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## Overview

Chapter 20 Housing Rehabilitation will provide information on program policies and best practices for housing rehabilitation projects funded by the Massachusetts Community Development Block Grant (Mass CDBG) Program. This chapter includes a discussion of the policies governing housing rehabilitation activities and procedures that past and present grantees have utilized in order to implement their grant programs effectively.

The chapter is written for community development administrators, rehabilitation specialists, local officials and others who may be responsible for designing and implementing housing rehabilitation programs. It provides some examples and recommendations developed from successful housing rehabilitation programs.

Grantees with housing rehabilitation programs must keep track of laws and regulations related to implementation of housing programs and revise their program requirements to reflect the changes. In the event that a change will impact the goals of the program, please follow the Program Amendment requirements provided in Chapter 3 of the Massachusetts CDBG Program Manual. This would include any revision to the scope or effectiveness of project/program design or significant change in the accomplishment of the national objective or beneficiaries to be served from what was approved in the community's final approved application and grant agreement.

Massachusetts CDBG housing rehabilitation funds are used by grantees to primarily benefit low- and moderate-income persons. The Contract between the Grantee and Massachusetts CDBG requires grantees to ensure that all code violations in each dwelling unit are corrected. "Code violations" means violations of Chapter II of the Massachusetts Sanitary Code, "Minimum Standards of Fitness for Human Habitation." However, rehabilitation undertaken with CDBG may also address Massachusetts Building Code, HUD Housing Quality Standards (HQS) and "incipient" code violations (may develop as a code issue within 1-2 years). Local programs must prioritize work if there are budgetary constraints. More information on this will follow. This chapter contains guidance on design and management of housing programs. This chapter will also discuss rental housing affordability, including guidance on Anti-speculation/ Recapture/ Forgiveness Policy, and Rent Stabilization.

On occasion, a grantee will process a grievance and the case may not be resolved or a complainant will contact HUD or DHCD and register a further complaint. If the local process has been followed, DHCD may become involved in the review of the process followed and may assist in resolution of the problem.

## Eligible Activities

Typically, applicants use housing rehabilitation funds to provide a range of eligible services for low- and moderate-income persons including lead paint removal, septic system repairs or replacement, elimination of code violations, removal of material and architectural barriers, upgrading electrical or plumbing systems, and weatherization. Rehabilitation needs may be

addressed for the purpose of correcting code violations and replacing major building systems which are obsolete or in danger of failure. Housing rehabilitation programs are intended to help low- and moderate-income people remain in their homes and to provide decent, affordable, safe housing; it is not a home improvement program.

Rehabilitation does not include:

1. Creation of a secondary housing unit attached to a primary unit;
2. Installation of luxury items, such as a swimming pool;
3. Costs of equipment, furnishings, or other personal property not an integral structural fixture (except appliances as noted below); or
4. Relocation and displacement (although temporary relocation while work is being completed may at times be required – see Relocation section in this chapter)

Grantees may also undertake the acquisition and rehabilitation of property. Most CDBG-funded housing rehabilitation is eligible under Title I section 105(a)(4) and allows for clearance, demolition, removal, reconstruction, and rehabilitation of buildings, including rehabilitation which promotes energy efficiency. Interim assistance and financing for public or private acquisition which leads to the rehabilitation and/or reconstruction of privately owned properties, including the renovation of closed school buildings, is also eligible.

Housing rehabilitation programs typically include related activities that are eligible elsewhere in Section 105(a). For example:

- Section 105(a)(1) – Acquisition of real property.
- Section 105(a)(3) – Code enforcement.
- Section 105(a)(5) – Architectural barrier removal.
- Section 105(a)(11) – Relocation.

Reconstruction vs. Rehabilitation. The Massachusetts CDBG Program has adopted a policy consistent with HUD CPD Notice # 07-08, subject: Use of CDBG Funds in Support of Housing, which defines reconstruction as generally meaning the rebuilding of a structure on the same site in essentially the same manner. It states that deviations from the original design are allowed for reasons of safety or if otherwise impractical. The Notice further states that the number of dwelling units on a site may not be increased, but the number of rooms per unit may be increased or decreased.

Targeted Housing Rehabilitation. Massachusetts CDBG explicitly allows communities to design limited scope, rehabilitation programs that target specific housing needs identified in a community. Such programs may address a category of repairs that are common to and will address the needs of a particular population of the community, e.g., elders or persons with limited mobility. Such programs may be designed so that full code compliance, such as in a “traditional” housing rehabilitation, is not the primary objective. Along with a more limited scope, these programs would offer less assistance (e.g., \$10,000), and would be awarded as

unsecured, outright grants. However, targeted rehabilitation activities must be operated in conjunction with traditional housing rehabilitation programs.

DHCD recommends and encourages that any major violations that are identified and which may risk the health and safety of the occupants in targeted rehabilitation programs be addressed in (traditional) comprehensive housing rehabilitation programs. If, when operating a targeted rehabilitation program, significant health and safety violations are identified, then the owner or occupant must be given the option to address those issues through the traditional housing rehabilitation program. Alternatively, the owner or occupant may decline the traditional housing rehabilitation repairs by signing a disclosure that they are waiving the additional repairs to correct identified code issues and associated funding.

In order to accomplish energy efficiency and program/property owner cost savings through communication and coordination of rehabilitation and weatherization services, DHCD strongly encourages Housing Rehabilitation Program coordinators to consult regularly with local Weatherization Assistance Program(s) (WAP) regarding opportunities for cross-referral, cost-sharing and joint scheduling of projects.

## National Objective

Most CDBG-funded housing rehabilitation programs are designed to qualify under the national objective of benefit to low and moderate-income persons, housing activities (LMI/housing) 24 CFR 570.483(b)(3).

For an activity to qualify under LMI/housing it must result in housing that will be occupied by LMI households upon completion. The housing can be either owner- or renter-occupied and can be either one family or multi-unit structures. When the housing is to be rented, in order for a dwelling unit to be considered to benefit a LMI household, it must be occupied by the household at affordable rents. Refer to Preserving Affordability of Rental Units on page 23 of Chapter 20. When using LMI/Housing LMI Benefit status is based on households and not persons.

Occupancy Rule. Occupancy of the assisted housing by LMI households under this subcategory is determined using the following general rules:

1. All assisted single unit structures must be occupied by LMI households;
2. An assisted two-unit structure (duplex) must have at least one unit occupied by a LMI household; and
3. An assisted structure containing more than two units must have at least 51 percent of the units occupied by LMI households.

Eligibility and national objective are discussed in greater detail later in this chapter.

## Environmental Review

All CDBG-funded Housing Rehabilitation Programs and all program properties assisted using CDBG funds must go through an environmental compliance review consistent with the National Environmental Policy Act of 1969 (NEPA) and CDBG environmental regulations, 24 CFR Part 58 before committing funds. Since the status of environmental review is evaluated as part of the application process, Massachusetts CDBG urges communities to initiate environmental review prior to application. CDBG applications documenting generic completion of environmental review, up to the point of Findings of Exemption, Categorical Exclusion, or Finding of No Significant Impact for the overall program are considered as advanced as possible for the purposes of the application evaluation. Please note, all Environmental Review documents must be signed by the Environmental Certifying Officer (ECO). If funded, the community would then complete required postings, comment period, and submit Request for Release of Funds to Massachusetts CDBG. Since individual properties are not usually known prior to program start-up, further compliance review (e.g., wetlands, historic properties) will be required as projects are identified. Refer to [Tiered Environmental Reviews - HUD Exchange](#) and/or contact program staff for more details.

*Please Note: CDBG-assisted properties located within the 100 -year flood plain area must carry flood insurance coverage. Many property owners already carry such insurance, but if this is not the case for a CDBG-assisted property, the cost of one (1) year of flood insurance can be included in the financial assistance provided.*

## Program Administration and Staffing

Successful administration of a Housing Rehabilitation Program requires knowledge of Massachusetts State Sanitary Code (105 CMR 410.00) Building Code (780 CMR), ordinances and rules, construction methods and materials, specification writing and cost estimating, finance and contracting.

Administration. Grantees with successful Housing Rehabilitation Programs develop a strong and comprehensive management plan as part of the implementation design of the housing rehabilitation activity. There must be a clear system of checks and balances. For example, the housing rehabilitation specialist should only sign off on payment approval they inspect the work to ensure that it was completed in accordance with the specifications and in a workman-like manner. The actual completed work must correspond to the payment request. Refer to the section on internal controls in Chapter 11 Financial Management.

Program Guidelines. Massachusetts CDBG requires grantees to establish written guidelines for the operation of their Housing Rehabilitation Program. Guidelines include participant selection criteria, income eligibility requirements, target area (if applicable), qualification processes and types of assistance available. Guidelines must be available to the public and evaluated periodically by local residents.

*Please Note: Guidelines must be clear, and written in advance of program implementation, and applied consistently to all applicants and situations. These guidelines should be posted*

*and/or distributed to all program applicants. The guidelines may be amended/revised to address unforeseen issues, or to change program implementation procedures. The distribution process and any revisions to the guidelines should be documented.*

Program Components and Functions. An efficient and properly managed Housing Rehabilitation Program will include:

1. Properly trained program staff and management who are responsible for overall administration of the program including, but not limited to administrative staff, who may be in charge of program intake and application processing, project management staff responsible for eligibility review and contract implementation and oversight, qualified housing rehabilitation specialist responsible for inspections, drafting work specifications, oversight of bidding and construction work. All staff may be liaisons with local officials and Massachusetts CDBG staff. The community's application for CDBG funding describes this structure in the Housing Rehabilitation activity packet and/or the Management Plan.
2. Marketing and citizen participation: responsibility for publicizing the program in the community, lining up prospective program applicants and ensuring that local citizens are involved in ongoing evaluation of program design and implementation.
3. Grant and loan processing: application intake and counseling of property owners, coordination with other professionals and institutions throughout the process, including banks, employers, contractors, inspectors, attorneys, rehabilitation specialist, and other Town staff, including inspection department, assessor, treasurer/accountant, etc.
4. Income verification: Documentation of national objective includes verification of income information provided by the applicant on the application. HUD's CDBG income limits are updated annually are used to identify LMI households based on family size for specific areas. LMI households have incomes that do not exceed 80 percent of the median income of the area. Updates to income limits are published annually and available at <https://www.hudexchange.info/resource/5334/cdbg-income-limits/> Grantees may also use the HUD income eligibility calculator at the following link: [CPD Income Eligibility Calculator and Income Limits - HUD Exchange](#).
5. Reconstruction or rehabilitation oversight: initial inspections, contractor selection, work write-ups or specification writing, cost estimates, bidding, progress inspections of construction work, final inspections, payments and release of liens.
6. Ongoing monitoring: liens/mortgages (and discharge), loan/DPL terms and compliance, rental agreements compliance and discharge, rental unit vacancies and turnovers, changes of ownership, and contractor eligibility.

Program Staffing. Program functions may be carried out through one of several staffing arrangements, including:

1. Establishing a local community development office and hiring staff to work as municipal employee(s);
2. Hiring individual staff under a Professional Services Contract (PSC). It is recommended that you work with your local procurement officer on this;
3. Hiring a private consultant or management firm;
4. Contracting with another agency such as a regional planning agency or a local or regional housing authority; or
5. Creating a hybrid arrangement combining two or more of the above. For example, establishing your own municipal office by contracting with consultants for one or two technical areas such as loan processing or construction inspection.

*Please Note: Regardless of whether a grantee manages the program or has an outside company or agency provide management, an individual from the municipality must be assigned to work with that agency and provide administrative oversight.*

Regardless of which staffing arrangement is chosen, staff must be selected and assigned specific responsibilities. Grantees are encouraged to hire staff and/or consultants as soon as possible after receipt of the award letter. The grantee decides who is responsible for each administrative function and whether the position is full or part time.

The decision on staffing arrangement and the selection of personnel to fill that arrangement should reflect the size, needs, budget, and expertise of the municipality. Each grantee designs its own plan based on the situation within the community and the level of expertise available. Primary housing rehabilitation program staff members includes the CD Director or Grant Manager and the Housing Rehab Specialist.

The housing rehabilitation program must be under the direction of one person who functions as the community development director, program manager, coordinator, or grant manager. The person in this position is responsible for overall policy and administration of the program and, depending on the size of the program and the number of staff, may also be responsible for citizen participation (Please refer to most current Application Guidance and One Year Action Plan) and marketing functions. They may also be responsible for some of the day-to-day operations of the program such as application in-take and review, income verification, and/or contractor outreach.

The individual should possess the following qualifications:

- Extensive management and organization experience, preferably in municipal or non-profit organizations.
- Extensive administrative and supervisory experience.
- Ability to deal effectively with residents, local officials, outside groups, and other individuals.



- Extensive experience with community development block grant programs, housing rehabilitation or construction, and/or financing and marketing.

### Housing Rehabilitation Specialist

The position of housing rehabilitation specialist usually combines an understanding of housing development concepts with several years of inspection experience, and knowledge of construction. The number of units that a housing rehabilitation specialist is able to handle per grant period of performance will range depending on experience, other professional commitments, communication skills and ability to balance multiple projects in different stages of completion. Some municipalities have a full-time housing rehabilitation specialist, though in many instances housing rehab. specialists are consultants who may be working for multiple agencies. There is a range in capacity and communities should determine what amount of time investment will be necessary from their housing rehabilitation specialist(s) in order to meet the unit goal submitted in the CDBG application. A housing rehab. specialist with extensive CDBG experience who specializes only in housing rehab. will likely be able to handle more units than others who have fewer years of direct experience and who may have other job duties. Many programs use multiple rehab. specialists taking into account their experience, specialty, and availability. The level of production is also dependent upon the types of buildings being rehabilitated (e.g., single or multi-family, size of structure, age of structure, etc.) and the existing condition of the structure including whether or not lead paint or asbestos is present. The housing rehabilitation specialist must be competent in the areas of:

- Building inspections.
- Construction work and specification write-ups.
- Construction techniques.
- Construction cost estimating.
- Construction monitoring.

### Financing Housing Rehabilitation Programs

Housing rehabilitation program grantees often assume many of the functions of mortgage lenders. Just like local banks, they promote a financing product, take applications, qualify borrowers, commit funds, and close transactions. One difference from private lenders is that grantees don't have to make money from the transactions. As a result, grantees provide assistance to people who could not otherwise qualify for private financing. The recommended financing mechanism used in the Massachusetts CDBG Program is the Deferred Payment Loan (DPL).

Deferred Payment Loans (DPLs). Deferred payment loans (DPLs) are self-declining and forgiven over a period of time. The standard period of forgiveness is 15 years to coincide with the minimum affordability period required by the grant agreement, and the "typical" useful life of many home repairs. The period of forgiveness should be 1/15<sup>th</sup> per year over the 15-year period, but DHCD offers a DPL recapture schedule that is more accelerated in



the earlier years, as provided in the chart below. It is Massachusetts CDBG Program policy to encourage program designs that will minimize the generation of program income.

A lien is placed on the assisted property and recorded at the Registry of Deeds, similar to a mortgage. If the property is sold or transferred before the end of the forgiveness period, the unforgiven balance of the DPL is repaid from the proceeds of the sale.

### **Accelerated DPL Recapture Schedule**

Program funds shall be protected by a property lien in an amount equal to the Deferred Payment Loan. If the owner transfers his/her interest in the property, by sale or otherwise within fifteen (15) years of the date of completion of the work, the owner shall upon demand, repay the City/Town the following amount of the Deferred Payment Loan.

| Sale or cessation of<br>occupancy<br>before the end of year | % of Loan Recaptured<br>per year (accelerated<br>schedule) |
|---|--|
| 1   | 85   |
| 2   | 70   |
| 3   | 55   |
| 4   | 40   |
| 5   | 35   |
| 6   | 30   |
| 7   | 25   |
| 8   | 20   |
| 9   | 15   |
| 10  | 10   |
| 11  | 8  |
| 12  | 6  |
| 13  | 4  |
| 14  | 2  |
| 15  | 1  |

### **Minimum DPL Recapture Schedule (1/15<sup>th</sup> per year)**

Program funds shall be protected by a property lien in an amount equal to the Deferred Payment Loan. If the owner transfers his/her interest in the property, by sale or otherwise within fifteen (15) years of the date of completion of the work, the owner shall upon demand, repay the City/Town the following amount of the Deferred Payment Loan.

| Sale or cessation of occupancy before the end of year | % of Loan Recaptured per year (accelerated schedule) |
|---|--|
| 1   | 100  |
| 2   | 93.33  |
| 3   | 86.67  |
| 4   | 80   |
| 5   | 73.33  |
| 6   | 66.67  |
| 7   | 60   |
| 8   | 53.33  |
| 9   | 46.67  |
| 10  | 40   |
| 11  | 33.33  |
| 12  | 26.67  |
| 13  | 20   |
| 14  | 13.33  |
| 15  | 6.67   |

Deferred payment loans can also be referred to as conditional grants. The lien describes the conditions of the transaction is recorded in the Registry of Deeds usually following a loan closing. The grantee is responsible for recording the lien and for recording the document releasing the lien when the time frame has elapsed or when the loan is paid. The property owner must agree to the placement of the lien on the property. If the loan conditions are either not met or otherwise violated, the borrower is subject to penalties specified in the agreement (recapture of the loan balance). In most cases, conditions placed on the property owner pertain only to longevity of ownership and compliance with rent restrictions. Aging in Place program funds should be offered as grants and do not require liens.

Anti-Speculation/Recapture/Forgiveness Policy. Massachusetts CDBG Program requires grantees to have an anti-speculation, recapture and forgiveness policy in place to protect rehabilitation program funds from real estate speculation. This chapter uses “recapture policy” to mean the all-encompassing policy covered in this section. The mechanism, used by grantees to protect Massachusetts CDBG resources, sets limits on the sale or transfer of ownership of the property, non-compliance by the property owner with the terms of the rental agreement, and non-compliance with other provisions of the contract, which was rehabilitated using Massachusetts CDBG funds alone or in combination with private funds. If a property is sold or transferred within the designated time period, full or partial funds are recovered by the grantee.

The housing rehabilitation program design of the recapture policy includes designation of responsible staff, corrective actions for violation of the policy, and instances in which

forgiveness will be exercised. It describes the procedures through which the grantee will monitor the property owner's compliance with:

- Time limits.
- Forgiveness policy.
- Rental agreements.
- Loan agreements, etc.

Applicants submit their recapture policy to Massachusetts CDBG as part of the application. If a grant award is made by Massachusetts CDBG and the policy is not acceptable, the grantee is notified, and a special condition may be imposed. A revised policy must be submitted to the Massachusetts CDBG as specified in the Contract.

Recaptured funds may be considered program income if they exceed the community's annual (April 1 – March 31) threshold. See Chapter 11 on Financial Management in the Massachusetts CDBG Program Manual for information on program income. The use of program income funds is governed by the grantee's Program Income Plan. The recapture policy must be appropriate for the level of investment of public funds, the specific economic conditions of the program beneficiary, and the useful life of the rehabilitation work. The term of the recapture policy is typically synchronized to the term of the loan/DPL assistance. Massachusetts CDBG requires using 15 years as the standard forgiveness schedule, which coincides with the minimum affordability period for assisted rental units.

*Please Note: Many municipalities waive the recapture of funds if the transfer of property is from one family member to another (parent to child or sibling to sibling) or if the new occupant family meets all the following conditions:*

- *Resides in the dwelling;*
- *Are income eligible; and*
- *Assumes the balance of the years remaining on the lien.*

*Other grantees incorporate a "hardship" clause in their recapture policy such that the lien is waived or forgiven in cases of extreme economic or personal (e.g., illness or death) hardship. DHCD recommends grantees provide examples of unforeseen hardship that may qualify for forgiveness in the recapture policy.*

**Mortgages.** A mortgage is a conveyance of or **lien** against property (as for securing a loan) that becomes void upon payment or performance according to stipulated terms. Many housing rehabilitation programs file mortgage instruments as liens against assisted properties. Mortgages may also be utilized by another lending institution assisting the same project. In these instances, the banking institution assumes the responsibilities of filing, tracking, and clearing the mortgage at the County Registry of Deeds. The grantee's position with respect to the mortgage should be understood by both the grantee and the program recipient.

**Liens.** A lien is a claim by one person on the property of another as security for money owed. Such claims may include obligations not met or satisfied, judgments, unpaid taxes,

materials, or labor. A lien is an encumbrance on the property and reduces the owner's equity in the property until the lien is released. In housing rehabilitation programs which use liens to enforce the terms of a recapture and anti-speculation policy, grantees develop a lien oversight, management, and monitoring process. The process includes:

- Determining when the lien should be recorded at the County Registry of Deeds. Some grantees record following the loan closing, while others wait until the completion of the rehabilitation work to ensure that the lien covers the full amount of public funds used in the rehabilitation. When a municipality chooses to execute the lien at the loan closing and immediately record it, amendments to the lien can be done if the amount of funds either increases or decreases. Recording the lien at the time of closing does protect funds that are committed to the project. Other municipalities file at the end, which has the benefit of reducing the number of filings.
- Recording the lien. Upon project completion, the grantee is responsible for taking the lien document to the County Registry of Deeds and having it recorded. Massachusetts CDBG does not require use of a particular system for recording and discharging liens.

*Please Note: Grantees must maintain a formal tracking system.*

Once recorded and until later released, the recorded mortgage or lien gives notice to potential purchasers or future lenders using the property for equity, that there is a debt against the owner's equity or value which must be paid off ahead of other debts recorded later. Because a lien or mortgage is a legal document that can affect a property owner's ability to secure other financing using the property as security, it is important that the grantee release the lien when the terms of the agreement have been met. This may happen after the end of the Massachusetts CDBG program in a particular community. This responsibility may be carried out by various positions, including Finance Director, Treasurer, Assessor, or Town Counsel, Town Manager or other designated entity. Important points to consider:

- Upon project conclusion, be certain that the lien includes the correct, final project cost.
- Check periodically on the project status to ensure against lien violations.
- Keep track of the time frame involved so that the appropriate release of lien takes place when the terms of the lien have been met.

Effective Lien Management Systems often utilize a Lien Ledger Sheet. Once established, periodic reviews of the sheet are made and when appropriate a discharge notice is sent to the Registry of Deeds. The ledger sheet is easily transferred to another municipal office when the community development activity administration ends. The Lien Ledger Sheet typically includes:

- Owner's name;
- Address of the property;
- Book and page number where deed is recorded;
- Loan or grant amount (and forgiveness schedule if applicable);
- Date recorded; and

- Date of expiration.

Lien Management Systems with a built-in discharge process not only facilitates the lien discharge, but also helps prevent future problems. Below are 2 types of discharge processes:

Use of Town Counsel to monitor and discharge liens. One grantee records a lien and gives a copy to the town counsel who has responsibility for discharging the lien upon sale or transfer of ownership. Property owners are given written notice that the lien is on file and can contact the counsel when sale of the property is expected.

Discharge Notices Prepared at time the Lien is Set-up. Another grantee prepares discharge notices in advance (at the time that the contract between the owner and the grantee is finalized). These discharge notices are filed by expiration date (month and year). Upon expiration, the discharge notice is signed by the Chief Executive Officer of the community and sent to the Registry of Deeds. The discharge process will be taken over by the Town Clerk's Office when the housing rehabilitation program ends.

Subordination. The Anti-Speculation/Recapture/Forgiveness Policy included with the community's application must specify the local policy for subordination of housing rehabilitation loans, and the appeal process should be addressed in the Anti-Speculation /Recapture/Forgiveness Plan. A community's subordination policy should be designed in consideration of local economic and lending standards. Major considerations for subordination policies include:

- What are the reasons for allowing subordination? E.g., will subordination allow the homeowner to refinance at a lower interest rate, modify the term of mortgage or otherwise lower the monthly payment?
- How much equity must be maintained in the property for subordination (loan-to-value ratio)? E.g., 80%, 90%, or 100% of current property value?
- How will property value be determined? E.g., assessed valuation or appraisal?
- How much, if any, cash out will the community allow, and for what purposes? E.g., to pay medical bills or college tuition, or to undertake home improvements?
- How will requests for subordination be reviewed and approved? E.g., Grant Administrator or Board of Selectmen?
- Any appeal process should be included in the Anti-Speculation/Recapture/Forgiveness Plan.

## **Marketing and Outreach of Housing Rehabilitation Programs**

Marketing and outreach for housing rehabilitation programs must be consistent with the program guidelines prepared during program design. It is important to ensure that the guidelines are applied consistently with all prospective applicants. An effective marketing campaign informs residents about the:

- Availability of funds to be used for housing rehabilitation.
- Eligibility requirements for property owners and types of work that can be undertaken.

- Application procedures.

The success of a marketing campaign can be measured by the number of inquiries from potential applicants and contractors and from the number of applications received. On the other hand, if there is little interest expressed, few applications are submitted and property owners drop out of the process early in the in-take process, it may be time to reevaluate the outreach and change marketing strategies. It may also be time to review the overall program design and to talk with potential customers about problems they see with the program. A variety of techniques can be combined to create an effective campaign, including:

- Press releases and articles in local newspapers, including ethnic, cultural, and minority newspapers.
- Public service announcements and interviews on radio or local cable channels.
- “Speakers Bureau” where members of the community development office staff speak about the program at civic, business association, banking, and or social service organization meetings.
- Exhibits or displays of “before” and “after” pictures (with owner’s consent) of completed projects arranged in the lobbies of local banks, schools, businesses, or government buildings.
- Newsletters or program brochures.
- Posters or flyers.
- Posting on community website.
- Individual letters to property owners in target area - Addresses for absentee landlords may be obtained from tax records in the assessor’s office.
- Notices to local building material construction suppliers.
- Agenda items at Selectmen’s or council meetings.
- Notices at local functions - e.g., spring clean-up, annual civic events, holiday events. Referrals from other programs or government offices.
- Notices to proximate Community Development Corporations (CDCs).
- Program brochures to local lenders/banks who may refer applicants who don’t qualify for traditional financing.
- Word of mouth – be certain to follow established application/wait list procedures.

Before developing the materials for a marketing campaign, grantees must develop the eligibility requirements for participation in the program. Identifying who is eligible early in the process may help reduce the number of people who go through the program only to discover that they are ineligible.

In order to serve more residents, including those who may not be eligible for the Massachusetts CDBG funded program, community development staff should be prepared to disseminate information about other programs and funding sources both public and private. Making referrals to other sources of funding for both eligible and ineligible applicants is a method some grantees use to address the overall needs of a target area and to make the public funds go further.

Promotional materials should be well written, clearly presented, consistent and concise. Materials should include the following information:

- Amount of funding available.
- Type of assistance available (i.e., funding mechanism - loans, grants, or combinations).
- Map of geographical target area (if applicable).
- Eligibility requirements including but not limited to:
  - Ownership status (i.e., owner occupied or investor).
  - Income limits
  - Eligible repairs.
  - Ineligible repairs
- Application process.

Marketing materials targeted for local contractors to encourage their participation in the program should include information that states:

- Detailed specifications will be made available to simplify cost estimating and fair bidding.
- Payment will be guaranteed by the grantee as long as work is deemed satisfactory upon inspection.
- Timely progress payments will be made during the rehabilitation work.
- Executed contracts will protect both the homeowner and the contractor from misunderstandings.
- Processes are in place for mediating disputes which may develop between and among homeowner, tenants, contractor, and craftspeople or tradespeople on a timely basis.
- Year-round work means that construction work is available in the off season.

## The Selection Process

Grantees often have more eligible applicants for the program than the available funding can cover. Grantees should establish written criteria and priorities for selecting which of those eligible applicants will receive financial assistance for housing rehabilitation. The law and regulation do not provide a standard selection criterion. It is very important that the selection criteria reflect overall housing rehabilitation program design and the needs of the community. The selection process may include any of the following:

- No priorities. Eligible property owners are served in the order in which they apply. "First come, first served."
- Very low-income owner-occupants of eligible properties are given priority over low to moderate income owners or investors.
- Priority is given to properties with the most serious code and/or health and safety violations - e.g., failure of major systems or presence of hazardous materials vs. peeling wallpaper or torn window screens.



- No target area is designated (unless required), however, priority is given to properties located in the most visibly blighted neighborhood regardless of whether it is an investor-owned or owner-occupied property.
- Priority is given to elderly owner-occupants or to households with handicapped members based on an urgent need.
- Priority is given to units where there is lead paint and a child present, or if the child is lead poisoned.
- Priority is given to property located in or adjacent to a target area.

*Please Note: Massachusetts CDBG allows up to 20% of program funds to be used for emergency repairs (e.g., leaking roof, failed heating system, failed septic system, etc.) that are out of sequence from written application procedures used by the local program. Emergency funds may be used only to address the emergent repair(s). If there are other issues they can be addressed only by following established applicant selection procedures.*

Emergency repairs. Emergencies are serious, unexpected, and often dangerous situations requiring immediate action. By definition, housing emergencies that may be addressed in a housing rehabilitation program include imminent threats to the health and safety of the occupants of a dwelling. In addressing an emergency, CDBG funds may be used only for what is necessary to address the emergent repairs. This will vary case-by-case depending on physical circumstances in the field. Examples of emergency conditions that might be addressed in a housing rehabilitation program include, but are not limited to:

- Roof leaks that are detrimental to the health or safety of the occupant(s).
- Mold or insect/rodent infestation.
- No heat due to system failure.
- No electricity due to system failure.
- Plumbing deficiencies causing health or safety threats to occupant(s).
- Structural deficiencies rendering the home unsafe.
- Lead poisoning.
- Septic system failure.

All valid emergencies require documentary evidence such as photos and inspection reports, written opinion of third-party professionals or written determination from the Board of Health, building inspector, or other oversight authority of the community of the emergent condition that is causing or contributing to an immediate threat to the health or safety of the occupants of the dwelling. Professional letters of opinion and similar documentation must include a description of the failed conditions and specific threats to health and safety of the occupants. Examples of emergency documentation for 4 common situations include:

1. Roof leaks – Photos, Board of health letter, or mold inspection report that clearly document that the leak is infiltrating the building structure and damaging framing members, insulation, building systems or causing dangerous mold growth, or other health or safety hazard. There must also be evidence that emergency repairs are limited to those required to address the immediate threat. E.g., patching the roof to the extent practical and feasible vs. replacing the entire roof.

2. Failed heating system – Photos, letter from a plumbing or heating contractor, or other qualified professional that the heating system has failed, a description of the failure (e.g. cracked boiler), and health/safety threat (e.g., no heat).
3. Septic system failure – Letter of opinion from the Board of Health, septic inspector or installer, or other qualified professional that the system has failed, the evidence and nature of failure, and the specific health and safety threat.
4. Lead poisoning – Report from the Massachusetts Department of Public Health or a qualified health professional that a lead-poisoned child or child under 6 years of age resides in the dwelling. (Refer to Lead Paint section in Chapter 20 on page 36.)

Please Note: An emergency repair does not remove the responsibility for grantees to undertake environmental review.

## Application Process

Grantees design their intake and selection process based upon what is most appropriate given the nature of the target area or population. Applicants for the housing rehabilitation program complete an application for assistance. Information is required for both the owner and the tenant of a unit. As a rule, the grantee will require third party verification of the information provided.

In many communities, applicants are encouraged to complete applications at the Program Office where staff are available to answer questions. Some offices hold evening hours or open on designated weekends to accommodate working people's schedules. Other offices allow applicants to complete applications at home. Communities should also consider making themselves available for meetings through virtual platforms.

Information submitted on an application and related income documentation is, as a general rule, considered confidential and must be maintained in a secure file (See [201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth.](#)) Grantees are encouraged to develop policies and procedures to be used in the limited situations when the information must be made available. For example, it may be necessary to share application information with bank personnel when a loan application is under consideration. It is not always possible to keep applicant information completely confidential.

Pre-application. Long and/or confusing preliminary applications may discourage property owners from participating in a housing rehabilitation program. Use of a pre-application may save time for both property owners and staff. Grantees may establish an initial screening process prior to application submission. Some grantees distribute a short preliminary or pre-application with marketing and promotional materials. Submittal of detailed information that requires verification is delayed until later in the application process. Pre-applications are often used to eliminate clearly ineligible applicants or properties. Determination of

preliminary eligibility may be combined with identification of the estimated level of the assistance needed.

When the national objective is benefit to low- and moderate-income persons, the listing of household incomes without verification is used in making the first "cut" for culling potential "eligible" applicants and structures from the "ineligible" ones. Applicants who make the first cut submit full documentation to verify household income for each unit in a residential structure. Examples of information requested on a preliminary application often includes:

1. Property address.
2. Holder of title to property.
3. Number of dwelling units.
4. Number of individuals living in each household/unit.
5. Number of children under the age of six in each household/unit.
6. Description or listing of repairs needed, which may include pictures.
7. Estimated annual gross income of all adult members in each household/unit.

In addition, some municipalities undertake a preliminary property inspection to:

1. Evaluate the existing condition of the property;
2. Compare inspection findings with the property owner's "wish list" of needed repairs; and
3. Determine if the property qualifies for program assistance.

Early inspection provides an opportunity for the rehabilitation specialist to meet with the property owner to explain program requirements in detail. The pre-application and early inspection processes may help the property owner decide whether to proceed with the selection process. On the other hand, many municipalities undertake property inspections only after the selection process is completed. See the discussion in Chapter 20 on page 21 "Formal Notification and Agreement" for additional information on the property inspection process.

Application. The application identifies those applicants, individuals and properties - which- meet income and program eligibility requirements. Once eligible applicants are identified, the grantee makes the final selection of program participants based upon locally determined funding priorities.

The level of information requested at application is determined by the grantee. For example, some municipalities request a list of needed repair work with the application rather than with a preapplication. There are specific requirements that are required of all housing rehabilitation program applications. E.g., household income, issues or problems needing rehabilitation assistance, conflict of interest certification, and statement that information is subject to review and provided under penalty of perjury. Grantees who use a separate preapplication process may require the submission of income documentation (owner-occupant and tenant household(s)), property deed, and mortgage at final application. Income verification must be current. If a grantee has determined income of the owner or tenants at a pre-application stage, a review of income status may be necessary if time has elapsed.

Some grantees use a single application and do not pre-screen for eligibility of owners and properties. All required information is submitted at the same time. The level of detail is determined by the grantee in the program design. Collecting and verifying applicant information can be very time consuming. While grantees often allow 2 to 3 weeks to complete the selection process, the process often takes considerably longer, based on delays involving missing documentation such as IRS tax transcripts when appropriate, lead paint testing, a full inspection, a Work Write Up, and other types of delays. Please note, it is important to commence rehabilitation work as soon as is practicable from the time of income verification in order to avoid the need to re-verify income. For instance, if more than six months has elapsed between income verification and the execution of the contract, then income will need to be re-verified. The selection process typically includes:

1. Pre-application process.
2. Application submission and review.
3. Property inspection and eligibility determination.
4. Acceptance or rejection notification.
5. Signing of agreement and other legal documents.

## Determination of Eligibility

Verification of eligibility is based on CDBG requirements and the community's program design. All eligible applicants are placed in a pool and participants are selected from the pool of those eligible based upon additional criteria included in the grantee's program design. The process selected must be uniformly applied to all applicants. Grantees must be able to demonstrate the uniform application of guidelines with all applicants during monitoring as well as during the review that takes place during resolution of an appeal or grievance. See most recent draft One Year Action Plan/Application Guidance for more information on grievances. A Determination of Eligibility for a resident and for the property consists of several considerations, including:

- Income eligibility of occupants of the residential unit(s);
- Nature of repairs needed;
- Eligibility of the property – e.g., the location, number of units in the structure, and whether it has been assisted in the recent past; and
- No identified conflicts of interest of owner or occupants.

*Please Note: Conflict of interest requirements for inclusion in all housing rehabilitation program applications for assistance are provided in the Massachusetts Conflict of Interest law MGL Chapter 268A. CDBG Conflict of Interest regulations are codified at 24 CFR 570.489(h). There is also a Conflict of Interest Informational Memo on the MA CDBG webpage.*

Grantees are required to administer the programs as specified in their application unless the changes have received prior approval by Massachusetts CDBG. E.g., If the program design calls for 100% low-and moderate-income benefit, only units occupied by low- and moderate-

income households may be assisted with grant funds. The Program Office reviews the application, income information, and documentation required by the program design to determine:

1. Whether tenants and property owners are income eligible. If some are not, is the percentage of units occupied by income eligible households greater than 51%?
2. Eligibility of the structure - Does the property meet the basic requirements for program assistance? Is it in the targeted neighborhood? Does the property need repairs to correct code violations? Has it been assisted in the past?
3. Eligibility of individual units being assisted (income eligible households, no conflicts of interest).
4. Eligibility of the work proposed.

### **Income Eligibility and Verification**

When the national objective selected is benefit to low- and moderate- income persons, determining eligibility for assistance includes verification of information provided by the applicant on the application. HUD's CDBG income limits are updated annually are used to identify LMI households based on family size for specific areas. LMI households have incomes that do not exceed 80 percent of the median income of the area. Updates to income limits are published annually and available at <https://www.hudexchange.info/resource/5334/cdbg-income-limits/>.

Standard documentation of gross household income (before taxes and deductions) includes six to eight weeks of payroll information immediately prior to filing the application. Total household income is verified including that of all individuals, 18 years and older. Income of fulltime dependent students may be excluded in calculating gross income.

#### Minimum Unit Eligibility Criteria for low- and moderate-income national objective:

The following are Massachusetts CDBG minimum criteria for the number of units in a structure, which must be occupied by households (owners or tenants) of low or moderate income. Grantees may be more restrictive if they choose, however, they should consider whether additional restrictions will impact timely program implementation or discourage participation:

- Single Unit Structure - The resident (owner or tenant) of the structure must be income-eligible.
- Two Unit Structure - At least one of the units must be occupied by an income eligible household.
- Three or More Units - At least 51% of the units must be occupied by households that are income eligible. All units are included in the calculation. Vacant units can be counted as

income eligible as long as the owner agrees, in writing, to limit rents for a minimum of fifteen years (see Rental Agreements on page 24 in this chapter).

- When two or more rental buildings being assisted are located on the same or contiguous properties, and the buildings are under common ownership and management, the grouped buildings may be considered as a single structure.

*Please Note: Grantees are encouraged to set time limits on receiving completed application information. Protracted delays in providing necessary documentation and application information at various steps in the process can quickly compound the overall program timeline. Program delays caused by uncooperative applicants are also unfair to other applicants who may be waiting for help. DHCD would recommend that the municipalities incorporate language into program guidelines to address instances in which applicants are impeding the completion of the rehabilitation work.*

## **Notification to Applicants: Eligibility, Funding Decision and Requirements**

All applicants should be notified in writing as soon as possible whether they are eligible for the program and whether they are selected for program assistance. Ineligible applicants should receive a rejection letter that specifies the reason(s) for the determination. If there is insufficient funding to assist all eligible property owners, the grantee may maintain a waiting list. Individuals who are placed on the waiting list should be notified in writing that if funds become available they will be notified. If a housing rehabilitation program maintains a wait list or pre-applications list, then it should invite full applications to the entire list before accepting full applications from additional applicants contacted through further program marketing and word-of-mouth.

All grantees must have a grievance policy to follow so that they can request a hearing if they feel their applications were not treated fairly or want to dispute the eligibility determination.

Once an applicant is accepted into the housing rehabilitation program, a meeting is arranged to explain, in greater detail, the requirements and procedures for receiving program assistance. In addition, program restrictions, including recapture of funds, placement of liens, and rental policies, are explained to property owners during the meeting.

*Best Practice: Applicants should sign an acknowledgement form that they have received program materials and have had program requirements and procedures explained by housing rehabilitation program staff.*

**Environmental Review.** Once an application is approved and the project site is known, there are further steps in the environmental review process that need to be completed. At this time, the initial environmental review for the housing rehabilitation program will have been completed, including environmental clearance issued by the Massachusetts CDBG Program. This initial review would have identified areas for further review that could not be carried out until the project site is identified. Environmental clearance is conditional upon completion of these site-specific reviews. A site-specific review form must be completed for each project once they are identified. The site-specific review will look at one or more areas of

environmental compliance (e.g., historic properties) that were identified during the initial review. Be aware that site specific reviews extend the period of time for environmental clearance of each identified project. e.g., historic properties reviews under the Section 106 of the National Historic Preservation Act allow up to 30 days for the State Historic Preservation Office (Massachusetts Historical Commission) or other local entity designated to conduct such reviews and comment. This process is called a Tiered Review. More information can be found on at HUD Exchange.com. Search Tiered Environmental Reviews.

Title search. Housing Rehabilitation Programs must conduct a title search of the property to be assisted prior to committing grant funds. The purpose of the title search is to verify ownership status of the property, and to determine if there are any encumbrances, such as transfers, liens, judgements or other recorded data that impact the title. Title searches range from assigning an experienced, in-house staff person to conduct a title “run-down” using the online deeds system, to hiring a professional title search company, to using an outside attorney. Local housing rehabilitation programs may select the method that is most appropriate and cost-effective considering local program design. Some local programs also compile information from the title search about outstanding debt on the property as a threshold for making assistance. I.e., the expected amount of the grant lien is added to existing debts and compared to the assessed property value to determine a maximum debt-to-equity ratio of 80:20, 90:10, or other ratio. The primary purpose for this is to protect the program against a loss in the event of foreclosure. However, a maximum debt-to-equity ratio is not a program requirement. Whatever title search method is utilized, the process and summary of results must be documented in the case file.

Up-to-date payment of real estate taxes. If a tax lien is on the property it should be identified in the title search. However, housing rehabilitation programs should also check with the local tax collector or other municipal official to determine if there are any other tax delinquencies or unpaid municipal fees. This process must be documented. Most housing rehabilitation programs will not approve assistance unless or until all past due real estate taxes and other municipal fees are paid. Others may verify that a payment plan has been implemented and is being followed. In any event, the program should have a written policy for how applications with past due municipal taxes or fees will be handled.

Homeowners insurance. Having a current homeowner’s policy (for owner-occupied property) or a liability policy (for investor-owners) at the time of application and for the duration of the lien for CDBG assistance is a Massachusetts CDBG Program policy. Housing rehabilitation programs should document in the case file that insurance policies are current at the time of application and should include language in owner-town agreements that appropriate insurance must be maintained for the term of the lien for municipal assistance.

Flood insurance – Lenders will require flood insurance on properties located within a 100-year floodplain as shown on the FEMA Flood Insurance Rate Maps (FIRM). Occasionally local housing rehabilitation programs will encounter applications for properties that are located in the 100-year floodplain, but which do not carry flood insurance because they have no mortgage, or their existing mortgage precedes an update to the FIRM that now includes their property. Flood insurance premiums are expensive so sometimes a low-income



homeowner may elect to risk not carrying a policy if they're not required to by a lender. HUD does not require flood insurance in state administered programs. However, as a best practice recommendation, Massachusetts CDBG Program policy encourages local housing rehabilitation programs to require it for projects located in a 100-year floodplain.

*Please Note: Massachusetts CDBG Program policy allows payment of the first year premium for homeowners flood insurance policies as an eligible project cost.*

Owner-municipal Agreement. An agreement or contract is used to specify the requirements of all parties and to identify the maximum amount of funding which will be provided. The owner-municipal agreement must reference the work write-up, include the amount of assistance and recapture provisions, and must reference the rental agreement(s) (see Rental Agreements in Chapter 20 on page 24) if it includes rental unit(s). Once a property owner decides to participate in the housing rehabilitation program, some municipalities require him/her to sign and date an agreement before undertaking property inspections and otherwise committing housing rehabilitation staff time. Most grantees wait until after the property inspection and work write up have been completed and contractor selection before signing the agreement.

The owner-municipal agreement may also be signed and dated at the closing for grant assistance along with other required documents. Regardless of when the agreement is signed and dated, it delineates all program requirements and stipulations including Massachusetts CDBG policies regarding fair housing and non-discrimination, recapture of funds, and rent stabilization procedures (if applicable). The owner-municipal agreement is executed between the property owner and the Program Director, the Community Development Director or other authorized municipal official, on behalf of the grantee. The agreement is kept in a project file and amended or extended if necessary.

Contractor-Owner Contract. This contract must refer to the work write-up, include a detailed budget consistent with approved cost proposal, timing and method of payment, period of performance and procedures for extending or revising project costs, including change orders.

*Please Note: Davis-Bacon wage rates would not normally apply in a typical housing rehabilitation program, but does apply to mixed-use projects, and in projects that include more than 7 units. If they do apply, Davis-Bacon wage rates and other applicable construction-related provisions must be incorporated into the contract. Contact Massachusetts CDBG Program staff for assistance.*

## **Preserving Affordability of Rental Units**

The Massachusetts CDBG Program requires that projects that are assisted in housing rehabilitation programs must be occupied by Low-and-Moderate Income households (LMI). Compliance with the national objective of LMI/housing requires that all (100%) of assisted single-family homes must be occupied by LMI households, either as owners or renters.

- At least one (1) unit in an assisted two-family home must be occupied by a LMI household (either owner or renter).
- At least 51% of units in projects with three (3) or more units must be occupied by LMI households.
- For owner-occupied, two (2) to four (4) unit projects: National objective compliance is achieved by counting rental units that are occupied by LMI households. Those units, and/or vacant units, must be preserved as affordable for at least 15 years (or the term of assistance) in numbers sufficient to maintain national objective compliance. Affordability of rental units in owner-occupied 2-4 unit buildings is maintained using *Rental Agreements* (see discussion on rental agreements, below).

**Investor-Owned Properties.** When national objective compliance is achieved by counting rental units that are occupied by LMI households, those units, and/or vacant units, must be preserved as affordable for at least 15 years in numbers sufficient to maintain national objective compliance. The owner, municipality and DHCD will execute an Affordable Housing Restriction (AHR) for the property, which specifies number of units with affordable rents, income limits and rent increases over time. The AHR is recorded and runs with the land. Units that are vacant or are vacated over time and are counted as contributing to the project's national objective compliance must be filled by a LMI household.

**Rental Agreements.** In owner-occupied 2-4 unit projects with rental units, the owner, municipality and tenants (if LMI-occupied units) will execute Rental Agreement(s), which specify affordable rents, income limits and rent increases over time. Rental Agreements for vacant units and for units that are vacated in the future and will contribute to the project's national objective compliance are executed when filled by a LMI household.

#### Comparison of Rental Agreements and AHR Key Features:

| Feature   | Rental Agreement | Affordable Housing Restriction (AHR) |
|---|------------------|--------------------------------------|
| 15 years, for owner-occupied 2-4 unit rental properties | YES              | NO                                   |
| 15 years, for investor owners                           | NO               | YES                                  |
| Runs with land  | NO               | YES                                  |
| Expires with loan                                       | YES              | NO                                   |
| Income doc existing occupants* at application           | YES              | YES                                  |
| Applies to vacant units* at application                 | YES              | YES                                  |
| Income doc of filled vacancies*                         | YES              | YES                                  |

\* To the extent necessary for the project to meet national objective, Rental Agreements shall incorporate:

- A unit's base rent;
- Allowable rent increases based on the Annual Adjustment Factor (AAF);
- Listed utilities allowance;
- The dates rent increases can occur (typically at renewal of one-year lease);
- The effective date of the agreement (start and end dates);
- Prohibitions on dislocation and discrimination;
- Provision for annual tenant income monitoring;
- A sign-off by the tenant;
- The procedure by which the tenant(s) will be notified of changes to the Rental Agreement, including rent increases; and
- A recapture policy and the legal recourse which may be undertaken if an owner does not abide by the terms of the rental agreement.

**Affordable Rents.** The establishment of allowable maximum rent levels for rental units assisted with Massachusetts CDBG funds is covered by the Massachusetts CDBG policy summarized below.

*Please Note: Units occupied by over-income tenants at the time of application are not subject to the affordability restrictions, although the tenants are protected under the Uniform Relocation Act).*

- **Base Rent:** For occupied units, the base rent is the actual rent for the unit at the time of the owner's application for housing rehabilitation assistance. Rents are held at the base rent until expiration of the lease, and then may increase annually applying the AAF.

For units that are vacant at the time of the owner's application, the rent shall be determined by factors that include the operating expenses the owner incurs for the unit and the owner's share of the rehabilitation costs. In no event shall the base rent of vacant units exceed the lesser of Fair Market Rent (FMR) or High HOME Rent for the area.

- **Fair Market Rent (FMR) or High HOME Rent:** The cost to rent modestly priced, decent, safe, and sanitary housing in various housing market areas, by bedroom size, is defined by HUD by two methodologies – FMR and High HOME Rent. Owners of rental units covered by the 15-year affordability restriction may increase rents, in amounts not to exceed the lesser of FMR or High HOME Rent at:
  - the completion of rehabilitation, if there is no current lease, or upon the expiration of the existing lease, and
  - annually thereafter for the duration of the Rental Agreement.

Limiting rent increases to the lesser of FMR or High HOME Rent is intended to ensure the continued affordability of the units while allowing the owner a reasonable return on his or her investment. The most recent FMR and High HOME Rent schedules are updated annually and posted at the following links: [FMRs](#), [High HOME Rents](#).

**Rent Increases.** With rental agreements and AHRs, rent increases are limited to the HUD Section 8 existing housing program Annual Adjustment Factor (AAF). This rental increase provision shall be included in the lease between the owner and the tenant or, if a lease is already in effect, the tenant shall be notified in writing of the rental increase restriction and the maximum allowable rent increase. For units occupied by low- and moderate-income households (LMI):

1. Rent increases are limited to once per year.
2. If there is no existing lease, rents can be increased in accordance with the FMR or High HOME Rent schedules upon completion of the rehabilitation.
3. If the unit is under lease, increases cannot occur until that lease expires.
4. Rental agreements for longer than one year should allow increases at annual intervals.

*Best Practice: A notice of tenants' rights relative to the rental cost of the unit should be provided to tenants before the project begins. Grantees monitor owners of rental property assisted with Massachusetts CDBG funds for compliance with restrictions on rent increases. This may be done by notice, in which the tenant is told how to notify the grantee of a problem, or by survey. Violation of the rental agreement is grounds for recapturing Massachusetts CDBG funds from property owners.*

## The Rehabilitation Process

Prior to construction there are five main steps to complete: Initial inspection(s), work write-up, cost estimate, bid and contract award.

**Initial inspection.** All housing rehabilitation projects must include an inspection of the property to be rehabilitated. Inspections are used to justify the expenditure of CDBG funds for each specific rehabilitation item by documenting that costs are necessary, reasonable and allowable, and to:

- Determine and document code violations relating to the [Massachusetts State Sanitary Code, Chapter II \(105 CMR 410.00\)](#);
- Identify additional health and safety problems which might be described in terms of building code issues, [HUD Housing Quality Standards \(HQS\)](#), incipient violations; and
- Develop work specifications and determine cost estimates for those specifications.

During an inspection, a rehabilitation specialist conducts an on-site survey of the property. The purpose of the inspection is to determine the condition of the property including the roof, structural components, foundation, exits, and electrical, plumbing, waste, and heating systems. Inspections cover the entire interior, exterior, and systems of homes. Some of the basic tools that are used by inspectors to measure and evaluate existing conditions include:

- Note pad or electronic device to record room by room deficiencies.
- Paper or electronic inspection form or checklist which identifies code violations and brief descriptions of issues that need to be addressed.
- Camera to document existing conditions.

- Tape measure, level, and a few basic hand tools.

*Best Practices: For ease of coordination and tracking, a standard numbering system for work items should be consistent from inspection to work write-up and cost estimate to work write-up.*

Code Violations. Code violations are defined as conditions that do not meet the minimum standards detailed in the Massachusetts State Sanitary Code, Chapter II or otherwise do not comply with HQS. Code violations often addressed by the Massachusetts CDBG projects include:

- Major defects in structural elements of a dwelling (e.g., floors, stairways, porches, railings, etc.). Leaks, obstructions or defects in sinks, tubs, showers, toilets, connecting plumbing, gas fittings, sewage disposal system, electrical, heating, or ventilation equipment.
- Temporary, improper, or dangerous electrical wiring.
- Infestation of insects and rodents.
- Most homes constructed prior to 1978 will require a lead paint inspection by a qualified inspector, including a soil test.
- The presence of identified or suspected hazards and contaminants, such as asbestos or oil, will require specialized inspections.

A detailed, signed and dated inspection report must be generated to record the inspection. The inspection report must identify all specific code violations and incipient violations. This practice will ensure that complete and uniform inspections are performed on all properties. The inspection report and notes are maintained as part of the project file. Inspection reports detail the condition(s) of:

1. Property exterior (e.g., chimney, roof, foundation, light fixtures, porches, stairs);
2. Property interior (e.g., walls, ceiling, windows, floors);
3. Heating, electrical, plumbing and other building systems;
4. Basement, attic and all floors;
5. Room-by-room (e.g., living room, kitchen, common areas, exits) conditions of the structure;
6. All areas of the property including the yard, soils, driveway, fences, stairs, and out buildings;
7. Defects by age and degree of neglect;
8. Presence or absence of smoke detectors (since the local fire department is charged with enforcing regulations for smoke detectors, they are a good source for directions on installation requirements including number, type and location);
9. Presence of lead paint or other hazardous materials (identified in other specialized inspections, such as for lead paint or hazardous materials -- refer to Hazardous Materials - Lead Paint and Asbestos in this chapter);
10. Septic system repairs needed (identified by a qualified septic system inspector); and
11. All incipient code violations -- items which will likely require replacement or repair within a year or two. For example: roofing shingles that are beginning to deteriorate but

which are not yet leaking, or an aging heating or hot water system which has minimal efficiency rating should also be recorded.

Complete inspection reports contain sufficient details of the existing condition of the property to justify the subsequent work write-up and cost estimates. For example, a notation of "broken window" is not sufficient detail to justify "replace window and frame" in the write-up. A more complete report will answer:

- What is broken - the window glass, the sash, the frame?
- What is the extent of the deficiency?
- Is this a code violation or an incipient violation? (Cite violations in report.)

A more appropriate description might read, "window--warped wood frame, broken glass replaced with cardboard, no storm window or screen, no sash." Other examples of detailed descriptions of code violations include:

- First floor level wood shingle siding is rotted, wet/spongy at foundation level. - One shingle broken and missing on wall area.
- Wood shingle not tight around windows, 1/4" to 1/2" space.
- Although the aluminum siding on the top two floors and wood shingle siding on first floor was painted, (one coat, per/owner knowledge), a 2' x 5' section of the wood shingles near the back has not been painted. In addition, the wood covering boards and molding at roof line are loose, appear rotted in areas, covering end is not tight at rear section, and paint is chipped and peeling. - One downspout is missing, from gutter to ground.
- One cellar window, (ply covered), is loose and drafty.
- Cement stucco (applied by contractor) on foundation does not go below ground level. Currently 3 or 4 inches above ground.

*Please Note: Today many inspectors use standardized electronic forms with tablets, laptop computers or mobile devices. Others still prefer the paper and clipboard method. The important thing is that the information is standardized, includes code references and is retrievable, legible and detailed.*

Work Write-Up. After the initial inspection report is completed, the housing rehabilitation specialist prepares a detailed work write-up. The work write-up details the specific code violations or incipient violations that must be remedied, the materials to be used, and methods for installing materials. The work write-up will incorporate into the specifications- remediation of lead paint, septic repairs, or other environmental hazards identified in specialized inspections.

Some programs have developed written rehabilitation and material quality standards, installation and performance standards, and may use formatted electronic forms and specifications. These are helpful for the rehabilitation specialist in preparing the work write-up. Written standards may include the quality and substance of workmanship, standard practices of the various trades, and adherence to manufacturers' installation recommendations. They provide details of what is expected of tradesmen and decrease the

likelihood of complaints, grievances, or misunderstandings of what is and is not allowable for the project.

The work write-up will typically begin with these material and rehabilitation standards. The standards are followed by a description of the specific work to be performed at the assisted property. Code reference numbers are included in the work write-up to show that specific work items directly correspond to corrections of specific code violations per the State Sanitary Code, Chapter II. The work write-up may list work items by room location or by trade.

The work write-up must be written in sufficient detail and specificity to allow participating contractors to submit competitive bids that correspond accurately to the work specification. The write-up should avoid the use of words such as “as necessary,” “if needed,” and “repair or replace.”

When specifying a brand name, the term “or equivalent” must be included in the description in accordance with state procurement law. If it is not feasible or workable to specify a brand, a dollar amount should be specified. The following information should always be included in work write-ups:

1. Location/case reference amount of property.
2. Name of property owner.
3. Scope of work.
4. Construction methods.
5. Quantity, dimensions, locations.
6. Rehabilitation and material quality standards.
7. Installation and performance standards.

If the planned rehabilitation cost exceeds the per project cap set in the grantee’s program design, the following options are available to the grantee and property owner:

- Request a Single Case Waiver.
- Eliminate lower priority work items using deduct alternates.
- Use other funding sources, if available, and allow the property owner to contribute to project cost.

*Please Note: Massachusetts CDBG policy on the assignment of bid alternates follows MGL Chapter 149, Section 44G (B), which provides that, “(e)very alternate contained in the form for general bids shall be listed in a numerical sequence in order of priority. When the awarding authority decides to consider alternates in determining the lowest eligible and responsible bidder, the awarding authority shall consider the alternates in descending numerical sequence, such that no single alternate shall be considered unless every alternate preceding it on the list has been added to or subtracted from the base bid price.”*

From the time it is originally drafted, the work write-up may be revised one or more times before the final work write-up is signed. Changes may occur following initial review with



the owner, or after the rehabilitation specialist receives input from prospective bidders. In any case, when the scope of work is finalized and ready for signatures, it is labeled Final Work Write-Up and is signed and dated by both the property owner and rehabilitation specialist. The review and signing procedure is intended to limit complaints caused by misunderstandings about the work to be performed on the property. Labeling the write-up “final” differentiates it from the initial write-up and/or subsequent versions or drafts. The final work write-up becomes part of the contractual agreements between the municipality and the property owner and between the property owner and contractor. Subsequent changes should be made on separate change order forms and appended to the final work write-up. Refer to section on Change Orders in Chapter 20 on page 34 for further guidance.

The work write-up must be consistent with CDBG rules concerning eligible expenses. The purchase of furnishings and personal property are ineligible expenses. On the other hand, if the unit needs a new stove, an Energy Star compliant stove may be included as long as it remains with the dwelling unit as an “integral structural fixture.”

Cost Estimates. A preliminary cost estimate for work to be performed is prepared as part of rehabilitation process and is done in conjunction with the work write-up. The cost estimate is intended for office use only and is not shared with the property owner in advance of contractor selection. The cost estimate is used to estimate the total construction costs of a specific project and as a reference or gauge against deficient contractor bids. The cost estimate, together with the competitive bidding process, is used to document reasonable costs, as required by 2 CFR Part 200. Cost estimating may be done through the use of an estimating manual or online service (e.g., Home-Tech and R.S. Means) and/or experience with the costs of other similar work items. The rehabilitation specialist should be aware of local prices of materials and labor. They should watch for advertisements from suppliers and should visit area stores to get an idea of the cost of materials.

*Please Note: Although they are completed separately, the initial inspection report, work write-up and cost estimate are interconnected, and the information contained in each document flows to the next. Code violations (or incipient violations) identified in the initial inspection must also be shown to be addressed in the work write-up. Work item references used in the work write-ups should correspond to those used in the cost estimate (and later in the bid sheet).*

Bidding Process. A bid package is developed for each project and generally includes the following items:

- General program description.
- Rehabilitation and material quality standards.
- Installation and performance standards.
- Bidding instructions (e.g., require a site visit, how to treat unseen additional work, etc.).
- Items specific to a particular project (e.g., specifications, alternate work items, floor plan or sketch).
- Detailed work write-up/specifications.
- Bid form.

It is recommended that housing rehabilitation programs require contractors to visit the property prior to submission of bids. In such cases, the bid package includes work specifications, property address, the date of the site visit, and a bid form for contractors to write their proposed costs. The package may also be mailed to selected contractors and be accompanied by a response postcard for contractors to return notifying the Community Development Office whether or not they will attend the site visit and whether they are interested in bidding on the project. The card should state that blind bids are not allowed and that if a contractor plans to bid they should plan to attend the site visit. Today the bid process is frequently managed using email and online systems, but some communities still prefer the paper and postal method.

The pre-bid walk-through at the site allows contractors to ask questions and evaluate the scope of the work required. Some questions may indicate a need to improve and revise the work write-up before bids are submitted. If a work item is amended as a result of the site visit and questions, then the notice and the revised FINAL work write-up (refer to work write-ups, above) must be sent to everyone who received a copy of the bid package.

Although this method entails more responsibility for the Community Development Office staff, there are several advantages. Everyone involved in the project is there at the same time. It is easier for the property owner and the rehabilitation specialist to meet with and show the property to contractors as one group rather than individually. In addition, the return postcard or email response gives the Community Development Office an indication of how many contractors are expected to attend the site visit and bid on the project.

Contractor Solicitation. Municipalities follow various procedures for soliciting contractors. They include solicitation, legal notices and/or having the homeowner solicit their own contractor. The following suggestions may expedite or enhance the process.

- Most communities require contractors to submit application forms that are kept on file and routinely updated. The application includes information on the contractor's work history, references, licensing and associations, and liability and workmen's compensation insurance, including limits. Generally, bid information is sent directly to this list of pre-qualified contractors.
- Some municipalities send out a general letter of invitation to all area contractors informing them that housing rehabilitation work will be funded under its Massachusetts CDBG Program.
- Maintaining a list of pre-qualified contractors is an efficient time-saving measure. Pre-qualifying contractors allows the Community Development Office to determine whether a particular contractor is experienced, competent, licensed to do the work (e.g., lead paint) and completes work in a timely manner. Community Development Directors often recommend against hiring contractors who do not provide at least three references.

- Some municipalities also check a contractor's credit history requiring each contractor to sign a credit release form.
- It may be helpful and expedient to maintain separate listings of general contractors and of specialists (i.e., electrician, plumber, roofer).
- When soliciting for qualified contractors to participate in a rehabilitation program, grantees must contact the Office of Small Business and Entrepreneurship (OSBE) to request a list of eligible minority contractors.

The following questions help in evaluating and pre-qualifying contractors:

1. How long has the contractor been in business? Have they been in business before? When? Under what name?
2. Does the contractor have a permanent office and/or staff?
3. Is the contractor a member in good standing of a trade organization? (Building trade organizations have a code of ethics and a self-policing complaint procedure.)
4. Does the contractor have adequate liability insurance and workman's compensation?
5. Is the contractor familiar with state and local requirements for rehabilitation work and will he/she obtain all the necessary permits? All information should be verified at least annually.
6. Is the contractor licensed and registered as a General Contractor with a Construction Supervisor's License, and/or a Home Improvement Contractor's license with the appropriate license (Restricted, Unrestricted or Specialty) for the work being bid?
7. If applicable, does the contractor have a Moderate Risk or High Risk Deleading License?
8. Is the contractor not listed on the federal or state debarment lists? (Links to debarment lists here): [SAM.gov](https://www.sam.gov) | [Exclusions](#) and [Debarred, Suspended or Decertified Contractors](#) | [Mass.gov](https://www.mass.gov)

Contractor Selection. There are two ways to select a contractor. The procurement process to be followed depends on who executes the contract with the contractor. If the grantee is party to the contract, applicable state and federal procurement laws apply. Grantees must work with their local procurement officer on the system used. If, however, the homeowner signs the contract with the contractor, as is usually the case, municipal procurement requirements do not apply. The grantee may set up its own requirements for the homeowner to follow in selecting the contractor based on cost reasonableness and good business practices.

Cost reasonableness must always be evident, regardless of the method used to select the contractor. Most grantees follow a sealed -bid opening process. The Community Development Office, on behalf of individual property owners, invites contractors to submit competitive bids on specific rehabilitation projects. A Notice of Bid Documents can be published as a legal notice in local newspapers and, if appropriate, in trade publications. Most offices direct mail the Notice to their list of pre-qualified contractors. Contractors are invited to pick up copies of specific work write-ups from the Community Development Office in order to prepare and submit bids.

Many Community Development Offices provide property owners with its list of pre-qualified contractors. Property owners may solicit bids from contractors not on the list with the understanding that all contractors must meet certain qualifications before they are awarded contracts and therefore, participate in the housing rehabilitation program. The property owner is usually required to obtain bids from at least three contractors based upon the specifications in the work write-up.

Regardless of who solicits contractor bids, the lowest qualified and eligible bidder is awarded the construction contract. However, if the low bidder cannot start the work on a timely basis, is on a state or federal debarred list, or does not meet minimal qualifications (e.g., has not submitted references or insurance certificates for liability and workmen's compensation) then the contract may be made to the second lowest qualified bidder. The reasons for disqualifying the low bidder must be thoroughly documented.

On occasion a property owner wants to hire a particular contractor who is not the low bidder. It is allowable for owner to pay the difference between the preferred contractor's bid and the low bid.

If bids are higher than the estimated cost for a particular property, work items identified as alternates in the bid specifications can be deleted and the bids re-evaluated. Negotiation of the scope of work or budget after the bids are submitted is not allowed. However, revising the scope of work, including changing the method of accomplishing work items, adding eliminating work items, or adding alternates, is allowed. If only one bid is received, and it is within 15% - 20% of the cost estimate, it may be awarded; otherwise, the project should be rebid.

The award of a contract signifies the obligation of Massachusetts CDBG funds and is followed by a notice to proceed to the contractor. The notice to proceed specifies the time period within which the work begins and sets the date by which the work must be completed.

Construction Contract. After contractor selection, the contractor agreement or construction contract is executed. There are typically two types of construction contracts:

1. Two party contract between the property owner and the contractor(s). This is the most common type of contract.
2. Three party contract between the municipality, property owner, and contractor(s) (rare).

The contract should explicitly state the following information:

1. Responsibilities of the parties during the life of the contract (i.e., owner shall give access to work area and contractor shall keep work area free from debris).
2. Responsibility of the contractor to repair any damage resulting from his/her work at no additional cost to the owner.
3. Contractor's liability and workmen's compensation insurance which will be in force for the duration of the contract.

4. Responsibility of the contractor for storage and safety of materials until the project is completed.

Grantees may include provisions that the contractor:

- May not assign the contract without the prior written consent of the homeowner and the program director;
- Obtain and pay for all necessary permits and licenses;
- Perform all work in conformance with local codes and requirements;
- Keep the premises clean and orderly during repairs;
- Remove all debris at the completion of work; and
- Warrant the work for one year from final acceptance.

*Best Practices: The Massachusetts CDBG Program recommends that grantees hold preconstruction conferences for each assisted property with the contractor(s) and property owner. Construction contracts can be signed at this time.*

Change Orders. The most common change to rehabilitation contracts is caused by discovery of unanticipated costs. For example, a contractor stripping old shingles off a roof may find rotten sheathing boards that are too soft to shingle over. There are several ways to handle the increased cost. E.g., more funds may be authorized for a particular project. This is dependent upon the local program design and may necessitate a single case waiver if it takes the funding amount over the per unit cap.

Change orders may be executed as a means of changing costs or quantities of a construction contract to address unanticipated conditions. Change orders should be kept to a minimum since they frequently increase the cost of a project or may slow it down. This does not mean that verbal agreements should be used instead of change orders. All changes to an executed contract must be documented in written form and must be justified in the documentation. Change orders must be approved prior to executing the change.

Change orders are appended to construction contracts and are documentation of a change in the executed contract. Change orders must be signed by the property owner, the contractor, and the housing rehabilitation specialist on behalf of the grantee before the specified work can be undertaken by the contractor. Each change order must be accompanied by supporting documentation that describes why the change is necessary, provides revised cost estimates, and any needed plan and specification changes.

“No money” change orders substituting one work item for another, a change in the scope of work, or a change in the time in which work will be completed must be documented and signed by all parties.

Sometimes contractors or property owners attempt to secure additional work that is outside the rehabilitation work approved in the final work write-up. Private agreements or "deals" are discouraged. Such deals may result in short cuts on specified work in order to subsidize the unapproved work. They may also lead to conflicts and disagreements over the scope or

quality of the additional work. The grantee is only responsible for work that is approved as part of the final work write-up or approved change orders. Any additional work must be reviewed and approved by the rehabilitation specialist as a change order.

Progress Inspections. Systematic, thorough inspections are critical to successful housing rehabilitation. The rehabilitation specialist must visit individual properties at regular intervals to ensure that the construction work conforms to specifications. All inspection visits require written documentation in the case file including the date and the nature of the work inspected and must be signed by the Rehabilitation Specialist. Site inspections form the basis for progress payments which are only made for work actually completed. Any conflicts that arise are governed by the grantee's grievance procedure. Typically, the housing rehabilitation specialist performs the property inspection and all subsequent progress inspections of the construction work, and the building, plumbing, electrical, gas or other local inspectors will inspect at required intervals in accordance with the issued permits.

Payment. The disbursement of funds for construction is initiated by the contractor. When the contractor feels that the work has been completed to a point where a partial/final payment is due, a detailed invoice and/or request for payment is submitted to the Community Development Office. The rehabilitation specialist inspects the property to confirm that the quality and value of the work is acceptable. Payment(s) to the contractor can be issued only after inspection determines that the work has been completed, that it is acceptable and that it has been completed in a workmanship-like manner.

All invoices and/or payment requests must detail the specific work completed. The scope and nature of the work must be specified. For example, it is not sufficient to say "25% of work completed." Instead, the payment request should read, "7 of 28 windows removed and replaced per work write-up item #6." There should be a direct relationship and clear paper trail through the initial inspection, work write-up, cost estimate, invoice/payment request, progress inspection, and payment. All documents approved through the rehabilitation process must be signed and dated by the Rehabilitation Specialist or duly authorized municipal official or designee.

In general, grantees withhold a percentage (up to 10%) of each progress payment as a retainage. This amount is released when the final inspections are complete and following execution of contractor warranties and release of liens. After the final inspection, the contractor is paid in full minus the retainage. The remaining 5%-10% is generally paid to the contractor after a period of 30 - 45 days. If the program design specifies a retainage, a clause to this effect is included in the construction contract.

Final Inspection. When the rehabilitation work is completed, the contractor should submit a detailed invoice and a request for final payment. The housing rehabilitation specialist conducts a final inspection of the property to ensure that all contracted work is satisfactorily completed in a workmanship-like manner and that all code violations identified in the scope of work are corrected. In addition, the rehabilitation specialist confirms that all necessary permits were obtained, that all work was signed off by the appropriate inspectors, and that all guarantees and warranties are in place.

The final inspection should also include documentation showing whether the property owner was satisfied with the rehabilitation work. The property owner's signature is required on the request for final payment as an indication that the work was completed to their satisfaction.

The following items are involved with the close out process and certification of work:

1. The “Contractor’s Release of Liens” is the contractor's certification that all subcontractors working on a specific job and all material and supplies have been paid in full, and that their mechanic's liens have been satisfied. The release should be witnessed and notarized to be effective.
2. Municipalities should ask property owners to complete a “Homeowner’s Contractor Evaluation” and/or “Program Evaluation.” These evaluation forms are used to assess contractor performance and the general operation of the Housing Rehabilitation Program.

Relocation and Displacement. Whether unit occupants will be temporarily relocated from a residential dwelling undergoing rehabilitation depends upon the type of work being undertaken. In many instances the amount of proposed work is so limited that rehabilitation without relocation is feasible. However, the greater the amount of rehabilitation work to be done, the less likely that occupants will be able to remain in a particular unit or building. Often, occupants of units being de-lead must vacate their units while the work is being done and cannot return until the unit receives a certificate of re-inspection. See the section on Removal of Hazardous Materials below for additional information on requirements associated with lead paint removal.

In general, all temporary relocation expenses incurred by tenants as a result of rehabilitated work on assisted properties are reimbursed. It is not mandatory to reimburse owner-occupants for relocation-related expenses similarly incurred. However, all relocation-related expenses are CDBG--eligible. The details must be specified in a grantee’s Relocation Plan.

Some communities reimburse relocated occupants upon submission of receipts. Other communities make payments directly to service providers such as hotels and restaurants and reimburse incidental out-of-pocket expenses upon submission of receipts.

Tenants cannot be required to stay with relatives or friends or otherwise provide for their own relocation needs while they are temporarily relocated. However, a tenant may voluntarily make his/her own temporary relocation arrangements. This choice does not preclude his/her receipt of other relocation payments or assistance.

## **Hazardous Materials - Lead Paint and Asbestos**

Both the Commonwealth of Massachusetts and the federal government have issued regulations addressing lead paint and other hazardous materials, including asbestos. Grantees using Mass CDBG funds for housing rehabilitation must understand both the state and federal regulations and apply the standards appropriate to the specifics of each housing



case. For further resources and training material, please see the following link: [Lead Safe Housing Rule Training - HUD Exchange](#). Requirements regarding lead paint are found in:

- Massachusetts CDBG Grant Contract, Attachment A, Scope of Services, Section III, Compliance Requirements
- Massachusetts State Sanitary Code, Chapter II (105 CMR 410.502)
- Lead Poisoning Prevention and Control (105 CMR 460)
- De-leading Regulations (454 CMR 22)
- MGL 111, Public Health, ss. 189A - 199B
- HUD Lead-safe Housing Rule
- U.S. Code: Title 42, The Public Health and Welfare
- 24 CFR 35 Lead-Based Paint Poisoning Prevention in Certain Residential Structures
- 24 CFR 982.401 HUD Housing Quality Standards

Requirements regarding asbestos are found in:

- MGL Chapter 149, Section 6 (453 CMR 6.00 Asbestos Control)
- Massachusetts State Sanitary Code, Chapter II (105 CMR 410.353)
- All residential, commercial and institutional buildings are subject to Mass Department of Environmental Protection (MassDEP) asbestos regulations (310 CMR 7.15)
- 40 CFR Part 763 EPA Asbestos Requirements

Summary of Massachusetts Department of Public Health (DPH) Lead Paint Law. The Massachusetts DPH is responsible for implementing the state's lead paint program. Through the Childhood Lead Paint Poisoning Prevention Program (CLPPP), the department oversees the "prevention, screening, diagnosis, and treatment of lead poisoning, including the elimination of the sources..." Components of the Abatement Standards for Lead Based Paint Poisoning Prevention include:

#### Abatement methods

Exterior and interior paint shall be abated according to regulations issued by CLPPP after consultation with the Department of Environmental Quality Engineering and, if appropriate, the Massachusetts Historical Commission, specifying acceptable methods and prescribing shrouding or other containment methods.

- Limitations on who can occupy unit undergoing lead abatement or interim control.
- The Massachusetts CDBG Program and the LHSR require that grantees temporarily relocate household members before and during rehabilitation. Temporary relocation is an eligible CDBG activity and grantees are encouraged to utilize such funds where appropriate.
- Licensing of Inspectors.
- The Massachusetts Division of Occupational Safety.
- Licensing of Lead Workers and Supervisors.

- The Department of Labor Standards administers licensing of lead inspectors. An updated list of licensed professionals is available from the Department of Labor Standards at the following link: [DC \(mass.gov\)](#)
- Renovation, Repair and Painting (RRP) Regulations in Massachusetts: Information for Contractors.

The Massachusetts DOS requires under its lead standard, 454 CMR 22.00, that apply to renovation, repair or painting (“RRP”) work conducted for a fee in target housing (defined as any residence built before 1978, except housing for the elderly or persons with disabilities (unless a child under the age of six resides, or is expected to reside in such housing) and any zero-bedroom dwelling) or any child-occupied facility, where more than threshold amounts of lead paint are disturbed.

With certain exceptions, contractors and other entities who carry out work covered by these requirements must be licensed as “Lead-Safe Renovation Contractors” by DOS. Affected occupations include, but are not limited to: painters, plumbers, electricians, window installers, general contractors, property maintenance workers, and remodelers.

Commonwealth of Massachusetts licensing and training requirements for lead inspectors and contractors incorporates all required federal HUD and EPA requirements.

Summary of HUD Lead-Safe Housing Rule. Whenever Federal funds, such as CDBG, are used to assist housing built before 1978, steps must be taken to address lead hazards. Requirements for rehabilitation and acquisition assistance differ, but this summary focuses on rehabilitation.

Some CDBG projects are exempt from the HUD Lead-Safe Housing Rule, including:

- Property constructed on or after January 1, 1978.
- Zero-bedroom and Single-Room Occupancy units.\*
- Housing for the elderly, or a residential property designated exclusively for persons with disabilities.\*
- Properties found to be LBP free by an inspection, or where all LBP has been identified, removed, and clearance achieved.
- An unoccupied property that is to be demolished and remains unoccupied until demolition.
- Emergency repairs to protect life, health, safety or structure - see note below.
- Rehabilitation that does not disturb a painted surface.
- Compliance with requirements for testing and remediation may be reasonably delayed due to adverse weather conditions.

\*Exemption does not apply if a child under six years of age resides or is expected to reside in the dwelling unit.

*Please Note: The HUD Lead-Safe Housing Rule provides various exemptions, including for emergency repairs. 24 CFR 35.115 provides an exemption for when emergency repairs to the property are being performed to safeguard against imminent danger to human life, health or safety, or to protect the property from further structural damage due to natural disaster, fire or structural collapse. This exemption applies only to repairs necessary to respond to the emergency.*

Level of Assistance. The lead hazard evaluation and reduction activities required depend on the level of assistance to the project. The Massachusetts CDBG program recommends that grantees use the HUD form, Calculating Level of Rehabilitation Assistance worksheets for rendering and documenting the level of assistance. Grantees may adapt alternate methods of documenting level of assistance, which are consistent with the methods of calculation contained in the HUD worksheets. Use the lower of:

- Per unit rehabilitation hard costs (regardless of source of funds); or
- Per unit federal assistance (regardless of the use of funds).

For CDBG-funded projects that receive assistance not exceeding \$5,000 per unit:

1. Work must be conducted using work-safe practices.
2. Paint testing must be conducted to identify lead-based paint on painted surfaces that will be disturbed or replaced. (Alternatively, the community may presume that these surfaces contain lead-based paint.)
3. Repair disturbed, painted surfaces, and if lead-based paint is detected or presumed, follow safe work practices.
4. Clearance of the work area required.
5. Required notices to owner and tenants.

For CDBG-funded projects that receive assistance between \$5,000-\$25,000 per unit:

1. Paint testing of surfaces to be disturbed or replaced during rehabilitation and conduct risk assessment.
2. Alternatively, presume lead-based paint is present. Evaluation is not required but follow standard treatments in lieu of interim controls.
3. Alternatively, conduct lead hazard screen instead of a risk assessment. If no deteriorated lead paint is found, and composite dust sampling and soil sampling is less than maximum allowed for lead hazard screens (24 CFR 1320 (b)(2)(i), no risk assessment is required. If not, conduct a full risk assessment.
4. If lead-based paint is identified on surfaces to be disturbed, all hazards receive interim controls or abatement.
5. If lead hazards are identified from risk assessment, all hazards receive interim controls or abatement.
6. Treat bare, accessible soil.

7. Clearance of the entire unit required.
8. Required notices to owner and tenants.

For CDBG-funded projects that receive assistance exceeding \$25,000 per unit:

1. Paint testing of surfaces to be disturbed or replaced during rehabilitation and conduct a risk assessment.
2. Abatement of all lead paint hazards must be conducted.
3. If exterior hazards detected in risk assessment, or the area with the hazard is smaller than the HUD de minimus standards at 24 CFR 1350(d), address using interim controls.
4. Treat bare, accessible soil.
5. Clearance of the entire unit required.
6. Required notices to owner and tenants.

*Please Note: Grantees must document receipt by all homeowners and heads of household in all units assisted with CDBG funds for rehabilitation of the HUD pamphlet, "Lead Safe Certified Guide to Renovate Right." Housing rehabilitation programs must also obtain written acknowledgment from all property owners participating in a rehabilitation program that produced lead reports are public record and will be filed with the Massachusetts Department of Public Health and must be disclosed by the property owner in the event of sale of the property.*

Guidelines relating to Asbestos. The Massachusetts Department of Labor and Workforce Development is responsible for implementing the Commonwealth's asbestos control regulations. The regulations govern the removal, containment and encapsulation of asbestos. The Department of Labor Standards oversees the use, handling, removal, disposal, licensure and workplace standards in order to protect workers, occupants and users of dwellings from which asbestos is removed, contained or encapsulated.

Inspections and Identifications of Lead Paint and Asbestos Hazards. Grantees are required to identify lead paint hazards and to remove these hazards in housing units rehabilitated with Massachusetts CDBG funds. Specifically, Massachusetts CDBG requires that lead paint inspections be conducted in every unit which was built prior to 1978 to determine if a hazard exists. Inspections for and removal of lead paint hazards in other units is not required although grantees must comply with all state and federal laws and are encouraged to address lead paint issues whenever hazardous conditions are suspected. Documentation of the inspection(s) must be in the project files.

Massachusetts CDBG requires that inspections of structures proposed for rehabilitation with Mass CDBG funds include a check for the presence of asbestos or materials containing asbestos during their review of the project.

## Sweat Equity

Proposed Housing Rehabilitation Program projects that are “funded” wholly or in part by sweat equity have been discouraged for many years and current Massachusetts CDBG policy does not allow for sweat equity to be included as any part of a project’s funding equation.

## **Monitoring Review and Technical Assistance**

During a scheduled monitoring site visit, Massachusetts CDBG staff will examine records, files, and processes relating to the Housing Rehabilitation Program. At a minimum, the Mass CDBG reviewer(s) will review the grantee’s Housing Rehabilitation Program files and interview program staff, documenting evidence that supports and demonstrates that:

1. The grantee has adequate staff to administer the program.
2. The grantee is operating the program consistent with its approved Mass CDBG application and grant contract.
3. The program’s operating guidelines are clearly described, available for public review and includes: income, and other eligibility criteria, eligible rehabilitation activities and code standards, types of financial assistance and how they are determined, rent stabilization and property recapture, anti-speculation requirements, bid/contracting procedures, complaint/dispute resolution process and other relevant program information
4. Program guidelines have been applied uniformly.
5. Marketing of the program is adequate to attract property owners and contractors and includes use of brochures, direct mail, press releases, and/or other means.
6. Any waiting list for assistance has been properly managed.
7. All Contractor’s files are up-to-date, including insurance and workman’s compensation binders or other verification (letter from insurance company, memo to file on phone verification, etc.).
8. Separate files are established and maintained once an application is approved and that files are adequately organized to effectively track progress of each case.
9. Project records for 8 or more units demonstrate that Davis-Bacon has been applied and all construction contracts pertinent to that project reflect Davis-Bacon regulations.
10. Appropriate relocation guidelines were followed and documented for any tenants relocated due to rehabilitation activities.

Individual Project Case file monitoring. Examination of files will include a review of the following components:

1. Information about the ownership and residents: Whether all tenants and property owners meet income documentation requirements, as applicable. How much time has elapsed from the initial income verification? Is there proof of property ownership? Was there an appropriate review of eligibility?
2. Inspection, Work Write Up & Cost Estimate: Was there a detailed inspection citing code violations, existing conditions and property deficiencies? Is there a lead paint inspection report, if required? Does the work write-up include clear, detailed, specifications which address code violations and other eligible work-items consistent with the initial inspection? Is the work write-up signed by the property owner and the rehabilitation

specialist? Is there a cost estimate for the proposed rehabilitation that prepared, signed and dated by the Rehabilitation Specialist? If something has been classified as an emergency case, does it in fact meet all the criteria for that designation?

3. Construction Procurement: Was the process fair and open? Were results recorded on bid summary sheet? Was a cost reasonableness review made? Was the low bidder selected? If not, was the reason adequately documented?
4. Owner-Municipality Agreement: Is the signed, final work write-up included? Does the agreement include the amount of assistance to be provided, recapture provisions, period of performance? If the property is a rental, is there a rental agreement, were tenant(s) notified, and is there rental agreement tracking? Is there evidence of a lien on file? Are complaint/dispute resolution procedures included?
5. Contractor-Owner Contract: Does the contract contain final work write-up, cost of work, period of performance. Are change orders, signed by all parties in the file? Do federal labor standards apply and were they followed?
6. Invoices and Payments: For both invoices and payments, are specific items accomplished, consistent with work write-up? Are there owner and Housing Rehabilitation Specialist sign-offs to indicate satisfaction with the work done? Were all necessary permits signed-off by municipal inspectors before the final payment?
7. Inspection Reports and Field Notes: Are there signed, periodic inspection and dated reports indicating that all work was completed in accordance with Contract specifications?
8. Summary of case reviews: Are the timing and sequence of events through the application, inspection, cost estimate, work write-up, bid, contract, rehabilitation, and inspection processes acceptable and logical? This should be based on date of application to date of contract with community and the date of contract to the date of final payment and inspection.