SECTION C
HOUSING REHABILITATION

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SECTION C
HOUSING REHABILITATION

C.0 Introduction

The Department of Agriculture (TDA) funds eligible housing activities on a competitive basis through the Texas Community Development Block Grant Program (TxCDBG). The program is intended to solve certain local housing problems. On the federal level CDBG housing activities are governed by:

- Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations under 24 C.F.R. Part 35
- Title I of the Housing and Community Development Act of 1974, as amended (”Act”)
- 24 C.F.R Part 570

TDA places further restrictions, such as eligible activities and income level on housing funded through the TxCDBG program via:

- Annual Action Plan
- Application Guidelines
- TxCDBG Contracts
- TxCDBG Project Implementation Manual

The Grant Recipient must develop Housing Rehabilitation Guidelines and have them approved by TDA during the application process and prior to receiving a TxCDBG grant under this program.

The Grant Recipient must ensure that original objectives are met, that each eligible beneficiary has received quality rehabilitation work, and that the community has benefited from the program.

C.1 Eligible Activities

In the TxCDBG program, housing rehabilitation activities must be carried out through five-year forgivable loans to assist housing for low and moderate income persons. These loans can be used to rehabilitate housing units. The Grant Recipient must provide homeowners information that clearly explains the forgivable loan process and requirements. For purposes of this chapter, the term “homeowner” includes both individual owners for owner-occupied units and community based development organizations (CBDO) that own units to be rehabilitated through TxCDBG funding.

C.1.1 Property Eligibility

1. Single-family owner-occupied units will be eligible for housing assistance. A family is defined as a householder and one or more other persons living in the same household who are members of his/her immediate family. Immediate family is considered to be spouses, parents, children, and grandchildren. An individual living alone and joint tenants who both occupy the unit are also eligible.

    - Ownership is documented by a deed; a leasehold agreement with a 99 year leasehold term; statement of ownership and location (for Manufactured Housing Units)

- Common types include a Warranty Deed; a Warranty Deed with Vendor's Lien; a Special Warranty Deed; a Gift Deed; a Quit Claim Deed; and a Sheriff's Deed.
- A "contract for deed" is not a deed and does not convey ownership or title to the property. Therefore, federal assistance for homes that were financed through a contract for deed financing mechanism will not be allowed.
    i. For homes located within a colonia that were financed through a contract for deed, assistance converting a contract for deed to a traditional warranty deed is available. Contact the Texas Department of Housing and Community Affairs (TDHCA) HOME Program.

2. Single-family unit(s) owned by a community based development organization (CBDO) and occupied by primarily low or moderate income persons will be eligible for assistance.
    - A single family structure is defined as 1 to 4 units; only the units occupied by LMI persons are eligible for assistance.
    - The CBDO must sign a letter of commitment to maintain the housing units for residents that meet eligibility criteria of both CDBG and the CBDO for a minimum of five years.

    - A CBDO must meet the definition found in the Housing and Community Development Act of 1974, as Amended, Section 105(a)(15):
        - neighborhood-based nonprofit organizations,
        - local development corporations,
        - nonprofit organizations serving the development needs of the communities in non-entitlement areas,
        - entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of section 101(c) of this title, and
        - nonprofit organizations assisting the development of shared housing opportunities (other than by construction of new facilities) for elderly families.

    Manufactured homes will only be considered as eligible units if they are anchored in accordance with the manufacturer's installation instructions or the generic standards approved and promulgated by the Texas Department of Housing and Community Affairs' Manufactured Housing Division. Substantial reconstruction of such a home will consist of a replacement manufactured home.

C.1.2 Eligible Activities:

Rehabilitation: Materials, labor, and other construction costs for the rehabilitation of housing units that are inhabited by low or moderate income persons. Housing rehabilitation activities must bring each rehabilitated unit up to HUD Section 8 existing housing quality standards (HQS) and to the Texas Minimum Construction Standards (TMCS). Rehabilitation to assist persons with disabilities includes any improvements necessary to make the housing unit accessible to the residents. Rehabilitation activities shall be subject to the Lead Based Paint regulations which may require the Grant Recipient to incur additional costs associated with lead abatement. More information on Texas-specific lead based paint requirements may be found on the HUD website at http://www.hudexchange.gov.

Reconstruction: Materials, labor, and other construction costs for the substantial reconstruction of housing units. Substantial reconstruction may be necessary if the housing unit is dilapidated beyond rehabilitation, or the cost of the rehabilitation is greater than the cost to reconstruct. The existing structure must be demolished and the new unit must be constructed on the same site in essentially the same manner, e.g., site- built housing replaced by new site-built housing.

Administrative Costs: Administrative costs associated with the housing assistance program, in amounts designated by the TxCDBG contract. (See Chapter 2, Financial Management, for Administrative Drawdown Procedures).

Inspections: Inspection costs (conducted by a Certified Professional Inspector or a Qualified Inspection Individual) associated with the housing assistance program, including initial inspections and preparation of work write-ups, work specifications and cost estimates; inspections for lead-based paint, asbestos, or termites; inspections or site evaluations for septic systems; and interim and final inspections. Such inspection costs for each home are eligible for TxCDBG funding and are part of the total allowable project cost not to exceed $50,000 for each home.(i.e. inspection costs and construction and acquisition costs may not exceed $50,000).

National Program Objective

Grant Recipients undertaking housing rehabilitation activities must document how they have met the National Objective specified in their application. The National Objective is not met until funds have been expended and documentation has been completed.

C.2 Ineligible Activities

Ineligible activities include:

- Engineering services are generally not appropriate or necessary for housing rehabilitation.
- Improvements to detached structures.
- Replacing manufactured housing units (or mobile home units) with stick-built units is an ineligible activity in the CDBG Housing Rehabilitation Program. There shall be no waivers issued concerning this policy.
- Relocation assistance will not be provided as participation in the Housing Assistance Program by the assisted homeowner is voluntary.

C.3 Special Requirements

Grant Recipients undertaking housing rehabilitation activities must comply with the Federal requirements in Section A of the TxCDBG Implementation Manual, Chapters 1 through 14, with the following exception:

> Davis-Bacon labor standards generally do **not** apply to projects involving rehabilitation of single family homes, unless the work involves up to eight housing units in 2 or more structures from a single owner. However, the Contractor Eligibility Verification process (SAM) and the submission of the Financial Interest Report (**Form A503**) regarding each contractor is required for ***each*** bid contract awarded, even if the same contractor is awarded several rehabilitation contracts under the same bid.

Additional requirements specific to the TxCDBG housing rehabilitation program are described below.

C.3.1 [Text deleted] Beneficiary Report

Grant Recipients administering housing activities on private property must submit a [Text deleted]. *Beneficiary Report* **(Form C1)** upon request by TDA [Text deleted]. HUD requests the information contained in this report for the Consolidated Annual Performance and Evaluation Report. [Text deleted]. Grant Recipients should report the number of housing units in which rehabilitation has been completed during the reporting period and the other beneficiary information as indicated on the report form. [Text deleted].

C.3.2 Costs

TxCDBG investment shall not to exceed $50,000 of eligible costs for each house rehabilitated. If additional funding is necessary to complete the housing rehabilitation project, the Grant Recipient may leverage funds from non-profit organizations or other sources. This funding must be committed by resolution and supported by the funding award notification and/or other documentation, and approved by TDA prior to executing a construction contract under this program.

Eligible housing rehabilitation line items include but are not limited to the following:

- Labor and Materials (Construction)

- Inspections: Conducted only by a Certified Professional Inspector or a Qualified Inspection Individual
    - Initial inspections
    - Preparation of work write-ups, work specifications, and cost estimates
    - Inspections for lead-based paint, asbestos, termites; inspections or site evaluations for septic systems
    - Interim and final inspections by the construction inspector

- Lead-based paint abatement

- Financing of Forgivable Loan:
    - Financing fees
    - Credit reports
    - Title binders and insurance
    - Recordation fees, transaction taxes
    - Legal and accounting fees
    - Appraisals

- Architectural or other professional services required to prepare plans, drawings or specifications directly attributable to a particular project – these costs are not usually necessary for housing rehabilitation and the need for such professional services must be requested and approved by TDA.

Eligible administrative costs for the overall CDBG project include:

- Solicitation and review of applications for assistance
- Submission of required reports for the TDA contract, including Quarterly Progress Reports, Acquisition Reports, Section 3 Reports, and Project Completion Reports
- Compliance with other federal and TDA requirements, including civil rights regulations, single audit compliance, and competitive procurement

Note: The CBDO may provide some or all of these administrative services, but must be a TxCDBG Certified Administrator.

C.3.3 Required Improvements

The rehabilitation or reconstruction of any house using TxCDBG funds must:

- Include energy efficiency and conservation standards as considerations in the planned improvements;
- Install a hard-wired or battery operated smoke detector in accordance with National Fire Protection Association standards;
- Address lead-based paint and asbestos hazards; and
- Ensure connection to water and sanitary sewer services.

C.3.4 Rehabilitation vs Reconstruction

The decision to reconstruct a house is made on a case-by-case basis and requires prior written approval from TDA. Reconstruction of a housing unit requires a written feasibility analysis comparing the house's current value, the expenses required to bring it into compliance with Housing Quality Standards (HQS) and Texas Minimum Construction Standards (TMCS), replacement costs and its after rehabilitation value. The feasibility analysis must include:

- An assessment which compares the potential costs of rehabilitation to the cost of reconstruction;
- Estimated costs for meeting the HQS and TMCS standards;
- Itemization of costs of major housing systems (e.g. foundation, electrical, plumbing, etc.) requiring repair or replacement;
- Lead-Based paint reduction costs;
- Initial inspection;
- Work-Write-Up Cost Estimate Worksheet (**Form C3**), including sufficient detail to prepare bid and contract documents;
- Notes and information pertinent to determining the construction required and;
- Photographs of the housing unit's interior and exterior.

C.3.5 Change Orders

If the Grant Recipient prepares adequate work write-ups during the application phase of the program, few changes to the construction contract are anticipated. If the need for a change order arises due to conditions not previously observed, the Grant Recipient should submit the *Housing Rehabilitation Change Order Approval Request* **(Form C4)** and the original work write-up prepared for the house. All changes in the construction contract price or scope of work will be reviewed and compared to the work write-up. If the change order contains significant changes to the scope of work, the Grant Recipient must provide justification for the changes and continued rehabilitation. Change orders **may not** exceed 25% of the original contract price and shall be limited to the availability of funding.

C.3.6 Historic Preservation

If the property proposed for rehabilitation is considered to have historical significance, separate rehabilitation standards will apply. The Grant Recipient should contact the Texas Historical Commission to ensure compliance with historic preservation requirements.

Contact Information for the
Texas Historical Commission
P.O. Box 12276
Austin, TX 78711-2276
(512) 463-6100
www.thc.state.tx.us

C.3.7 Environmental Review

Housing rehabilitation activities are subject to the environmental review and clearance requirements found in **Chapter 3: Environmental Review**. In general, the Grant Recipient starts the review process by considering the environmental impacts on the general target area for the housing activity. If the housing rehabilitation program is available throughout the city or county, the Grant Recipient must consider that entire area in order to reach a Finding of No Significant Impact (FONSI). TDA will issue an environmental clearance based on this area-wide FONSI.

Once each rehabilitation site has been selected, Grant Recipients must follow the tiering process to ensure that each site is included in their Environmental Assessment. Please contact TDA for assistance if site specific significant impacts are identified.

C.3.8 Age of Property/Lead-Based Paint

Housing rehabilitation activities often involve property that, depending on its age, may contain lead-based paint. Age of the property can indicate the amount of lead-based paint likely to be present and the extent of the lead hazard control work that may be necessary. The majority of buildings built before 1978, and especially those built before 1960, contain some lead-based paint [Text deleted]. .

The older the dwelling, the higher the concentration of lead in the paint. For pre-1950 properties, it is reasonable to assume that lead-based paint is present on more than a few surfaces and that abatement of lead hazards will involve a significant amount of work. (See 24 CFR Part 35, Subparts L through R, for lead-based paint requirements.)

The homeowner and housing rehabilitation coordinator must certify on the *Status of Compliance with Lead-Based Paint Regulations* form **(Form C2-a)** whether the assisted home was known to be constructed post-1977. The Grant Recipient must also certify any other qualifying exemptions to lead-based paint requirements under 24 CFR §35.115 using **Form C2-b** *Certification of Lead-Based Paint Exemption*.

No lead-based paint testing is required if the housing is certified to be built on or after January 1, 1978.

Calculating the Level of Rehabilitative Assistance

The type and level of lead hazard evaluation and reduction activities required for housing rehabilitation projects depend on the level of assistance received by the project.

The amount of federal assistance in an activity is calculated at the lower of either: costs per unit rehabilitation (not including lead hazard reduction costs), or per unit federal assistance (note: where there is a combination of Federal and non-federal funds, subtract out the non-Federal share). Lead hazard reduction costs are not included as costs when calculating the level of rehabilitative assistance required under 24 CFR Part 35.

Example: A family is receiving a CDBG grant of $25,000 to rehabilitate their home. $5,000 of the costs will be to reduce the amount of lead based paint found in the home. The level of rehabilitative assistance required will be based on $20,000 (i.e. more than $5,000 and up to $25,000 per unit).

Based on per unit amount of rehabilitation costs, excluding Lead Hazard Reduction (LHR) costs:

Up to and including $5,000 per unit:

When rehabilitation costs are $5,000 or less per unit, a jurisdiction must “do no harm.” That is, the jurisdiction must conduct mild lead hazard evaluation and lead hazard reduction.

More than $5,000 and up to $25,000 per unit:

When rehabilitation costs are more than $5,000 up to $25,000 per unit, jurisdictions must “identify and control lead hazards.” That is, the jurisdiction must conduct a moderate level of lead hazard evaluation and lead hazard reduction.

More than $25,000 per unit:

When rehabilitation costs are over $25,000 per unit must meet the following requirements.

- The goal is to "identify and eliminate lead hazards." A risk assessment is required to identify hazards and any identified hazards must be abated by a certified abatement professional. Abatement means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. (See 24 CFR § 35.110)
- Lead Hazard Evaluation. A risk assessment must be conducted prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any surfaces to be disturbed by the rehabilitation or the Grant Recipient may assume that lead-based paint hazards exist.
- If lead-based paint is present, the removal of lead based paint will be considered in the costs of rehabilitation (but not for determining the level of assistance required).
- Lead Hazard Reduction. To address hazards identified:
  - Abatement must be conducted to reduce all identified lead-based paint hazards except those described below. Abatement must be conducted by a certified abatement contractor.
  - If lead-based paint hazards are detected during the risk assessment on the exterior surfaces that are not to be disturbed by rehabilitation, interim controls may be completed instead of abatement to reduce these hazards.
  - Clearance is required when lead hazard reduction activities are complete.
- Options. There are two options, as follows:
  - The Grant Recipient is permitted to presume that lead-based paint hazards exist. In such cases, a risk assessment is not required. The Grant Recipient must abate all applicable painted surfaces that will be disturbed during rehabilitation and all presumed lead hazards.
  - The Grant Recipient is permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead hazards, the Grant Recipient must then conduct a risk assessment. (Note: Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform abatement on lead-based paint hazards created as a result of the rehabilitation work.)
- Notices must be provided to owners and tenants:
  - EPA's *Protect Your Family from Lead in Your Home* brochure (See http://www2.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure);
  - The Notice of Evaluation (if a risk assessment is conducted) or Notice of Presumption (if a risk assessment is not conducted); and
  - The Notice of Lead Hazard Reduction.
- In short, compliance with the Lead Safe Housing Rule for such rehabilitation projects will affect the project planning, timeline, scope of work, contracting, and budget. In particular, it involves the engagement of a certified abatement contractor.

C.4 Steps in Housing Rehabilitation

Below are typical steps involved in a housing rehabilitation program using TxCDBG funds. The steps follow in a sequential manner although some may occur simultaneously:

Step 1: Housing Rehabilitation Guidelines

- Grant Recipient develops Housing Rehabilitation Guidelines which must be provided to TDA as part of the application for grant funding.
- The Guidelines must include (See Form C2, Sample Guidelines):
  - Who is eligible? Any minimum criteria that will be used to determine eligibility for the housing unit, such as income eligibility, location within a target area, tax compliance status, ownership status, or maximum home value.
  - How will the units be selected? Any priorities or scoring criteria that will be used to select eligible units, such as priorities for elderly or disabled residents, scoring based on income category, or order received (first-come-first served).
  - What is the maximum funding per unit? Cannot exceed $50,000 per unit.
  - What types of improvements are eligible?
  - What are the terms of the assistance? Must include information on forgivable loans and potential repayment of loans, cost over runs, and homeowner responsibilities.

Step 2: **Administrative Start-up**

- The Grant Recipient procures professional services as needed, including architectural and administration services.
- A Rehabilitation Coordinator is designated, which may be an employee of the Grant Recipient or a professional administrator.
- The Grant Recipient completes an area-wide environmental review and receives clearance from the TDA Environmental Regulatory Officer (see Chapter 3.1, Step 3, Tiered Review)
- Grant Recipients must maintain an assisted homeowner case file at the locality (see *Housing Rehabilitation Case File Review*, **Form C6**).

Step 3: Homeowner Application Process

- Applications are taken from homeowners.
- The Grant Recipient verifies ownership, income-eligibility, and other qualifying factors for each application as described in the Housing Rehabilitation Guidelines.
- Income-eligibility shall be verified and noted in the local records by:
  - Providing third party verification of income from employers and other income sources;
  - Requiring pay stubs for at least three previous months of earnings prior to application;
  - Requiring income tax returns and/or other verifiable statements of annual income if possible (e.g. Social Security benefit statements, employer letters) and/or
  - Interviewing applicants about her/his employment and past and expected annual earnings (e.g. How long have you worked for this employer? Is the work seasonal? Are you part-time or full-time employed?).

- The Grant Recipient performs an on-site code inspection on the home, both exterior and interior, for each eligible application to determine if the house can be rehabilitated within the funding limits of the program.

Step 4: <u>Applicant List</u>

- The Grant Recipient develops an Applicant List of proposed assisted homeowners, based on its Housing Rehabilitation Guidelines, individual needs, if applicable, and dwelling condition, which lists the order in which houses may be rehabilitated. This list must be maintained at the locality.
- Placement on the Applicant List does not guarantee that work will be performed on a specific house. If the work necessary to bring the house up to code exceeds the limits of the local Housing Rehabilitation Guidelines or the maximum TxCDBG investment of $50,000 per unit, the Applicant List scoring must be reevaluated and the house may be removed from consideration.
- If the planned rehabilitation work is not performed on one or more houses, the Grant Recipient must update the Applicant List. Once the Applicant List has been finalized, the Grant Recipient completes and submits to TDA an *Environmental Assessment (see Chapter 3)*, to include each house recommended for rehabilitation.

Step 5: <u>Rehabilitation Assessments (Work Write-ups)</u>

- The homeowner must be provided relevant information for the program, including:
  - a copy of the Grant Recipient's Housing Rehabilitation Guidelines;
  - information explaining the five-year forgivable loan program;
  - a signed copy of *TxCDBG Housing Rehabilitation Work Write-Up and Cost Estimate Worksheet* (Form C3); and
  - a copy of the EPA's *Protect Your Family from Lead in Your Home* brochure. All owners and occupants of units built <u>prior to 1978</u> must receive the required EPA regulations on Lead Based Paint. Note that the EPA makes available its *Protect Your Family from Lead in Your Home* brochure in English, Spanish, Vietnamese, Arabic, Russian, and Somali. See <u>http://www2.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure</u>.

- **Form C3 includes an acknowledgment by the owner or occupant of receiving these required documents. A copy of the signed Form C3 must be provided to each homeowner and the original signed form must be maintained in the local files.**

- The Grant Recipient must use a Certified Professional Home Inspector or a Qualified Home Inspection Individual to assess the work necessary to bring each unit up to building standards, The *Home Inspector Qualification Certification* form (**Form C8**) must be completed by the Grant Recipient and kept in the local files.

  - Certified Professional Home Inspector - a person who has received current and comprehensive training to enable them to conduct effective inspections. Completion of the training required to be a licensed Texas Real Estate Commission (TREC) inspector would be acceptable evidence of such training.

  - Qualified Home Inspection Individual - individual has professional certifications, relevant education or minimum five (5) years' experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and electrical systems found in Single Family Housing Units, as evidenced by inspection logs, certifications, training courses or other documentation.

- The Grant Recipient's inspector prepares a work write-up and preliminary cost estimate **(Form C3)** on each house recommended for rehabilitation, including all work necessary to bring the unit up to building standards.

- The homeowner signs the work write-up, indicating (s)he understands and accepts the rehabilitation work that may be performed. Every item noted on the work write-up need not be resolved by the rehabilitation program. The Grant Recipient may prioritize the work and complete only high-priority repairs so long as the house complies with Section 8 and Texas Minimal Construction Standards (TMCS) building standards once the rehabilitation is complete. The work

write-up should indicate which repairs are necessary to meet building codes and which are optional. The description of the work must include the dimensions in materials needed.

- The Grant Recipient must submit the first five work write-ups to TDA for approval prior to advertising any construction bid. Thereafter, each write-up for subsequent homes must also be submitted to TDA for approval.
- If the work necessary to bring the house up to code exceeds the limits of the local Housing Rehabilitation Guidelines or the maximum TxCDBG investment of $50,000 for a single-family owner occupied unit, return to Step 3 or document the availability of additional leveraging funds.

Step 6: Construction Bid

- The Grant Recipient may hold a pre-bid conference to explain the Policies and Procedures, code inspections, method of payment and grievance procedures to potential bidders. The bidders conduct on-site inspections of each house recommended for rehabilitation.
- The Grant Recipient receives bids and awards the contract to the low bidder on each home. The homeowner and construction contractor execute the rehabilitation contract and a copy of the contract and escrow request is sent to TDA.

Step 7: Construction

A pre-construction conference is held with the Grant Recipient, homeowner, and contractor so that all parties understand the goals, thresholds, limitations, and regulations associated with the TxCDBG program.

- The rehabilitation contract between the homeowner and contractor is executed and a Notice to Proceed is signed and submitted to TDA.
- The homeowner is responsible for review of the day-to-day work of the construction contractor. The Grant Recipient also makes periodic inspections of the work in progress. Both the homeowner and Grant Recipient must sign the *TxCDBG Housing Rehabilitation Payment Request* **(Form C5)**, to be submitted with all other required drawdown documentation, to request TxCDBG funds for rehabilitation costs.
- A final inspection is conducted by the rehabilitation inspector with the homeowner and contractor in attendance. A final punch list is made, if necessary.
- Eligible applicants may receive a five-year forgivable loan. The forgivable loan involves a lien requiring repayment of the loan if the homeowner sells, transfers or vacates ownership of the rehabilitated home for any single period that exceeds thirty (30) days during the five-year forgivable loan period.
- The Grant Recipient shall record the lien associated with the 5-year forgivable loan.

Step 8: Completion

- A *Certificate of Construction Completion* **(Form A709)** is executed and recorded for each house. Grant Recipients do not have to submit Final Wage Compliance Reports for housing rehabilitation contracts unless TDA has previously determined that Davis-Bacon Labor Standards apply.
- The Grant Recipient imposes and files a lien on the house, to be released once the loan is forgiven or repaid (typically five years). (See C9 Sample Release of Lien)
- The loan is forgiven at a pro-rated rate of 1.67% per month. Failure to comply with terms will result in the Grant Recipient's recapture of any outstanding debt obligation. For example, if the homeowner's total debt obligation is $50,000 and the homeowner sells the home 36 months after completion of the rehabilitation, then at that time, $30,000 of the loan will have been forgiven and $20,000 remain outstanding, which will be recaptured and returned to TDA when the home is sold.
- The program continues until all houses are completed in the project.