipients letterhead⁸ from the Chief Elected Official identifying the CDBG Certified Administrator and the procurement method utilized and signed by the Chief Elected Official.

⁶ Also known as "Grantee Information Sheet"

⁷ Representatives are the Chief Elected Official and the Clerk. At times the City Administrator may also be identified depending on the structure of the local unit of government. This form also includes the representatives' signatures.

⁸ If the subrecipient does not have letterhead, a notarized document with the same information will be acceptable.

The CDBG Certified Administrator may be the designated employee responsible for day-to-day administration or a contracted professional, in either case the Certified Administrator must be recognized by DED as being a Certified Administrator to oversee the administration of the grant.

Federal Funding Accountability and Transparency Act (FFATA). The subrecipient must also comply with provisions of the FFATA, which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

FEDERAL AND STATE REQUIREMENTS

In PART V: SPECIAL REQUIREMENTS AND ASSURANCES the subrecipient agrees to comply with: the Administrative Requirements of the program; those applicable items in the current Consolidated Plan; Title I of the Housing and Community Development Act of 1974; and 24 CFR Part 570; as well as other laws and regulations, both federal and state, as they are applicable to the approved project.

The subrecipient must gain understanding of all the requirements for which they are agreeing to comply. The following is a summary of some of the requirements and not an exhaustive list of the responsibilities of CDBG subrecipients. These provisions need to be referenced in any agreement the subrecipient executes pertaining to the CDBG Agreement.

Civil Rights and Equal Opportunity Provisions

- **Title VI of the Civil Rights Act of 1964**
Provides that no person shall be excluded from participation in, denied program benefits of, or subject to discrimination based on race, color and/or national origin under any program or activity receiving federal financial assistance.

- **Section 109 of the Housing and Community Development Act of 1974**
Provides that no person shall be excluded from participation in (including employment), defined program benefits of, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I (Community Development) of the Act.

- **Age Discrimination Act of 1975**
Provides that no person shall be excluded from participation in, denied program benefits of, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance.

- **Section 504 of the Rehabilitation Act of 1973**
Provides that no otherwise qualified individual shall; solely by reason of his or her handicap, be excluded from participation in (including employment), denied program benefits of, or subjected to discrimination under any program or activity receiving federal funding assistance.

United States Housing and Urban Development (HUD) regulations require that subrecipients follow specific steps in complying with Section 504 of the Rehabilitation Act of 1973. Attachment 2 provides guidance on those compliance steps.

- **Americans with Disabilities Act (ADA)**
 Extends civil rights to those with disabilities in the following areas: employment, public accommodations, state and local government services, and telecommunications. Discrimination could occur if facilities are designed or constructed (built for initial occupancy after January 26, 1993) and are not accessible or usable by those with disabilities. ADA also mandates that structurally based architectural and communications barriers be removed, provided that the removal be readily achievable, easily accomplished, and capable of being accomplished with little difficulty or expense.
- **Executive Order 11246**
 Applies to all federally assisted construction agreements and subcontracts. It provides that no person shall be discriminated against on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin in any phase of employment during the performance of a federal or federally assisted construction agreement in excess of \$10,000. Subrecipients must include the applicable equal opportunity language in the bid specifications and agreement documents.
- **Executive Order 11063, As Amended by Executive Order 12259**
 Provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States. Under this executive order, if HUD (or in this case, the state) concludes that any person or entity applying for or participating in, or supervised or regulated under, a program or activity relating to housing and urban development has not complied with this order or any applicable rule, regulations, or procedures issued or adopted pursuant to this order, they shall endeavor to remedy such violation by informal means, including conference, conciliation and persuasion. In the event of failure of such informal means, sanctions may be imposed.
- **Title VIII of the Civil Rights Act of 1968, As Amended by the Fair Housing Amendments Act of 1988**
 This law, seeking fair housing practices throughout the United States, prohibits any person from discriminating in activities associated with housing, because of race, color, national origin, religion, sex, handicap, or familial status. The subrecipient must also administer programs and activities relating to housing and urban development in a manner that affirmatively promotes fair housing and furthers the purposes of Title VIII.
- **Section 3 Compliance in the Provision of Training, Employment and Business Opportunities⁹**
 Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

⁹ 24 CFR 75 is followed for any CDBG agreement with a period of performance on or after November 30, 2020. 24 CFR 135 is followed for any CDBG agreement with a period of performance prior to November 30, 2020.

Environmental Standards and Provisions

For more information on environmental requirements refer to Chapter 6:

- **Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35 National Environmental Policy Act of 1969 and regulations at 24 C.F.R. Part 58**
Environmental review procedures, including completing a checklist and determining and publishing a Finding of Significance or of No Significant Impact for a project, are a necessary part of this process. Pursuant to these provisions, the subrecipient must also submit environmental certifications to DED when requesting funds be released for the project.

The subrecipient must certify that the proposed project will not significantly impact the environment and that the subrecipient has complied with environmental regulations and fulfilled its obligations to give public notice of the funding request, environmental findings and compliance performance.

- **EPA List of Violating Facilities**
The subrecipient will ensure that the facilities under its ownership, lease, or supervision which will be utilized in the accomplishment of the program are not listed on the U.S. Environmental Protection Agency's (EPA) List of Violating Facilities.
- **Flood Insurance**
The subrecipient will comply with the flood insurance purchase requirement of §102(a) of the Flood Disaster Protection Act of 1973. §102(a) requires, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Federal Emergency Management Agency as an area having special flood hazards.
- **Historic Preservation**
The subrecipient will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. §470), Executive Order 11593, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. §469 a-1, et. seq.) by:
 - Consulting with the State Historical Preservation Officer (SHPO) to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 C.F.R. Part 800.0) by the proposed activity
 - Complying with all requirements established by the state to avoid or mitigate adverse effects upon such properties.
 - Consulting with the Tribal Historical Preservation Officer (THPO) to identify properties with historical significance to the Tribe.

Labor Standards and Provisions

For more information on labor standards requirements refer to Chapter 9 – Construction & Labor Standards

- **Davis-Bacon and Related Acts (DBRA)**
 - The Copeland Anti-Kickback Act
 - Hours and Safety Standards Act
 - Fair Labor Standards Act of 1938

AFFIRMATIVELY FURTHERING FAIR HOUSING (AFFH)

All CDBG subrecipients, regardless of the type of CDBG project, must certify that they will affirmatively further fair housing in the community (Title VIII of the Civil Rights Act of 1968). This requirement dictates some form of action to be taken by the subrecipient, not just passive compliance with existing laws and ordinances. This requirement is applicable to all CDBG subrecipients regardless of the activity being implemented.

Fair housing choice is the ability of persons of similar income levels to have available to them a like range of housing choices regardless of race, color, national origin, religion, sex, familial status, or disability. Local governments, because of their influence and power, are in the most effective position to promote fair housing. CDBG subrecipients make a commitment to Affirmatively Further Fair Housing in the community as a recipient of CDBG funds. Although DED has a specific action requirement, it is important for subrecipients to be aware that this is a commitment to understand every individual's fair housing rights and ensure all local policies and practices do not hinder fair housing and when appropriate actively further fair housing.

Subrecipients, as a Special Conditions requirement must:

- **Local Contact:** Identify a local contact as the community Fair Housing representative.
 - The Fair Housing Representative is preferably an employee or elected official of the local government that will actively promote fair housing and ensure potential fair housing violations are reported to the appropriate agencies.
 - DED does not expect, or recommend, that the community Fair Housing representative take on the responsibility of deciding whether specific complaints are legitimate violations of the Fair Housing Act.
 - The Fair Housing representative needs to make individuals aware of the agencies that can assist them with investigating and resolving a complaint that is potentially a violation of the Act.
- **Proposed AFFH Action:** Identify a specific action to Affirmatively Further Fair Housing (AFFH).
 - This specific action is undertaken during the life of the grant.
 - Maintain documentation of the action(s) in the project file. Documentation may include newspaper articles, meeting and board minutes, agreements and agreements with workshop presenters, sign-in sheets, websites, and video files.

Standard, minimal AFFH actions that may be undertaken, without additional actions, only by a subrecipient that is a first-time recipient of CDBG funds and with permission from DED program representative:

- Add the Equal Opportunity Fair Housing logo to official letterhead.
- Prominently display posters, logo, and informational material on fair housing in the village office and community meeting places.
- Pass a Fair Housing Resolution with a commitment to fair housing and measurable action steps to promote fair housing.

Acceptable Fair Housing Actions for purposes of meeting the Special Conditions requirement that Affirmatively Further Fair Housing:

- Undertake a review of existing fair housing ordinances, zoning and land use practices for discriminatory policies and practices. Document the review and make it available to the public. Develop a Fair Housing Plan with corresponding action steps to address discriminatory policies and practices.
- Take an action step identified in your Fair Housing Plan that has not been previously taken.
- Develop a community Fair Housing webpage which prominently displays the community’s commitment to Further Fair Housing on the community website including links to fair housing enforcement and education agencies such as the Nebraska Equal Opportunity Commission, the Fair Housing Center of Nebraska-Iowa, and HUD.
- Enhance the community’s Fair Housing Webpage with additional resource and education materials.
- Print a notice or advertisement that appears in a prominent location of the local newspaper that states that the subrecipient is an active supporter of fair housing laws. The notice or advertisement must include the contact information for the community Fair Housing representative.
- Support and participate in an educational program coordinated with local realtors, home builders, and/or mortgage lenders designed to provide information on fair housing rights.
- Provide a housing referral and counseling services session with fair housing advocates to assist minorities, women, and persons with disabilities seeking housing within the subrecipient’s jurisdiction.
- Host an informational fair housing session for local employers to encourage cooperation in efforts to find housing for their employees and to promote equal housing choices within the community.
- Speak to an elementary school class about the Fair Housing rights of the children and their families.
- Request assistance from the Nebraska Equal Opportunity Commission or other advocacy groups to host a fair housing informational or technical assistance seminar in your community or region.
- Sponsor a billboard that informs citizens of their basic fair housing rights and contacts if they feel they have experienced discrimination.
- Invite the Nebraska Equal Opportunity Commission (NEOC) or other Fair Housing advocacy organization to have a discussion with a group of lenders or rental property owners and managers about their fair housing responsibilities.
- Host a Fair Housing Month (April) event such as a Fair Housing poster contest or Housing information event that includes Fair Housing advocates.
- Other actions approved in advance by DED on a per grant basis.

When promoting fair housing it is sometimes more effective to refer to the injustice of “housing discrimination” in materials for the public as most people are familiar with the concept of discrimination.

Basic Facts about Individual Rights and Other Components in the Fair Housing Act

What Housing Is Covered?

The Fair Housing Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

What Is Prohibited?

In the Sale and Rental of Housing:

No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting) or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

In Mortgage Lending:

No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap (disability):

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminate in appraising property
- Refuse to purchase a loan or
- Set different terms or conditions for purchasing a loan.

In Addition:

It is illegal for anyone to:

- Threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others who exercise that right.
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.
- Threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others who exercise that right.
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

Additional Protection if You Have a Disability

If you (or someone associated with you):

- Have a physical or mental disability (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities
- Have a record of such a disability or
- Are regarded as having such a disability

Your landlord may not:

- Refuse to let you make reasonable modifications to your dwelling or common use areas, at your expense, if necessary for the disabled person to use the housing. (Where reasonable, the landlord may permit changes only if you agree to restore the property to its original condition when you move.)
- Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.
- Examples:
 - A building with a "no pets" policy must allow a visually impaired tenant to keep a guide dog.
 - An apartment complex that offers tenants ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space near her apartment if necessary to assure that she can have access to her apartment.

However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

Requirements for New Buildings

In buildings that are ready for first occupancy after March 13, 1991, and have an elevator and four or more units:

- Public and common areas must be accessible to persons with disabilities
- Doors and hallways must be wide enough for wheelchairs

All units must have:

- An accessible route into and through the unit
- Accessible light switches, electrical outlets, thermostats, and other environmental controls
- Reinforced bathroom walls to allow later installation of grab bars
- Kitchens and bathrooms that can be used by people in wheelchairs

If a building with four or more units has no elevator and will be ready for first occupancy after March 13, 1991, these standards apply to ground floor units.

These requirements for new buildings do not replace any more stringent standards in State or local law.

Housing Opportunities for Families

- Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under the age of 18 live with:
 - A parent
 - A person who has legal custody of the child or children or
 - The designee of the parent or legal custodian, with the parent or custodian's written permission
- Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

Exemption: Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State, or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units and adheres to a policy that demonstrates an intent to house persons who are 55 or older

A transition period permits residents on or before September 13, 1988, to continue living in the housing, regardless of their age, without interfering with the exemption.

If You Think Your Rights Have Been Violated

HUD is ready to help with any problem of housing discrimination. If you think your rights have been violated, the Housing Discrimination Complaint Form is available for you to download, complete and return, or complete online and submit, or you may write HUD a letter, or telephone the HUD Office nearest you. You have one year after an alleged violation to file a complaint with HUD, but you should file it as soon as possible.

What to Tell HUD:

- Your name and address
- The name and address of the person your complaint is against (the respondent)
- The address or other identification to the housing involved
- A short description to the alleged violation (the event that caused you to believe your rights were violated)
- The date(s) to the alleged violation

Where to Write or Call:

Send the Housing Discrimination Complaint Form or a letter to the HUD Office nearest you or you may call that office directly.

If You Are Disabled:

HUD also provides:

- A toll-free TTY phone for the hearing impaired: 1-800-927-9275.
- Interpreters
- Tapes and braille materials
- Assistance in reading and completing forms

What Happens when You File a Complaint?

HUD will notify you when it receives your complaint. Normally, HUD also will:

- Notify the alleged violator of your complaint and permit that person to submit an answer
- Investigate your complaint and determine whether there is reasonable cause to believe the Fair Housing Act has been violated
- Notify you if it cannot complete an investigation within 100 days of receiving your complaint

NOTICE OF RELEASE OF FUNDS/ENVIRONMENTAL CLEARANCE¹⁰

After receiving a Notice of Release of Funds/Environmental Clearance and incurring eligible costs, the subrecipient may request CDBG funds from DED. The subrecipient must complete and submit to DED a Request for CDBG funds only as funds are needed for the project.

DED recommends to subrecipients, as a sound financial practice, that CDBG funds be drawn after the subrecipient has incurred and paid the eligible expense. It is an absolute requirement that expenses are incurred prior to drawing CDBG funds. More information on requesting funds is available in Chapter 12.

CDBG AGREEMENT AMENDMENTS

During the course of administering a project, situations may occur that require a change in the original terms of the CDBG agreement. These changes are referred to as agreement amendments and include agreement extensions and other modifications.

Subrecipients must request approval from DED for any amendment to the CDBG agreement. When submitting the amendment request for approval, the subrecipient must complete and submit documentation within DED's grant management system, or other manner as prescribed by DED, to DED along with attachments required by DED.

Common requests for agreement amendments pertain to:

- Changes to the budget (i.e., sources and uses)
- Extensions of the agreement end date
- Decreases in proposed accomplishments
- Amendments to Program Guidelines (e.g., Housing or Commercial Rehabilitation Program Guidelines related to the project activities)

In processing an agreement amendment request, DED may consider relevant information and factors, including but not limited to:

- The effect the amendment will have on the points earned in the selection process
- Appropriateness of the amendment in relation to the project, including how or if it may enhance the overall impact of the original project as proposed and agreed to
- Subrecipient's performance and capacity, which may require an on-site visit before a determination can be made

DED will inform subrecipients as to whether the amendment has been approved. When the amendment is approved, DED provides the subrecipient with a formal agreement amendment, which will need to be executed by the subrecipient and DED. Subrecipients should never assume that an amendment has been, or will be approved, and no action should be taken until formal approval from DED is received by the subrecipient.

Subrecipients should be aware that changes to the budget that allocate funds from one activity to another activity may require the subrecipient to provide additional matching funds for the project, as the proportion of match to CDBG funds that was approved during the application phase must be maintained when the budget is modified.

Additional items may be required to accompany the submission of the CDBG Agreement Amendment Request depending on the type of amendment request. Indented below is a list of common types of agreement amendments and attachments to be submitted to DED with the CDBG Agreement Amendment

¹⁰ The Environmental Clearance is sometimes issued with the Notice of Approval (NOA).

Request, or as otherwise instructed. For all other agreement amendments not included in the list, please contact your Program Representative to determine what information may be required to process your request.

From time to time, as a result of federal or state directive, statutory changes, or other guidance, DED may change or revise the CDBG Agreement. If these changes involve policy, DED may issue notice via Policy Memo or other means as determined by DED. As an example, past changes to the agreements pertained to the Office of Management and Budget's release of the Super Circular and the U.S. Department of Housing and Urban Development's Notice of Transition to 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance, DED has made several changes and additions to the CDBG Agreements.

Changes to the Budget/Sources and Uses

- **Attachment 1:** Letter from the Chief Elected Official including:
 - 1) Certification that the local governing body has approved the budget amendment. This is typically meeting minutes.
 - 2) Identification and reasons for the proposed budget amendment; including
 - a. Changes to the nature of the project requiring the amendment.
 - b. Steps being taken to avoid any future amendment requests for the same reasons.
 - 3) If additional local matching funds are required as a result of this amendment, certification that such funds are available.
 - 4) If the amendment includes a new activity, certification that the activity meets the national objective.
- **Attachment 2:** Minutes from the public hearing held on the proposed amendment (required if reallocating more than 10% of the total original grant amount).
- **Attachment 3:** If the budget amendment will affect major milestones, a revised performance plan showing when major milestones will be completed for each activity
- **Attachment 4:** Certification of re-evaluation of the environmental assessment (this form is included in Chapter 6 – Environmental Review)

Extensions of the Agreement End Date

- **Attachment 1:** A letter from the Chief Elected Official stating the following:
 - 1) Certification that the local governing body has approved the extension. This is typically meeting minutes.
 - 2) Identification and reasons for the proposed amendment; including
 - a. Changes to the nature of the project requiring the amendment;
 - b. Steps being taken to avoid any future amendment requests for the same reasons
 - 3) If additional local matching funds are required as a result of this extension, certification that such funds are available.
- **Attachment 2:** A revised performance plan showing when major milestones will be completed for each activity.

Decreases in Proposed Accomplishments

- **Attachment 1:** A letter from the Chief Elected Official stating the following:
 - 1) Certification that the local governing body has approved the decrease in proposed accomplishments. This is typically meeting minutes.
 - 2) Identification and reasons for the proposed amendment; including
 - a. Changes to the nature of the project requiring the amendment;

- b. Steps being taken to avoid any future amendment requests for the same reasons.
- 3) If additional local matching funds are required as a result of this decrease, certification that such funds are available.
- **Attachment 2:** A revised performance plan showing when major milestones will be completed for each activity.

Amendments to Program Guidelines (Housing and/or Commercial Rehabilitation)

- **Attachment 1:** Letter from the Chief Elected Official stating the following:
 - 1) Certification that the local governing body has approved the amendment to the program guidelines. This is typically meeting minutes.
 - 2) Identification and reasons for the proposed amendment;
 - 3) If additional local matching funds are required as a result of this amendment, certification that such funds are available.
- **Attachment 2:** If the program guidelines amendment will affect major milestones, a revised performance plan showing when major milestones will be completed for each activity.
- **Attachment 3:** A complete copy of the proposed revised program guidelines.

Note: The CDBG Agreement Amendment Request is available through DED’s grant management system, AmpliFund.

POST AWARD REQUIREMENTS

Consideration should be given to a variety of Federal and State regulations that may have scheduling or cost implications; this includes but may not be limited to the following:

Records. Retain all information on grant-assisted activities for ten (10) years following completion and closeout of the grant. During the grant period, performance reports are required semi-annually. Projects deficient for reporting are subject to further action as described in the CDBG Administration Manual or other such publication or notification by DED.

2 CFR Part 200 Subpart F. Local governments and nonprofits that expend \$750,000 or more annually must conduct a single audit¹¹ of federal and local funds.

Davis-Bacon Act. This and related acts require that prevailing wage rates be paid to all employees working on a construction agreement of \$2,000 or more.

Acquisition/Relocation. Regulations for acquisition and relocation emphasize anti-displacement and should be discussed with the DED representative at the beginning of the project. The Uniform Relocation and Real Properties Acquisition Act (URA) apply to all federally assisted activities that involve the acquisition of real property or the displacement of persons. If CDBG funds are used in any part of the project, the URA would govern the acquisition of real property, including easements, and any resulting displacement, even if local funds are used to pay the acquisition costs. The URA requirements may include: formal notification of the affected property owner(s), preparation of an appraisal to determine fair market value, and a written purchase offer based on an amount determined to be fair market value. The only exception is a voluntary transaction that meets certain criteria.

¹¹ The auditor selection must follow the procurement procedures in 2 CFR 200.

Regulations emphasize anti-displacement. However, if displacement is necessary, relocation assistance must be provided to persons displaced by rehabilitation, acquisition, demolition, or the conversion of units for use other than low- to moderate-income dwelling units. Subrecipients will be required to replace every occupied unit that is demolished or converted with CDBG funds on a one-for-one basis within a three-year period.

Procurement. Open and free competition on solicitation of professional services, materials/goods, or construction bidding is also required. If the applicant intends to use CDBG funds to pay all or a portion of fees, or intends to claim fees as match, then 2 CFR 200 procurement guidelines must be followed.

Environmental Review. Grant subrecipients are required to obtain appropriate environmental clearance for their projects and to maintain an Environmental Review Record for each project. The review process involves consultation with various agencies, groups and individuals regarding historic properties, floodplain management, wetland protection, noise control, air quality, explosive and flammable operations, airport hazards, water quality, threatened and endangered species, wild and scenic rivers, farmland protection, environmental justice, contamination, and toxic substances. The environmental review and Request for Release of Funds/Certification, if required, must be completed before the subrecipient, or any participant in the development process, incur costs against the project.

Special Assessments¹². Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments to recover the non-CDBG portion may be made provided that CDBG funds are used to cover the special assessment on behalf of all properties owned and occupied by low- and moderate-income persons.

Equal Opportunity, Fair Housing, and Handicap Accessibility. Laws require that CDBG subrecipients administer their projects in a manner that affirmatively furthers fair housing and equal opportunity. All subrecipients will be required to undertake specific activities to further fair housing. Subrecipients must assure that all activities and services are accessible to those with disabilities.

International Energy Conservation Code. Most new construction or substantial rehabilitation of buildings must meet the 2018 International Energy Conservation Code¹³ or the most recent version of the International Conservation Code in effect, as required by 72-804-806 NRRS, and provide for Nebraska Department of Environment and Energy review of plans and specifications (at no cost) that meet said standards. This applies to lighting, heating, cooling, ventilating, or water heating equipment or controls, as well as building envelopes.

As an alternate compliance method when a licensed architect and/or engineer have designed a subject building, a Designer Certification may be submitted to NDEE instead of building plans and specifications. The certification form, which will be provided by the NDEE, will attest that the building design complies and provide summary information about the design.

When NDEE has determined that a subject building complies, or has received documentation of alternate compliance, it will provide a Verification of Construction form on which it must be certified that the building is constructed substantially according to the plans. At key points during construction, the building should be inspected to verify that insulation and other envelope components, and all specified lighting,

¹² Special Assessments are not allowed after 2021.

¹³ This went into effect July 1, 2020.

heating, cooling, ventilating and water heating equipment and controls are installed as indicated on the plans. The Verification of Construction form must be signed and returned to the NDEE within twenty (20) days following substantial completion. Contact NDEE at (402) 471-2867 for a copy of the code.

Continued Use. All community facilities assisted with CDBG funds must remain in the same use for five (5) years after grant closeout. For more information see 24 CFR 570.489.

SECTION 504¹⁴

Responsibilities at the Local Level

The passage of the Rehabilitation Act of 1973 marked the first time in U.S. history that the civil rights of persons with disabilities were specifically protected.

The intent of the Rehabilitation Act was to end discrimination based on disability when federal funding was involved. This represented a national commitment to equal opportunity.

This law reflects an awareness that accessibility extends beyond building and buses to attitudinal prejudices. Inaccessibility in any form will lead to the limitation of full economic and social participation of citizens in any community and will limit a community's potential.

Section 504 of the rehabilitation Act of 1973, as amended, applies to all subrecipients of federal funds.

The Department of Housing and Urban Development issued its procedures and policies on June 2, 1988, 15 years after Congress passed the Rehabilitation Act. These regulations require that any applicant for, or recipient of federal funds will not discriminate on the basis of handicap in employment or in programs for qualified handicapped persons.

"Handicap person" is defined as an individual who has a physical or mental impairment substantially limiting one or more major life activities, has a record of this type of impairment and is regarded as having such an impairment.

Subrecipients must ensure that agreements, contracts, or subcontracts contain nondiscrimination clauses.

The Civil Rights Restoration Act of 1988 requires that your entire community comply with Section 504 in all operations.

Self-Evaluation

The first step determining whether a municipality meets Section 504 requirements is a self-evaluation. The assessment must include an examination of all functions of the subrecipients distributing or receiving funds.

Handicapped persons and or representative organizations, as well as, any interested persons must be included in the process. The self-evaluation must include careful inspection of:

- employment and personnel policies and practices
- the extent to which programs and activities are readily accessible usable by individuals with disabilities
- the extent to which benefits and service delivery is free from discriminatory effects
- the intent to which contractual arrangements are free from subjecting handicapped persons to discrimination

¹⁴ 24 CFR 8 (<https://www.ecfr.gov/current/title-24/subtitle-A/part-8>)

An effective approach to examining service and program accessibility is to do a walkthrough of the process required for participation. Analyze not only the physical path traveled, but also the administrative requirements, service delivery, eligibility, criteria, and application procedures.

Any policies and practices that are found to be contrary to Section 504 requirements must be modified and steps taken to remedy the discrimination.

Transition Plan

When and if structural barriers have been identified during the self-evaluation process and cannot be removed with nonstructural solution, a transition plan must be completed and be made available for public inspection. The transition plan must involve disabled persons and or representative organizations. The plan must:

- identify physical obstacles in the facilities that limit program accessibility
- describe in detail the method that will be used to make facilities accessible
- specify a schedule to achieve full program compliance and if the plan is longer than one year identify steps to be taken during each year
- indicate the person responsible for implementing the plan
- identify the person or groups with whose assistance the plan was prepared

“Accessible” under Section 504 means ensuring that program and activities when viewed in their entirety are accessible to, and usable by individuals with handicaps.

The subrecipient is not necessarily required to make each existing facility or every part of an existing facility accessible, although in some cases that will be the only way to achieve accessibility.

Specifics About Communication

Communication is also an important component of accessibility. Disabilities may include a wide variety of impairments - hearing, visual, speech or mobility. Varied approaches may be required to assure effective information dissemination such as using audio and visual materials. Members of the community who have disabilities must likewise be able to communicate with the town. Auxiliary aids, such as sign language interpreter, may be required.

Subrecipients must ensure effective communication with persons with all types of disabilities in all activities. Where the subrecipient communicates with applicants and beneficiaries by phone, a TDD is required, or an equally equivalent system must be available.

Specifics About Nondiscrimination in Employment

Any federally assisted subrecipient cannot legally limit, segregate or classify applicant or employees in any way that negatively affects their status or opportunities because of handicap. In pre-employment and employment activities discrimination based on a handicap must not occur and reasonable accommodations must be made to the physical or mental limitations of otherwise qualified individuals unless it creates undue hardship for the subrecipient.

It is important to remember that the essence of Section 504 provides for equal opportunity not necessarily identical results or level of achievements. Section 504 does not require the hiring or promotion of someone simply because they have a disability.

Reasonable accommodation in employment is determined on a case-by-case basis. It means reasonable modifications on the job or the workplace to enable a handicapped person to perform the job for which they are qualified.

HUD's regulations specify that an employer is prohibited from discriminating in:

- Recruiting, advertising, and processing of applications
- Hiring, upgrading, promoting, tenure, demotion, transfer, layoffs, termination right or return from layoffs, illness, and rehiring
- Rates of pay and any other forms of compensation
- Job assignments, classifications and description, organization's structure, lines, progression, and seniority lists.

A subrecipient must examine its employment policies and practices as part of the detailed self-evaluation. This assessment scrutinizes employment tests and other procedures of selection to make sure that they do not screen out handicapped persons. Selection procedures must be job related and measure a person's ability not an impairment.

Specifics About Program Accessibility

Under HUD's regulations program, accessibility is divided into two broad categories: non-housing and housing. The technical standards used by HUD for determining physical access in both categories is the Uniform Federal Accessibility Standards. (UFAS)

"Facility" is defined under Section 504 as any portion of a building, equipment, roads, walkways, parking lot or other real property. "Accessible" for non-housing purposes means that a facility or portion of a facility can be approached, entered and used by individuals with physical handicaps. For housing purpose, accessible means, in addition, that a dwelling is on an accessible route and adaptable inside.

Non housing programs as well as existing facilities in which they are situated must be readily accessible to and usable by persons with disabilities. Accessibility problems will be determined, once again, under your self-evaluation. The focus of program access is providing your programs in the most integrated setting possible. Providing separate or different programs is illegal unless necessary to achieve equal opportunity.

Methods of improving program access in existing facilities can include:

- Relocating programs to accessible facilities or accessible portions facilities
- Acquiring or building new facilities
- Selectively altering facilities
- Changing operating policies and procedures
- Assigning aides to assist beneficiaries
- Adding or redesigning equipment or furnishings
- Conducting home visits

All newly constructed multi-family, federally assisted housing project under Section 504 must have:

- A minimum of 5% of total dwelling units accessible for individuals with mobility impairments
- An additional 2% of units accessible for persons with hearing or vision impairments
- All units made adaptable that are on the ground level or can be reached by an elevator

The Fair Housing Amendment Act (Title VII) passed in 1988, extended federal housing anti-discrimination protection to families and people with disabilities. Section 504 is often more exacting in its requirements than Title VII.

The primary difference between the two is the Fair Housing Amendment requires that a landlord must allow a tenant to make reasonable modifications to a unit, paid for by the tenant. Section 504 provides that the landlord is responsible for making and paying for reasonable accommodations.

Compliance and Complaints

HUD's Office of Fair Housing and Equal Opportunity (FHEO) is responsible for seeking cooperation from and providing assistance to subrecipients regarding compliance. FHEO may perform periodic reviews of subrecipients or require reports or other information to measure compliance, including records of program participation by individuals with handicaps.

A complaint can be made by any individual or authorized representative of that individual who believes they have been the subject of discrimination based on a disability. This complaint would be filed with FHEO. The complainant's identity will be held in confidence unless written authorization is given.

The time period for filing complaints is within 180 days of the alleged act. The subrecipient will be notified by FHEO within 10 calendar days of receiving the complaint. Within 20 calendar days of this acknowledgement the complaint will be accepted, rejected, or referred to the appropriate federal agency.

Rather than having to exhaust administrative appeals, a person who believes their rights have been violated under Section 504 may file in federal court. The remedy through court action may include the award of damages, back pay, seniority and as with any equal opportunity action, attorney fees, or injunction against the noncomplying project.

It is HUD's policy to encourage informal resolutions to matters, solicit voluntary compliance and corrective action. Noncompliance with requirements of Section 504 may ultimately result in the termination of or refusal to grant federal assistance.

Special Requirements for Subrecipients With 15+ Employees

There are several special requirements for Section 504 compliance for subrecipients with 15 or more full or part time employees.

Subrecipients must keep a list of interested person or groups consulted in the self-evaluation process, a description of the areas examined, problems identified and a description of the modifications made and remedies taken to eliminate discriminatory policies and practices. This should remain available for public review for at least 3 years after completion.

A least one person must be designated to coordinate compliance efforts and most often it is the City Manager or Clerk.

A grievance procedure must be adopted for larger municipalities incorporating due process standards and allowing for prompt local resolution of any complaints of discrimination based on disability. Existing grievance procedures can often be adapted to satisfy this requirement.

Initial and continuing notices must be given to the public, job applicants and employees of their rights under Section 504 and the municipality's policy against discrimination, including that reasonable accommodation will be made.

Similar notice needs to be included in any municipal recruitment or information material. The notice must include:

- A statement that your municipality does not discriminate on the basis of handicap status in the provision of its programs, services or personnel practices
- The name of the program coordinator who is the responsible employee designated to coordinate the implementation of the handicapped discrimination requirements
- Methods of notification which ensure that visually impaired and hearing-impaired persons will have access to the information