

Chapter 10: Housing

Introduction

Like all other aspects of the KCDBG Program, there are a variety of ways that grantees may use KCDBG funds for housing activities that serve low- and moderate-income households (LMI). However, the majority of grantees in Kentucky will administer housing programs as discussed in this chapter.

This chapter is presented in two parts. Part I provides information pertaining to the implementation of voluntary homeowner rehabilitation programs. Part II reviews involuntary programs, which are programs that involve the acquisition of property through the use of eminent domain in neighborhood revitalization areas. Involuntary programs may also involve other activities such as demolition, rehabilitation, homebuyer assistance, rental housing, etc.

PART I: HOUSING REHABILITATION (VOLUNTARY) PROGRAMS

This part of the Housing Chapter reviews traditional housing rehabilitation activities (also called Voluntary Programs) and provides a step-by-step process for implementing housing rehabilitation programs in compliance with applicable rules and requirements.

Section 10-A. Eligible Activities and National Objectives

The most common type of single-family housing activity undertaken with KCDBG funds is the homeowner rehabilitation program. CDBG-funded homeowner rehab programs assist low- and moderate-income persons that voluntarily apply to the program and are determined to be eligible to bring their homes up to, at a minimum, the International Code Council (ICC) Property Maintenance Code. If the activity is a reconstruction project (due to the condition of the home), the unit must meet the Kentucky Residential Code (KRC).

Housing units are typically owner-occupied single-family structures. However, there are some variations to traditional rehabilitation that involve other CDBG-eligible activities, including:

- ✓ **Demolition and Reconstruction (Rehabilitation).** KCDBG funds may be used for demolition and reconstruction. Reconstruction is the rebuilding of a structure on the same site in substantially the same manner, and is considered a rehabilitation activity. Deviations from the original design (such as the addition of another room) may be permitted for reasons of safety, occupancy, zoning, etc. Note, however, that adding rooms may constitute new construction. Contact DLG for specific questions if reconstruction is anticipated. Reconstruction of residential structures would also permit replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing, or a “stick built” structure if manufactured housing is not allowed under existing zoning.
- ✓ **Conversion.** The cost of converting an existing non-residential structure to residential use by an eligible household or for eligible households is allowed as a rehabilitation activity. KCDBG funds may also be used to rehabilitate rental housing under certain conditions. (Refer to page 20 of this Chapter for guidance that is specific to rental housing rehabilitation.)

Guide to National Objectives and Eligible Activities for State CDBG Program may be downloaded from the HUD Exchange website at: <https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/>

✓ **Connections to water/sewer lines and septic systems.** The costs of connecting existing residential structures to water distribution lines or local sewer lines and payment of connection fees are eligible costs. The upgrading or replacement of an existing substandard septic system is also an eligible cost as part of a rehabilitation project, if providing a service lateral is cost prohibitive. Grantees should work with the local health department to determine the criteria for a substandard septic system. Connections to water/sewer lines and replacement or upgrading of septic systems cannot be stand-alone activities. These activities must be completed in conjunction with the rehabilitation of the unit and the unit must be brought up to the International Code Council (ICC) Property Maintenance Code or, if reconstruction, the Kentucky Residential Code (KRC).

✓ **Homeowner Maintenance/Life Skills Education.** Providing education courses to homeowners on various topics such as home maintenance, budget counseling and other life skills is eligible if provided to assisted households as part of a KCDBG funded housing rehabilitation or homebuyer program. If counseling services are provided, DLG requires the grantee to complete the Counseling Report-Homeowner Maintenance/Life Skills Education form (Attachment 10-1).

Attachment 10-1:
Counseling Report-Homeowner
Maintenance/Life Skills
Education Form

Grantees are responsible for publicly announcing housing rehabilitation programs, including funding availability and that the power of eminent domain will not be used under the program. The grantee should also develop and publicize its rating and ranking criteria for beneficiary selection. It is up to the unit of local government to determine what their community's priorities will be based on their community's needs, which should then result in the establishment of the rating and ranking criteria and the points that will be associated with each. (A sample rating and ranking criteria is provided as Attachment 2 to this chapter.) Grantees should make such announcements by placing an advertisement in a newspaper or periodical of general circulation for their citizens and by undertaking additional actions to reach LMI persons (e.g., distribution at a grocery store, church, etc.).

Attachment 10-2:
Sample Rating and Ranking
Advertisement and Criteria for
Voluntary Programs

Ineligible Activities

The general rule is that any activity not specifically authorized under the CDBG regulations is ineligible to be assisted with KCDBG funds. The regulations stipulate that the following activities may not be assisted with CDBG funds:

✓ New housing construction except under certain conditions. Certain types of nonprofit organizations that are undertaking certain kinds of activities may be allowed to utilize CDBG funds for new construction. The conditions under which this may occur are discussed in Section 10-E of this Chapter.

24 CFR 570.204(c)

- ✓ Income payments, which are defined as grants to an individual or family that are used to provide basic levels of food, shelter (i.e., payment for rent, mortgage and/or utilities) or clothing;
- ✓ Luxury or non-standard items, such as swimming pools, Jacuzzis, high-end appliances, window air conditioners, washers and dryers, etc.; and
- ✓ Labor time for sweat equity may not be paid out to recipients of rehabilitation assistance.

Meeting a National Objective

All CDBG-funded activities must not only be eligible, but also meet a national objective. Housing rehabilitation activities must result in permanent, residential housing that will be occupied by low-and moderate-income (LMI) households upon completion.

Occupancy of housing shall be based on the household income of all household members including earned income for members over 18 years of age and unearned income for all household members.

Housing income eligibility uses the following rules:

- ✓ Each single-family unit rehabilitated with KCDBG funds must be occupied by a LMI household.
- ✓ If the structure contains two dwelling units, at least one unit must be occupied by a LMI household.
- ✓ For properties with more than two units, at least 51% of the units must be occupied by LMI households.

For more information on documenting households as LMI, grantees should refer to the section regarding applicant eligibility later in this Chapter.

If a grantee is undertaking a housing activity that does not benefit LMI households, see Part II Involuntary Programs to determine if it is an eligible activity and how to document compliance with another national objective.

24 CFR 570.483(b)(3)

Guide to National Objectives and Eligible Activities for State CDBG Program may be downloaded from the HUD Exchange website at:
<https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/>

Earned versus Unearned Income Example:

While the income **earned** by a household member under the age of 18 such as wages from a local fast-food restaurant would not be counted as a part of the total household income, **unearned** income such as SSI benefits paid on behalf of a disabled minor would be included in the calculation of household income.

Section 10-B. Program Guidelines

KCDBG funded housing rehabilitation programs must be consistent with the grant agreement requirements. Any significant variation requires approval from DLG. The grantee must develop program guidelines covering the procedural requirements of its rehabilitation program and administer the guidelines uniformly.

These guidelines should be specific to the project and well defined as to what the grantee requires of the property owner in return for providing the assistance. Guidelines should generally contain the following key elements:

- ✓ Types of financial assistance,
- ✓ Applicant eligibility,
- ✓ Property eligibility,
- ✓ Property standards,
- ✓ Contracting requirements,

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- ✓ Relocation requirements,
 - ✓ Grievance procedures, and
 - ✓ Maintenance agreements.

Each of these topics is discussed in more detail below. In addition, sample Program Guidelines are provided as Attachment 10-3.

Attachment 10-3:
Sample Program Guidelines

The program guidelines should be developed by local agency staff. Guidelines should be written in plain language and made available to all potential applicants to the rehabilitation program.

The guidelines should be adopted by the local governing body in order to meet KRS Chapter 99 (for establishing public purpose to use KCDBG funds for private use). The guidelines should always include a clause describing the process by which they can be changed. If the local governing body passes special policies that change the adopted guidelines, these changes must also be approved by the governing body as an addendum to the guidelines. Each page of the adopted guidelines and addendum must be initialed by eligible participants and kept in their file.

All applicants initially selected to participate in the project are potential applicants until re-verification of income can prove they are low and moderate-income based on the applicable HUD income limits. This re-verification should not be done until KCDBG funds are made available. Once income re-verification identifies the eligible applicants, the program guidelines should be presented to the applicant household prior to commencing work on their properties. The grantee should ensure that the property owner has initialed each page and signed the last page of the guidelines for potential issues/complaints that may occur while providing them with assistance.

Applicants who choose not to comply with the grantee’s guidelines can choose not to participate in the “voluntary” rehabilitation project.

Types of Financial Assistance

There are two types of financial assistance that can be provided in housing rehabilitation programs—grants and loans—and within each category there are numerous variations. DLG allows grantees the flexibility to determine which type of financial assistance to use depending upon local program design.

- ✓ **Grants.** Grantees can use KCDBG funds to make outright grants to eligible households to cover the cost of rehabilitation of homes. Grants do not have to be paid back and normally come with no restrictions or further obligations by the recipient to the grantee. Many grantees will provide grants for the cost of temporary relocation or lead hazard removal. (NOTE that grants are the only allowed form of assistance under involuntary programs. Refer to Part II of this chapter for more information.)
- ✓ **Loans.** A loan is a sum of money lent to a borrower. The use of loans to rehabilitation recipients may enable the grantee to recover all or a portion of the original financial assistance for use in accomplishing additional housing rehabilitation. Loans also provide the recipient with security on the property that is not possible when funds are provided as a grant.
 - Loan programs are self-perpetuating when loan proceeds are used to provide other loans. Repayments from housing rehabilitation loans made with KCDBG funds are considered

Chapter 3: Financial Management

program income and are to be expended according to DLG requirements. (See Chapter 3: Financial Management for more information.)

There are three basic types of loan programs that may be established:

- ✓ **Forgivable loans.** A forgivable loan resembles a grant in that if the present owner retains the property for a certain period (usually a minimum period of five years), no repayment is required. The forgivable loan is instituted through the use of a mortgage and often accompanied by a promissory note (See Attachments 10-4 and 10-5). Each year the owner retains ownership and resides in the home a certain percentage of the loan amount is forgiven as if it were a grant. Should the owner continue as owner-occupant of the home until the term of the note expires, the owner pays nothing and has no conditions on the disposition of the property. Should the property be sold, vacated or its use changed prior to the expiration of the note, the owner owes the grantee whatever balance remains on the note. Mortgages and promissory notes must be recorded at the County Clerk’s Office.

Attachment 10-4:
Sample Real Estate Mortgage
Attachment 10-5:
Sample Promissory Note
- ✓ **Deferred loans.** A deferred loan is a loan made to an eligible homeowner that does not require repayment for a specified number of years or until the property is sold, at which time the remaining prorated balance would become due. This prorated value may be due to the depreciation of the rehabilitation work. DLG recommends a deferment period of five years. Grantees often use deferred loans to provide assistance to households that are currently unable to afford loan repayments. Funds received by the grantee for repayment of a deferred loan may be recycled for additional housing rehabilitation when repaid. This must be in accordance with the Grantee’s revolving loan fund policy. (Refer to Chapter 3: Financial Management for additional guidance on revolving loan funds.) The deferred loan is instituted through the use of a mortgage and often accompanied by a promissory note.

Chapter 3: Financial Management
- ✓ **Amortizing loans.** Amortizing loans are loans that require payment and that have a set interest rate and term. Grantees may provide loans at a single interest rate, or establish a sliding scale in which the interest rate is related to a household’s income or ability to pay. The term of the loan is also at the discretion of the grantee. All loans may be made for the same term or terms may be adjusted depending upon the size of the loan and the borrower’s ability to pay (e.g., larger loans having longer terms). The amortizing loan is instituted through the use of a mortgage and often accompanied by a promissory note.

There are several techniques or practices that can be used by grantees in loan programs to leverage funds:

- ✓ **Write-downs or principal interest subsidy.** A write down, also commonly referred to as a principal or interest subsidy, is a mechanism in which rehabilitation is financed by a loan from another source such as a private lender, but the amount repaid by the property owner is partially subsidized, or offset by the inclusion of grant funds. The amount of write down is predicated on the owner’s ability to pay. KCDBG funds may be used to pay the write down either as a grant or forgivable loan. The remaining amount is loaned to the owner and is amortized by monthly payments. The loan portion of the write down may be provided by a bank or other private or public funding sources.

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- ✓ **Loan leveraging.** Loan leveraging is the practice of using KCDBG funds along with funds from private lending institutions. Having other entities involved in the financing of a project will leverage KCDBG dollars. Loan leveraging programs often require staff with financial background and lending experience.

Tip: It is important for grantees to be aware that for voluntary rehabilitation programs, DLG requires a minimum of a five-year primary residency requirement for all recipients. Therefore the grantee should use a mechanism such as a covenant or lien recorded on the property to ensure that this requirement is enforceable.

A grantee should design its programs so that financial assistance is affordable to recipients. It is generally assumed that a household can afford to pay up to 25 to 30 percent of their gross monthly income for housing costs. The guidelines should clearly explain how ability to pay will be calculated (specifically what percent of household income will be used). If a household's ability to pay is zero, a forgivable payment loan may be the most appropriate option. Regardless of the percentage amount chosen, the determination must be used consistently across the program for all recipients.

Applicant Eligibility

Program guidelines should specify who is eligible for the program, the types of assistance for which they are eligible, and the amount of assistance available. The types and amounts of assistance available should be based on household and tenure characteristics and ability to pay and should be consistent across a grantee's program.

Determining Household Income

DLG requires that applicants conduct an initial threshold determination of household income prior to grant application to DLG. The income determination must be conducted using the current fiscal year Section 8 Median Income Limits for the applicants' county. These limits are posted on DLG's website. However, once funds have been awarded, but before providing any assistance, the grantee must conduct a detailed income verification of all applicants. DLG requires all grantees to follow the Part 5 (Section 8) method of calculating annual household income.

The Part 5 (Section 8) definition of annual income is the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period.

24 CFR Part 5

This income definition is used by a variety of federal affordable housing programs including Section 8, Home Investment Partnerships Program (HOME), Public Housing and the Low Income Housing Tax Credit (LIHTC) Program.

24 CFR Part 5 provides a comprehensive list of the types of income that are included and excluded from the calculation of annual gross income. Income from assets is also recognized as part of annual income under the Section 8 definition. The following steps should be taken to determine household income for the purpose of determining eligibility for KCDBG housing assistance:

- ✓ **Step 1:** Ask questions of the household regarding annual income and income from assets. Follow the rules pertaining to what types of income to include and exclude.

- ✓ **Step 2:** Gather appropriate documentation such as wage statements, interest statements, third-party verifications, etc. (Grantees should use Attachment 10-6: Sample Applicant Release to Obtain Verification of Income form.) Note: While verification from other agencies and employers is considered appropriate, self-certification of income by the household is not sufficient for housing activities.

Attachment 10-6:
Sample Applicant Release to
Obtain Verification of Income

- ✓ **Step 3:** Calculate total household income by adding up the information obtained. Use Attachment 10-7: Sample Part 5 (Section 8) Annual Household Income Calculation Form.

Attachment 10-7:
Sample Part 5 (Section 8) Annual
Household Income Calculation
Form

- ✓ **Step 4:** Compare the total household income to the HUD income limits for that household's size. Income limits are provided by DLG and can be found on HUD or DLG's website. Determine if eligible for assistance.
- ✓ **Step 5:** Place the income calculation, determination and back-up documentation in the appropriate files.

Details and forms used for calculating household income for rehabilitation projects are provided in the "Technical Guide for Determining Income and Allowances" and an Income Calculator for CDBG is available for use on the HUD Exchange website: <https://www.hudexchange.info/incomecalculator/>.

Grantees should consult Chapter 1: Project Administration "Conflict of Interest and Disclosure" and complete Attachment 1-4 "Section 102 Disclosure Report" to disclose any conflict of interest associated with the project.

Property Eligibility

Eligible units for rehabilitation must be substandard and occupied by LMI households (households whose income is below 80 percent of the area median income as provided by HUD annually). Grantees must identify and document the major deficiencies that qualify the unit as substandard. The unit must be owned by the applicant and be the primary residence of the applicant. The grantee must receive and document proof of ownership from the recipient. A family or individual owns the property if that family or person:

- ✓ Has fee simple title to the property;
- ✓ Maintains a 99-year leasehold interest in the property;
- ✓ Has a recorded life estate agreement; or
- ✓ Owns or has a membership in a cooperative or mutual housing project that constitutes homeownership under state law.

DLG requires the grantee to conduct a title-search to determine the applicant is the rightful owner of the property. The title search will also allow grantees to learn if there are any outstanding liens on the property. All tax liens must be cleared before assistance can be provided to the applicant.

Since DLG has a minimum five-year residency requirement for all recipients, it is recommended that grantees have recipients sign a certification that the property is and will remain their primary residence. This five-year residency requirement should also be clearly stated in the agreement between the recipient and the grantee and recorded in a lien or covenant.

Homeowners must also have current insurance and maintain insurance over the period of CDBG assistance for a property to be eligible for rehabilitation with KCDBG funds. The grantee should be listed on the policy as an additional party or loss payee to obtain notification of insurance coverage or changes to the policy.

Conflict of Interest

KCDBG grantees and subrecipients must comply with procurement requirements found as outlined in Chapter 4 and with other state and local applicable conflict-of-interest provisions.

Chapter 4: Procurement

If a grantee believes there may be a potential conflict of interest with a property or applicant, the grantee should refer to Chapter 1: Project Administration and/or contact DLG for further guidance.

Chapter 1: Project Administration

Property Standards

The rehabilitation program guidelines should specify the property standard that units must meet after rehabilitation is complete. Grantees must meet all local housing codes and occupancy standards for their rehabilitation program. At a minimum, the grantee must adopt the International Code Council (ICC) Property Maintenance Code. All new construction and reconstruction projects must meet Kentucky Residential Code.

Information regarding the International Code Council (ICC) Property Maintenance Code may be found at www.iccsafe.org/

The guidelines should clearly state both the eligible and ineligible improvements. Key rules in this area include:

The Kentucky Residential Code may be found at <https://dhbc.ky.gov/Documents/2018%20Kentucky%20Residential%20Code%20>

- ✓ Any improvement needed to bring the unit to code or which will result in energy conservation should be specified as an eligible improvement.
- ✓ Exterior painting or siding should also be eligible, depending on local weather conditions.
- ✓ General property improvements—carports, window air conditioning, den additions, etc., are generally ineligible.

24 CFR 570.487(c)

To comply with HUD’s Lead Safe Housing Rule (LSHR), rehabilitation to all units built prior to 1978 must follow prescribed rehabilitation practices and pass final clearance before approval of payment to the contractor. Tenants may be required to vacate the unit and not allowed to re-occupancy unit until an acceptable clearance test is achieved. See Section 10-C of this Chapter for more information on compliance with LSHR.

Contracting Requirements

The contract for homeowner rehabilitation recipients must always be between the property owner and contractor. The grantee or subrecipient may act on the homeowner’s behalf if the owner voluntarily delegates this authority to them and signs an authorization form (Attachment 10-8). The grantee remains responsible for monitoring contractor compliance with payments and all other program requirements.

Attachment 10-8:
Sample Homeowner
Authorization for Agency to Act
as Agent
List of Parties Excluded
from Federal Procurement
or Nonprocurement Programs
on the SAM website:
<https://sam.gov/portal/SAM/##11>

Grantees are required to ensure that contractors receiving work funded by KCDBG have not been excluded from participation in Federal programs before contracts are awarded. To do this, the grantee must check the website at System for Award Management at <https://www.sam.gov/>. The search of the excluded party's website must be completed prior to signing the construction contract and a printout documenting the search should be placed in the file documentation.

The guidelines should also specify contracting procedures that govern the conduct of work, such as those relating to change orders, dispute resolution, and acceptance of work. The grantee should assume final authority for sign-off on completion of work in the event of a dispute between the owner and contractor. See Chapter 5: Contracting for more information.

Chapter 5: Contracting

Relocation Requirements

As described in Chapter 8: Relocation, Displacement and One-for-One Replacement, federal relocation requirements generally do not apply to homeowner rehabilitation programs since participation is voluntary and usually does not involve permanent displacement. However, if the owner's home is a two- to four-unit structure with rental units, the tenants are covered by the Uniform Relocation Act (URA) and possibly by Section 104(d) of the Housing and Community Development Act. 24 CFR Part 42 are the regulations that implement Section 104(d) of the Housing and Community Development Act. See Chapter 8: Relocation, Displacement and One-for-One Replacement for more information.

Chapter 8:
Relocation, Displacement and
One-for-One Replacement

24 CFR Part 42

In addition, the LSHR states that temporary relocation may be required if lead hazard reduction work is performed. The grantee is not obligated to provide financial assistance for an owner occupant; however, it must ensure the family is relocated to a suitable, decent, safe and similarly accessible dwelling unit that does not have lead-based paint hazards. See Chapter 8 and 24 CFR 35.1345 for more information.

Chapter 8:
Relocation, Displacement and
One-for-One Replacement
24 CFR 35.1345

For all other situations, grantees are permitted (but not required) to relocate homeowner households temporarily while work is being completed. (For example, if rehabilitation work requires shutting off heat or plumbing for some period of time, temporary relocation may be appropriate.) In these cases, the grantees must meet several requirements:

- ✓ Grantees must have a written policy on eligibility and level of relocation benefits, known as an Optional Relocation Policy, so that benefits are distributed in a fair, nondiscriminatory manner.
- ✓ Residents who are relocated temporarily must be offered a dwelling that is suitable, safe, sanitary and lead safe. However, the unit does not have to be comparable. All other conditions of the move must be reasonable.

Grievance Procedures

Grievances are a part of every rehabilitation program. The best prevention is to conduct frequent on-site inspections of the work, and stop work when there are problems until the problems are corrected.

Also grantees should make efforts to ensure recipients are well informed about the contract work, have initialed and signed-off on the work write-up, and have a copy of the program guidelines that include the grantee's grievance procedure. Refer to Chapter 1: Project Administration for more information on grievances. A sample Grievance Procedures is provided as Attachment 10-9.

Chapter 1: Project Administration
Attachment 10-9:
Sample Grievance procedures

Maintenance Agreements

Each recipient under a voluntary program is required to agree to maintain their property for the term of the financial assistance. Maintenance of the property should be examined by the grantee throughout the term of financial assistance.

The grantee should reserve the right to take any appropriate action necessary to ensure that the rehabilitated property is maintained, which may include requiring an early payback of financial assistance. Therefore, the rehabilitation guidelines should detail the maintenance standards and procedures for enforcement.

Tip: The maintenance provisions apply only to Voluntary Programs. Grantees implementing Involuntary Programs may not place maintenance restrictions on assisted properties. (Refer to Part II of this chapter for more information on Involuntary Programs.)

Section 10-C. Implementing Housing Rehabilitation

Determining Staffing

In staffing a rehabilitation program, it is helpful to understand the specific skills and duties that will be needed. Some of the key elements include:

- ✓ **Finance Staff.** Staff is required for marketing the program, processing applications, completing income verifications, and ensuring that all KCDBG requirements are met for the project. General knowledge of mortgage lending is also helpful.
- ✓ **Rehabilitation Staff.** Staff is required for performing work write-ups and inspections. Qualifications may include a certification and considerable knowledge and/or experience in various aspects of housing construction, considerable inspection experience in government funded rehabilitation programs or in residential construction management, or certified in the completion of recognized building codes and/or rehabilitation standards training programs. These skills are found in experienced contractors, building inspectors, architects, etc., familiar with rehabilitation.

Marketing

In order to ensure a sufficient pool of qualified applicants, program staff should develop marketing procedures and materials (e.g., ads, flyers, etc.).

Marketing procedures should assure that the program is marketed and available to the full range of potential applicants, including those least likely to apply. These procedures should address the following:

- ✓ Use of equal opportunity language in advertisements and literature;
- ✓ Grantee waiver of eminent domain in advertisements and literature;

- ✓ Literature that is understandable to applicants, including key information available in other languages;
- ✓ A schedule and plans to ensure that advertising or other outreach efforts reach potential applicants at places they frequent;
- ✓ Lists of the places and/or personal contacts where program information is distributed such as churches, laundry mats, service providers, parks, etc.; and
- ✓ Accessible facilities such as the ability to accommodate people with disabilities and the completion of an accessibility self-assessment.

Screening Applicants

Applicants must be screened to determine income, property ownership and any other applicable criteria, as may be specified in the guidelines.

- ✓ The screening process is initially done through using DLG’s Rehabilitation Household Survey. Re-verification of income using the Part 5 (Section 8) definition of income is required before providing direct benefit if the household is receiving more than \$1,000. A sample CDBG Rehabilitation Assistance Application (Attachment 10-10) or another application format, at a minimum, must contain the following information:
 - Name of the owner and address of the property.
 - Signature of the owner and the date.
 - Number of persons (adults and children) in the occupant household and their ages.
 - Sufficient information concerning the occupant's household income.
 - The grantee should also verify that property taxes are current and in the case of an existing mortgage, that principle and interest payments are current and the mortgage is not in a delinquent or fail status.
 - Sufficient information to show that the occupant meets the grantee’s program eligibility criteria, including household income.
 - Verification of the above-referenced information.
- ✓ The interview is also a good time to give the applicant a copy of the pamphlet “Protect Your Family from Lead in Your Home” (Attachment 10-11). The grantee must document using a Verification of Receiving the Lead-Based Paint Pamphlet form (Attachment 10-12) that the pamphlet was provided to the applicant before any work may begin. The pamphlet can also be downloaded from DLG’s website. If the house is reconstructed, it is not required that the applicants be given the Lead Based Paint Pamphlet. The file should, however, be documented that the project is exempt from the Lead Safe Housing Rule since it is a reconstructed property.

Attachment 10-10:
Sample CDBG Rehabilitation
Assistance Application

Attachment 10-11:
“Protect Your Family from Lead
in Your Home” Pamphlet

Attachment 10-12:
Verification
of Receiving the Lead-Based Paint
Pamphlet form

The information collected is confidential and should be treated as such. Applicant's permission to obtain and verify any personal information must always be granted.

Tip: Detailed income documentation must be performed. See Section 10-B: Determining Household Income in this Chapter for more guidance.

Performing Work Write-Ups and Cost Estimates

A very thorough inspection of the property must be conducted to determine the type and cost of work necessary to bring the property into compliance with International Code Council (ICC) Property Maintenance Code (for rehabilitation) or the Kentucky Residential Code (for reconstruction). After the inspection, the work to be done should be written down. This is termed a work write-up. At this stage, the items must be estimated in terms of cost, a process to produce a cost estimate. These write-ups are usually done on a room-by-room basis. Some grantees with experienced staff have blank forms the housing inspector completes. If the staff is inexperienced, they may need detailed check-off forms that list virtually every possible deficiency. The housing inspector checks for each one and specifies action needed to remedy the problem. It is better to err on the side of caution. A Sample Work-Write up and Cost Estimate Form are provided as Attachment 10-13.

Attachment 10-13:
Sample Work-Write Up
and Cost Estimate Form

For reconstruction, DLG requires the use of Kentucky Housing Corporation's (KHC) Specifications for New Homes (incorporating Minimum Design Standards and Universal Design Standards, if applicable). These specifications are available on the KHC website.

Kentucky Housing Corporation's
(KHC) Specifications for New
Homes
<http://www.kyhousing.org>

If a home was constructed prior to 1978, the Lead Safe Housing Rule (LSHR) applies. Therefore, there will need to be two work write-ups -- one initial and a final work write-up. The initial work write-up must specify all the work to be done to bring the building to standard. The final write-up should include all work necessary to comply with applicable lead hazard reduction requirements (see the following sub-section of this chapter, Pre-1978 Properties and Lead Hazard Reduction, for guidance).

In addition, historic properties (those more than 50 years old and/or listed or eligible for inclusion on a national, state or local historic register) are required to follow the Secretary of Interior's Standards for Rehabilitation (also referred to as the Section 106 requirements).

During the environmental review process, grantees must consult the State Historic Preservation Officer (SHPO) for guidance for historic properties, which may require a Memorandum of Agreement or documentation approved by the SHPO. Grantees must then ensure the requirements stipulated by the SHPO be incorporated into the work write-up and cost estimate. Release of KCDBG funds cannot be obtained until the grantee receives SHPO concurrence. Refer to Chapter 2: Environmental Review for detailed guidance.

Kentucky Heritage Council State
Historic Preservation Officer
<http://heritage.ky.gov/>

Pre-1978 Properties and Lead Hazard Reduction

All units in a project assisted with KCDBG funds must comply with 24 CFR Part 35, which implements Title X of the Housing and Community Development Act of 1992, also referred to as the Lead Safe Housing Rule (LSHR). This regulation has been in effect since September 15, 2000, and Subpart J applies to rehabilitation projects. A briefing packet that explains more about HUD’s Lead Safe Housing Rule is provided as Attachment 10-14.

Chapter 2: Environmental Review

24 CFR Part 35

Attachment 10-14:
Lead Safe Housing Rule Briefing Packet

The applicability of the requirements for Subpart J depends on the level of assistance provided for a project. This level of assistance is determined by taking the lower of:

- ✓ The per unit rehabilitation hard costs (regardless of source of funds), or
- ✓ The per unit amount of federal assistance (regardless of the use of the funds).

Some rehabilitation work performed in pre-1978 units may be exempt from following the lead safe housing rule such as:

- ✓ Properties found not to have lead-based paint during current testing and earlier testing that meets the requirements of prior evaluations.
- ✓ Properties where all lead-based paint has been identified and removed using approved methods; and
- ✓ Rehabilitation that does not disturb paint.

Grantees should refer to the Lead Safe Housing Requirements Screening Worksheet Parts 1-4 (Attachment 10-15) and 24 CFR 35.115 and 35.165 for more information regarding exemptions.

Attachment 10-15:
Sample Lead Safe Housing Requirements Screening Worksheet Parts 1-4
24 CFR 35.115 and 35.165

Evaluation Method

After the initial work write-up is complete, the rehabilitation specialist must determine which lead evaluation activity must be followed. The evaluation activity required depends on the level of assistance (see above for the definition of the level of assistance):

- ✓ < \$5,000. Paint testing of surfaces to be disturbed must be completed. Paint testing must be conducted by a certified paint inspector or risk assessor.
- ✓ \$5,000-\$25,000. A risk assessment must be performed of the entire unit. A risk assessment must be conducted by a certified risk assessor.
- ✓ > \$25,000. A risk assessment must be performed of the entire unit. A risk assessment must be conducted by a certified risk assessor.

Attachment 10-16:
HUD-EPA Notice and Guidance
http://portal.hud.gov/hudportal/documents/huddoc?id=20264_abateguidance.pdf

Grantees should be aware that there are additional rules for the type of work that is performed depending on the intent of the work. See the combined HUD-EPA Notice and Guidance (Attachment 10-16) for more information.

Notification

Results of the paint test and risk assessment must be provided in a Notice of Lead Hazard Evaluation to the homeowner within 15 days of the grantee receiving them. The person performing the evaluation may be able to assist the grantee in completing the form. It is important for the homeowner to know that, under the LSHR, they must disclose any knowledge of lead in the home to any future buyers of the property. A sample Notice of Lead Hazard Evaluation is provided as Attachment 10-17.

Attachment 10-17:
Sample Notice of Lead Hazard
Evaluation

Grantees also have the option to presume there is lead in the unit rather than paint testing or risk assessments. If the grantee utilizes the presumption of lead option, the scope of work must address all painted surfaces. Grantees should note that this approach may raise the cost of the work as non-lead surfaces will be required to be treated as if they contained lead. Also, if the presumption method is followed, a “Notice of Presumption” must be provided to the homeowner within 15 days of performing the initial inspection. A sample Notice of Presumption is provided as Attachment 10-18.

Attachment 10-18:
Sample Notice of Presumption

Finalizing the Work Write-Up

If the paint testing or risk assessment shows there are no lead hazards, then traditional rehabilitation practices may be followed.

If there are lead hazards found in the home then the following lead hazard reduction activities must be followed based on the amount of assistance and incorporated into the work write-up.

- ✓ < \$5,000. Repair surfaces to be disturbed using safe work practices and trained workers.
- ✓ \$5,000-\$25,000. Perform interim controls using safe work practices and trained workers. If presumption occurred, perform standard treatments using safe work practices and trained workers.
- ✓ > \$25,000. Perform abatement using safe work practices and certified abatement supervisor and certified workers.

For more information about repair, interim controls, standard treatments, abatement and the types of training or certification required for personnel performing the work, please see the Briefing Packet on the LSHR (Attachment 10-14).

Attachment 10-14:
Lead Safe Housing Rule Briefing
Packet

The work write-up must be revised to incorporate the appropriate lead hazard reduction work and methods required to perform the work. Once the work write-up has been finalized, the cost estimate tells whether or not the work can be done within the average loan limits and the owner’s ability to repay.

The person preparing cost estimates should be familiar with the current rates for materials and labor and be able to estimate accurately the time required to complete each task. Good, reliable cost estimates are critical. Since costs change rapidly, it is important that cost estimates be used as soon as possible.

Executing Agreements with Beneficiaries

The grantee must enter into a formal written agreement with the applicant for the amount of the assistance made available (regardless of whether the assistance is in the form of a grant or loan). A Sample Rehabilitation Granting Agreement is provided as Attachment 10-19.

Attachment 10-19:
Sample Rehabilitation Granting
Agreement

- ✓ This agreement needs to be signed by the homeowner, prior to the start of work, and represents the official financial obligating instrument between the homeowner and the grantee.
- ✓ At a minimum, this agreement shall certify the legal owner of the property, the type of assistance (i.e., whether a grant or loan or combination), as well as outline all conditions associated with the assistance.
- ✓ Conditions of the agreement may include a monthly payment schedule if applicable, a minimum five year primary residency requirement, hazard insurance and property maintenance requirements, death of the applicant, conversion, transfer or sale of the property rehabilitated, and any other conditions that, if violated, may result in a reimbursement of funds by the applicant. To ensure adequate insurance coverage for the KCDBG lien position grantees may require hazard insurance to be maintained at a level adequate to protect the KCDBG lien.

If assistance takes the form of a loan, the grantee must also utilize a recorded mortgage to secure the amount of the federal investment. A sample Real Estate Mortgage is provided as Attachment 10-4.

Attachment 10-4:
Sample Real Estate Mortgage

Following approval, grantees should meet with the applicant to review the proposed scope of work to be undertaken. DLG requires the applicant to initial each page and sign the last page of work items, thereby attesting to the fact that the applicant was made aware of the improvements to be made to the property. The homeowner should also receive all proper notices and information about lead-based paint. It is also important to finalize any temporary relocation plans and set a schedule for the work.

Contracting for Rehabilitation

Developing and implementing effective contracting procedures is one of the most critical tasks in a housing rehabilitation program. Four key elements involved in the contracting process are covered in the following discussion: recruiting contractors, bidding procedures, preparing the contract, and contract award and monitoring.

Recruiting Contractors

It is often difficult to recruit contractors if there are only relatively small jobs for repairing homes in poor condition. The grantee should identify possible contractors and attempt to interest them in program participation. The yellow pages of the telephone book, the Chamber of Commerce, the Kentucky Department of Transportation Small Business & Civil Rights, KYPATC (see Chapter 4: Procurement), conversations with construction materials suppliers, and word of mouth are all information resources to aid in developing a contractors list. Certified lead-based paint contractors may also be found on the

Kentucky Health Department's
website:
[https://chfs.ky.gov/agencies/dph/
Pages/default.aspx](https://chfs.ky.gov/agencies/dph/Pages/default.aspx)

State of Kentucky's Health Department website at <https://chfs.ky.gov/agencies/dph/Pages/default.aspx>

To promote the participation of small contractors, the grantee may attempt to eliminate procedural barriers and provide technical assistance. Some grantees have:

- ✓ Waived bonding requirements and developed alternative ways to protect property owners (i.e., requiring a letter of credit from a financial institution).
- ✓ Provided technical assistance such as:
 - Financial management assistance;
 - Talking to local suppliers about credit extension to rehabilitation contractors;
 - Asking local financial institutions to extend lines of credit; and
 - Allowing progress payments after completion and inspection of a certain percentage of work.

In addition, grantees must ensure that they are using trained and certified workers to perform work in compliance with the lead safe housing rule.

Bidding Procedures

Bidding procedures need to be developed by grantees. Grantees must demonstrate that bids were let in a fair, unbiased manner and that efforts were made to solicit bids from small, minority and woman owned businesses. Below are some guidelines to include in bidding procedures.

Chapter 5: Contracting

- ✓ Bids may be advertised in the newspaper, through public notice or radio and by contacting an already approved list of contractors.
- ✓ Advertising at the start of the program and establishing a list of contractors interested in bidding for jobs throughout the duration of the program is acceptable.
- ✓ At least three contractors should be encouraged to bid on each job.
- ✓ Grantees are required to check GSA's List of Parties Excluded from Federal Procurement before awarding a bid and must check this list when bids are received.
- ✓ Each contractor must provide proof of liability insurance in an amount deemed reasonable by the grantee. (DLG strongly recommends a minimum of \$100,000.) The liability insurance shall be maintained during the life of the contract.
- ✓ Each contractor must provide evidence of workers compensation insurance at a level in conformance with state law for all employees at the job site and shall require subcontractors to provide evidence of the same.
- ✓ Contractors must submit documentation that shows they are qualified to perform lead work such as:
 - Proof they attended a safe work practices training session (for jobs involving safe work practices).
 - Copies of the Kentucky certification for abatement supervisor and workers (for jobs involving abatement).

List of Parties Excluded from
Federal Procurement can be found
at
<https://sam.gov/portal/SAM/##11>

Any solicitation for bids by the grantee should include:

- ✓ Location for bid document pick up and submission;
- ✓ Address of unit to be rehabilitated;
- ✓ Time the unit is open for inspection; and
- ✓ Time and place for bid opening.

DLG requires that minutes from the bid opening be taken. The minutes should include names of all present at the meeting, a list of all bids received and the amounts bid for the work.

Bids need to be reviewed for cost reasonableness. Grantees should be wary of bids above or below 15 percent of the cost estimate. Grantees should not award to the low bidder if the contractor has a backlog of incomplete rehabilitation jobs or a history of poor performance. Grantees are advised to impose a cap of two rehabilitation jobs per contractor at any given time, unless the contractor can clearly demonstrate capacity to handle more than that. This cap should be clearly outlined in the policies and procedures.

Tip: Housing contracts are executed between the Homeowner and Contractor, the main purpose for bidding is to establish a reasonable low-bid price. The homeowner makes the final decision for selection of the contractor.

Preparing the Contract

The contract for rehabilitation must be a two-party contract between the homeowner and the contractor. The grantee or subrecipient may act on behalf of the homeowner if the homeowner delegates this responsibility (Attachment 10-8). The grantee remains responsible for monitoring contractor compliance with payments and all other program requirements.

Attachment 10-8:
Sample Homeowner Authorization
for Agency to Act as Agent
for Homeowner

- ✓ Key federal provisions which apply to all rehabilitation contracts are:
 - Lead Based Paint clause, and
 - Conflict of Interest clause.

Davis-Bacon and other labor standard provisions do not apply unless the rehabilitation involves a structure with eight or more units.

Within the contract, the grantee should require the contractor to:

- ✓ Obtain and pay for all necessary permits and licenses;
- ✓ Perform all work in conformance with the International Code Council (ICC) Property Maintenance Code whether or not covered by the specifications and drawings;
- ✓ Keep the premises clean and orderly during repairs and remove all debris at the completion of work;
- ✓ Obtain written consent from the grantee and the homeowner for changes to specifications;

Chapter 5: Contracting

-
- ✓ Comply with all required rehabilitation practices for the lead safe housing rule;
 - ✓ CDBG funded rehabilitation projects that exceed \$200,000 in funding will trigger Section 3 requirements which will need to be included in the contract language;
 - ✓ Obtain written consent prior to sub-contracting;
 - ✓ Provisions for termination and for non-performance;
 - ✓ Pay for all lead-based paint clearance tests of the unit and continue work until the unit passes clearance; and provide each of the required notices to owners and tenants;
 - ✓ Warrant the work for one year from final acceptance.

Attachment 10-20:
Sample Contract Package for
Rehabilitation

DLG requires that grantees attach a copy of the work write-up to the contract. A Sample Contract Package for Rehabilitation is provided as Attachment 10-20.

Contract Award and Monitoring

Following award of the contract, the contract package must be executed by all parties. The homeowner must sign the contract and initial each page and sign the last page of the work write-up. A Notice to Proceed should be issued promptly to the contractor, specifying the time period within which the work should begin and when the work should be completed. A sample Notice to Proceed is provided as Attachment 10-21.

Attachment 10-21:
Sample Notice to Proceed

It is good practice to hold a pre-construction conference to clarify the responsibilities of all parties. A sample Pre-Construction Conference Checklist that can be used at such a conference is provided as Attachment 10-22.

Attachment 10-22:
Sample Pre-Construction
Conference Checklist

Inspections

Systematic thorough inspections by the rehabilitation inspector are critical to successful housing rehabilitation. (DLG strongly recommends the grantee contract with a certified building inspector to provide quality inspections.)

- ✓ Inspections should be conducted frequently and should be formally documented in the files.
- ✓ Periodic interim inspections of the rehabilitation construction will be made by the grantee throughout the contract period.
 - These inspections will be conducted to assure compliance with the contract standards for workmanship and materials, to detect any unauthorized deviations and to identify necessary changes to the contract work in its early stages.
 - Interim inspection reports must be prepared and signed by the grantee representative, rehabilitation inspector, contractor and owner.

- ✓ Inspection and approval of completed work must be conducted by the grantee prior to the contractor’s request for partial or final payment. The owner’s approval of the work is also required when payment is requested. A sample copy of the Notice of Acceptance of Work is provided as Attachment 10-23.

Attachment 10-23:
Sample Notice of Acceptance of Work

- The grantee has the authorization to override an owner’s decision and accept the work in accordance with grievance procedures if an owner makes unreasonable requests/demands and the contractor has satisfied all the requirements of the grantee.

- ✓ A final inspection of the work must be performed prior to final payment to the contractor in order for the project to be considered complete. A sample copy of Certification of Inspection is provided as Attachment 10-24. It is important for grantees to realize that this final inspection of the work is not the last inspection of the project. DLG requires a follow-up inspection be performed 60 days after project completion as referenced in follow-up inspection listed at the end of this section.

Attachment 10-24:
Sample Certification of Inspection

Change Orders

Any additions to, deletions from, or changes in the rehabilitation contract work, time, or price must be approved in a written change order request before the additional work is started. (Refer to Attachment 10-25 for a sample.)

Attachment 10-25:
Sample Change Order Request

- ✓ The change order must be executed by the owner and the contractor and approved by the rehabilitation inspector and the grantee. Change orders may be used to add items of work that are essential to complete the original work and were not evident until after the work started.
- ✓ The contractor shall not be authorized to perform any work outside the scope of the original contract without a written and properly executed change order.

Clearance

If the rehabilitation job had any lead hazard reduction work performed, a clearance of the unit must be passed before re-occupancy.

- ✓ A clearance examination involves a visual assessment and dust testing to determine if the unit or worksite is safe for occupancy.
- ✓ Clearance must be performed by a certified risk assessor, certified lead-based paint inspector or certified lead sampling technician.
- ✓ Clearance cannot be performed by the same contractor who performed the work. It must be a separate party.

The clearance test cannot be performed until one hour after the final cleaning of the unit. Results of the clearance test must be incorporated into a “Notice of Lead Hazard Reduction Activities” by the grantee. This notice must be provided to the homeowner within 15 days of the clearance test. A sample

Attachment 10-26:
Sample Notice of Lead Hazard Reduction Activities

Notice of Lead Hazard Reduction Activities is provided as Attachment 10-26.

Grantees must be aware that if the unit fails the clearance test the unit cannot be reoccupied. The contractor will need to re-clean and another clearance test must be performed.

Once the unit has passed the clearance test, the final invoice may be processed.

Final Documentation

Grantees should have the contractor sign an affidavit for Contract Termination and Release of Lien Form (Attachment 10-27) and provide warranty documents, and subcontractors release of lien waivers before final payout. After which, the Notice of Acceptance of Work (Attachment 10-23) may be issued to the contractor. A Project Benefit Profile by Person and by Household must also be completed (Attachment 10-28).

Attachment 10-27:
Sample Contract Termination
and Release of Lien Form

Attachment 10-23:
Sample Notice of Acceptance
of Work

Attachment 10-28:
Project Benefit Profile
by Person and by Household

Follow-Up Inspection

It is DLG's policy that the grantee performs a follow-up inspection of the property 60 days after job completion (Attachment 10-29). This inspection allows the grantee to see if there are any problems with the job. If problems have occurred, the grantee should assist the property owner to obtain corrective action according to the warranty.

Attachment 10-29:
Sample Certification of 60 Day
Follow-up Inspection

Section 10-D. Record Keeping

It is important for the grantee to maintain complete files and record keeping of the work they are performing and the units being rehabilitated. A Rehabilitation Program File Checklist (Attachment 10-30) should be in the front of each project file. In addition to the items listed in the rehabilitation program checklist, general files including the following should also be set up and maintained:

Attachment 10-30:
Sample Rehabilitation Program File
Checklist

- ✓ Local rehabilitation policies and procedures;
- ✓ Documentation of marketing and outreach efforts;
- ✓ Pending applications;
- ✓ Disqualified applicants; and
- ✓ Evidence of contractor participation.

PART II: INVOLUNTARY PROGRAMS

Sometimes a grantee may decide to exercise its right of eminent domain to acquire property to help revitalize an area. When this occurs, these projects are referred to as involuntary projects. These projects are primarily carried out in neighborhood revitalization areas. Grantees should work with DLG staff to determine if their proposed project will need to follow the Involuntary Program guidelines or if it can be completed within the Voluntary Program requirements.

Neighborhood revitalization areas should be concentrated enough that the KCDBG assistance will result in a resolution of all or most of the housing needs in the targeted area and a significant visual and physical impact. The revitalization areas must also be designated as a slum and/or blighted area under the Kentucky Urban Renewal and Redevelopment Law (KRS Chapter 99). There are a number of different activities that may be undertaken within these areas; however, certain program and other federal requirements (such as the Uniform Relocation Act (URA)) will apply to involuntary activities.

KRS Chapter 99

Tip: If the grantee chooses the project area(s) with the intent to use eminent domain, the project is considered involuntary even if a recipient agrees to be a part of the project and fully cooperates. Therefore, all URA requirements must be followed.

Section 10-E. Eligible Activities and National Objectives

There are several activities eligible under KCDBG that help to support the revitalization of slum or blighted areas and the development of affordable housing. These activities include:

✓ **Acquisition.** Acquisition of property is generally eligible under CDBG (provided the rules detailed in Chapter 9: Acquisition are adhered to).

Chapter 9: Acquisition

- Grantees may use KCDBG funds to assist private individuals and non-profits with the acquisition of property for the purpose of rehabilitation. After rehabilitation to applicable standards, the property may be used or sold for low- and moderate-income residential purposes.
- Grantees may also use KCDBG funds to acquire housing units, as long as the units are not newly constructed, and sell them for residential purposes. The CDBG regulations do not limit the amount of write-down to the buyer. The amount of write-down should be appropriate for the level of needed assistance and reasonable in relationship to the level of participation. Acquired property may be donated to purchasers; however, grantees should analyze the situation to avoid giving windfall profits to purchasers. If buyers are not LMI, prior approval from DLG is required.
- Grantees may acquire property to be used for LMI housing and donate or resell it at a lower price to nonprofit housing organizations to be used for LMI housing.

Tip: The number of units eventually constructed or rehabilitated on CDBG-assisted property may trigger the Davis Bacon labor standards requirements (see Chapter 6: Labor Standards and Construction Management or contact DLG for more information).

Chapter 6: Labor Standards and
Construction Management

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- ✓ **Conversion.** The cost of converting an existing non-residential structure to residential use by eligible households is allowed as a rehabilitation activity.
 - ✓ **Demolition and Reconstruction (Rehabilitation).** KCDBG funds may be used for demolition and reconstruction. Reconstruction is the rebuilding of a structure on the same site in substantially the same manner. Reconstruction is considered a rehabilitation activity. Deviations from the original design (such as the addition of another room) may be permitted for reasons of safety or for practicality. A reconstructed unit need not contain the same number of rooms as the unit it replaces. (Note, however, that adding rooms may constitute new construction. Contact DLG for specific questions.) Reconstruction of residential structures also permits replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing or a “stick built” structure if manufactured housing is not allowed under existing zoning in the community.
 - ✓ **Demolition and Clearance of Sites.** Grantees may clear a site to be used for housing. Clearance of toxic contaminants from property to be used for new construction of housing is also eligible. For all demolition and clearance activities, grantees must propose a plan with the end use lasting for at least five years.
 - ✓ **Disposition Costs.** The costs of disposition of real property, acquired with CDBG funds, which will be used for new construction of housing is an eligible activity to support new housing.
 - ✓ **Multifamily Rehabilitation.** Rehabilitation of multifamily rental units is an eligible activity under the KCDBG Program. At least 51 percent of units must be occupied by LMI households at affordable rents.
 - ✓ **New Housing Construction.** Generally, new construction of housing is not eligible under the KCDBG program. However, the regulations allow for certain "eligible subrecipients" to carry out this activity on behalf of the grantee.
 - **Eligible nonprofits and groups.** The eligible subrecipients include neighborhood-based nonprofit organizations (NBOs), nonprofit organizations serving the development needs of communities in non-entitlement areas, section 301(d) Small Business Investment Companies (SBICs), and local development corporations (LDCs).

24 CFR 570.204(c)
 - **Regulatory Documentation.** These nonprofit development organizations must meet the definition outlined in Section 5305(a)(15) of the Housing and Community Development Act and comply with conditions outlined in the Grant Agreement to be considered to undertake such activities.

HCDA Section 5305(a)(15)
 - **Activities to be performed:** These organizations must be undertaking a neighborhood revitalization, community economic development or energy conservation project in order to use CDBG for new construction. And, the grantee must determine that the project is necessary or appropriate to achieve its community development objectives.
- Tip:** **New housing construction carried out by an eligible nonprofit must be part of a larger effort to revitalize the neighborhood (i.e., a plan for the community’s revitalization efforts based on a comprehensive plan, not just for the sake of the CDBG project).**

- ✓ **Single Family Owner and Rental Rehabilitation.** Using KCDBG funds to assist low- and moderate-income persons to bring their homes up to, at a minimum, the International Code Council (ICC) Property Maintenance Code is an eligible activity. Rehabilitation of investor-owned, single-family rental units is also an eligible activity. Rents must be affordable for a period of five years. The maximum amount of rent charged may not exceed HUD's Fair Market Rent during the five-year period.

Access HUD Fair Market Rents from the HUD User website at: <http://www.huduser.org/datasets/fmr.html>.

Below are a number of activities that may be combined with the housing activities listed above to achieve neighborhood revitalization objectives.

- ✓ **Infrastructure Improvements.** The construction of publicly-owned water, sewer, streets and drainage facilities is eligible as a public facilities activity.
- ✓ **Site Improvements.** Grantees may improve publicly-owned sites for housing. Using KCDBG funds for improvements to a site after disposition to a private developer is eligible only if carried out by an eligible subrecipient (as discussed previously), in which case the activity must be for neighborhood revitalization, community economic development, or energy conservation, and the recipient must determine that it is necessary or appropriate to achieve community development objectives.

Ineligible Activities

The general rule is that any activity not specifically authorized under the CDBG regulations is ineligible to be assisted with KCDBG funds. The regulations stipulate that the following activities may not be assisted with CDBG funds:

- ✓ New housing construction except under certain conditions. Certain types of nonprofit organizations that are undertaking certain kinds of activities may be allowed to utilize CDBG funds for new construction. The conditions under which this may occur are discussed in Section 10-E of this Chapter.
- ✓ Income payments, which are defined as grants to an individual or family that are used to provide basic levels of food, shelter (i.e., payment for rent, mortgage and/or utilities) or clothing;
- ✓ Luxury items, such as swimming pools, Jacuzzis, high-end appliances, window air conditioners, washers and dryers, etc.; and
- ✓ Labor time for sweat equity may not be paid out to recipients of rehabilitation assistance.

24 CFR 570.204(c)

Meeting a National Objective

As discussed in Chapter 1: Project Administration, all funded projects must meet a national objective. At the time of funding, the grantee must document which national objective a project will meet.

Chapter 1: Project Administration

There are several different national objectives the grantee can use to satisfy this requirement. Housing is considered a direct benefit activity and each household in a single-family unit must be LMI, while one of two units in a duplex must be LMI and 51% of three or more unit properties must be LMI. To document the housing national objective, see the section entitled Applicant Eligibility in Part 1 of this Chapter.

However, other housing related activities related to neighborhood revitalization may be eligible to receive KCDBG assistance if the area has been designated as a slum and/or blighted area. If a grantee is using the slum/blight national objective, it must complete an Order of Municipal Resolution that states the project is slum and/or blighted and follow the criteria in KRS Chapter 99.

KRS 99.340

Under the Kentucky Urban Renewal and Redevelopment Law (KRS Chapter 99), the following definitions apply:

- ✓ A slum area is an area in which at least one-fourth of all buildings or a predominance of improvements are:
 - Unsafe or unfit to occupy due to dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation/light/sanitation/open space, high density of population, overcrowding;
 - Conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime;
 - Injurious affect the entire area; or
 - Constitute a public menace to the public health, safety and welfare.
- ✓ A slum area may include lands, structures, or improvements in which acquisition is necessary to assure the proper clearance and redevelopment of the entire area and to prevent the spread or recurrence of slum conditions thereby protecting the public health, safety and welfare.
- ✓ A blighted area is an area where, due to various reasons (predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, submergence of lots by water or other unsanitary or unsafe conditions, deterioration of site improvements, diversity of ownership, tax delinquency, defective or unusual conditions of title, improper subdivision or obsolete platting), the development of predominantly housing units is being prevented.

Where the activity being carried out with KCDBG funds in a slum and/or blighted area is housing, two additional criteria must be met:

- ✓ Each building must be considered substandard under local definition; and
- ✓ All deficiencies making the building substandard must be corrected before less critical work on the building may be undertaken.

If a grantee determines the project will meet the definition of a slum and/or blighted area, then it must complete a Development Plan to set a foundation for eminent domain and to establish the area's redevelopment plans (See Attachment 10-31 for a sample). This is a plan for acquisition of properties, demolition of removal, rehabilitation or historic preservation of structures and improvements, relocation of displaced, resale of improved land and designation of specific uses permitted in redevelopment of new sites. It must be prepared in accordance with KRS Chapter 99 and all federal regulations in the Housing and Community Development Act of 1974.

Attachment 10-31: Sample
Development Plan

Grantees will need to do a Development Plan if one of the following occurs:

- ✓ Public funds on private property (KRS 99.360) (i.e.: KCDBG funds used to rehabilitate an individual’s home);
- ✓ Public purpose is required in order to condemn a property (KRS 99.420); or
- ✓ Grantee owns land and wants to sell surplus property (KRS 99.450).

KRS 99.360

KRS 99.420

KRS 99.450

Tip: If land will be sold at less than fair market value to promote affordable housing for LMI families, resale of property must be identified as a public purpose in the Development Plan (KRS 99.450). Refer to the sample Short Form Development Plan for Voluntary Rehabilitation/Reconstruction (Attachment 10-32) for guidance.

Attachment 10-32:
Sample Short Form Development
Plan for Voluntary
Rehabilitation/Reconstruction

While grantees may assist non-LMI households under these conditions, only health and safety issues may be addressed for these properties. For example, roof problems, unsafe wiring and inadequate plumbing could be addressed with KCDBG funds. Rehabilitation activities for more cosmetic purposes such as painting or carpeting are not eligible KCDBG expenditures for over income residents.

Section 10-F. Implementing Involuntary Programs

In addition to the Development Plan and acquisition and relocation requirements under the URA, there are other administrative requirements that grantees administering involuntary programs must follow.

Most of these requirements are discussed in Part I: Housing Rehabilitation; therefore, they will not be repeated here. As a brief reference, grantees undertaking involuntary housing activities must comply with the following sections of Part I of this chapter:

- ✓ Section 10-B:
 - Program Guidelines
 - Applicant Eligibility (Note: income eligibility does not apply to URA. Knowledge of income is required to establish LMI status and relocation benefits.);
 - Property Eligibility;
 - Conflict of Interest;
 - Property Standards;
 - Contracting Requirements; and
 - Grievance Procedures (which must be provided to all residents in the designated Development target area.)
- ✓ Section 10-C:

-
- Determining Staffing;
 - Pre-1978 Properties and Lead Hazard Reduction;
 - Lead-Based Paint Requirements;
 - Work Write-Ups and Cost Estimates;
 - Recruiting Contractors;
 - Bidding Procedures;
 - Preparing the Contract; and
 - Contract Award and Monitoring.
- ✓ Section 10-D: Record keeping (Note: Individual case files are required for all activities benefiting a recipient, i.e. acquisition, relocation, clearance, etc.).

Grantees with specific questions or concerns about these or other requirements should contact DLG for assistance.

Additional Requirements for Rental Housing Rehabilitation Projects

In addition to the requirements discussed in the previous sections, there are a number of other requirements that must be met when administering a rental housing rehabilitation program.

Meeting a National Objective

As with all CDBG-funded activities, rental housing that is rehabilitated or built with CDBG funds must meet a national objective. Specifically:

- ✓ For rental properties that are single family, the tenant must be LMI.
- ✓ For rental properties with two units, at least one unit must be LMI.
- ✓ For properties with more than two units, at least 51 percent of the units must be occupied by LMI households.

Rental units must be occupied by LMI persons at affordable rents (as defined by DLG) for a period of five years. The maximum amount of rent charged may not exceed the HUD Fair Market Rent (FMR) during the five-year period. Fair market rents by area and bedroom size can be accessed from the HUD User web site at <http://www.huduser.org/datasets/fmr.html>

Access Fair Market Rents from the HUD User website at <https://www.huduser.gov/portal/datasets/fmr.html>

Installation of Broadband Infrastructure in Multi-Family Housing

In December 2016, HUD published new regulations requiring the installation of broadband infrastructure at the time of new construction or substantial rehab of HUD-funded multifamily housing, including CDBG-funded multifamily housing with more than four rental units. This requirement will apply to projects for which funds are obligated by a state grantee on or after July 18, 2017.

Broadband infrastructure is defined as cables, fiber optics, wiring or other permanent, including wireless, infrastructure in each dwelling unit meeting the Federal Communications Commission's

definition. Substantial rehab is defined as work on the electrical system with estimated costs equal to or greater than 75% of the cost of replacing the entire electrical system, or when the estimated cost of the rehab is equal to or greater than 75% of the total estimated cost of replacing the multifamily rental housing after the rehab is complete. Some exceptions are allowed when:

- ✓ The location of the new construction or substantial rehab makes installation of broadband infrastructure infeasible;
- ✓ The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or an undue financial burden; or
- ✓ The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

Financial Assistance

Financial assistance may be provided as a grant or loan to the property owner for an eligible project (e.g., the rehabilitation of a multi-unit housing complex). The assistance must be conditioned upon the requirement to make 51% of the units available for five years at rents affordable to lower income tenants (as discussed above).

Davis Bacon Wage Determination

Davis Bacon wage determination applies if a grantee expects to rehabilitate a structure with eight or more units. Grantees are advised to contact DLG very early for guidance. There are a number of preplanning documents that must be completed and reviewed before going to bid and entering into a contract. See Chapter 5: Contracting for more information.

Chapter 5: Contracting

Relocation

The Uniform Relocation Act applies to all projects in which tenants are living in a multi-unit structure. Proper notices, services and payments must be provided to tenants as applicable. See Chapter 8: Relocation, Displacement and One-for-One Replacement for more information.

Chapter 8:
Relocation, Displacement, and
One-for-One Replacement