

**Sub-Recipient Agreement
HUD-Community Development Block Grant (CDBG) Funds for
Small Business Development Program**

AGREEMENT, made this 21st day of October, 2011 between the City of Biddeford and the Biddeford-Saco Area Economic Development Corporation (BSAEDC) to use Community Development Block Grant (CDBG) Funds for a Small Business Development Loan Program (SBDLP). The SBDLP will be set up as a revolving loan fund. Program income will be tracked and held for future applicants.

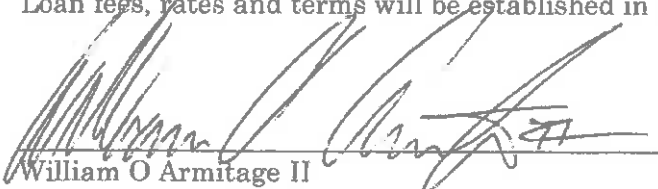
The purpose of the program is to supply "gap" loan funding for businesses locating in Biddeford's downtown.

The program must meet the HUD National Objective Benefit of benefiting "low to moderate income persons". The creation of one full time job to be awarded to a person of low to moderate income as specified in HUD income guidelines for that year are to be followed. In addition, the job created must be filled by a qualified Biddeford resident. The Seeds of Hope Career Center located at the Christ Episcopal Church at 18 ½ Crescent Street in Biddeford is available as a screening agent for qualified job applicants. A complete job description can be sent to the Community Development Coordinator for forwarding to the Career Center. If requested, qualified applicants for the position will be forwarded to the business by the Seeds of Hope Career Center.

Funds for the program will be made available through the normal requisition process used by the City's CDBG Administrator.

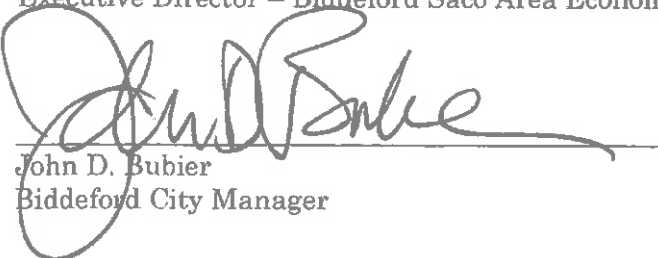
BSAEDC will work closely with the Community Development Coordinator to ensure all aspects of the program including documentation and reporting are in compliance with HUD requirements and regulations. Documentation is to be open to inspection by the Community Development Coordinator upon notice by letter. Any net "program income" generated from the program will remain within the program and be used for future applications upon approval by the Biddeford Community and Economic Development Department.

Loan fees, rates and terms will be established in the program guidelines.



William O Armitage II

Executive Director – Biddeford Saco Area Economic Development Corporation



John D. Bubier
Biddeford City Manager

PROGRAM GUIDELINES

BIDDEFORD SMALL BUSINESS DEVELOPMENT LOAN PROGRAM

A. Background. The City of Biddeford has established a Small Business Development Loan Program (SBDLP) with HUD-Community Development Block Grant (CDBG) Funds:

- The purpose of the SBDLP is to provide financing to assist small business owners and operating businesses seeking to start-up, locate or expand in the City of Biddeford.

B. Program Guidelines

1. Eligible Areas. Properties and/or businesses located or seeking to locate within the downtown City of Biddeford.
2. Eligible Businesses. Any existing or proposed business and property owners located within the eligible area defined herein under section B-1 and meeting other requirements as follows:
 - a. Applicant must provide proof of ownership or leasehold interest.
 - b. Applicant must not be in arrears on any personal property or real estate taxes owed to the City of Biddeford.
 - c. Applicant must demonstrate the availability of any matching funds required to complete the “project” as approved.
 - d. Applicant must meet the underwriting requirements of the Program and otherwise comply with Program procedures and requirements as established by the Program Administrator, Biddeford-Saco Area Economic Development Corp. (BSAEDC).
 - e. Applicant must secure all required permits and approvals as required by local, state, federal jurisdictions.

3. Eligible Uses. The following are eligible use of loan proceeds pursuant to the MRF:

- a. Fixtures, furniture, and equipment related to the business.
- b. Working capital including relocation expenses and inventory acquisition.
- c. Machinery and equipment.
- d. Related professional services including architectural, engineering, marketing, and other fees and costs.

4. Ineligible Uses. The following are ineligible uses of loan proceeds under the MRF:

- a. Refinancing of existing debt.
- b. Sweat equity – payment for the applicant’s own labor.
- c. Reimbursement of any project costs incurred prior to the approval of the SBDLP loan.

5. Financial Terms and Conditions. The SBDLP shall provide loan financing subject to the following terms and conditions:

- a. Maximum loan amount shall be \$20,000. All loans shall bear an interest rate of 5% per annum.
- b. Applicant must match SBDLP at minimum of \$1 to \$1.
- c. All SBDLP loans may carry a provision which defers the amortization of the loan for a period of one year from the date of closing.
- d. The applicant shall comply with all other terms and conditions as may be established by the Program Administrator, Biddeford-Saco Area Economic Development Corp. (BSAEDC).
- e. The loan agreement shall contain a provision which stipulates that the SBDLP loan is immediately due and payable in full should the business relocate outside of Biddeford prior to the full amortization of the loan.

C. Program Administration. The SBDLP shall be administered by the Biddeford-Saco Area Economic Development Corp. (BSAEDC) in accordance with HUD guidelines recommended by the Biddeford City Staff and in accordance with the Agency’s loan underwriting procedures. BSAEDC shall perform functions such as loan origination,

servicing, management, and program reporting including quarterly program reports to the City of Biddeford's Economic Development Director who shall serve as the City's liaison. As compensation for the foregoing, BSAEDC shall retain a loan application fee of \$250.00 charged to each applicant. The BSAEDC shall also retain ten percent (10%) of the monthly loan repayments.

CITY OF BIDDEFORD, MAINE

COMMUNITY DEVELOPMENT PROGRAM

THIS AGREEMENT MADE THIS First day of July A. D. 2012, by and between

The CITY OF BIDDEFORD, a body politic and corporate located in the County of York,

State of Maine (hereinafter referred to as "City", and

Biddeford Saco Area Economic Development Corporation

190 Main Street

Saco, Maine 04072

(hereinafter referred to as "Subrecipient").

WITNESSETH

WHEREAS, the City on the 21st day of July, 2005, and thereafter has received a Grant under Title I of the Housing and Community Development Act of 1974, said Grant currently designated as B-12-MC-23-0006; and

WHEREAS, pursuant to said Grant, the City is undertaking certain activities and

WHEREAS, the City desires to engage the Subrecipient to render certain assistance in such activities;

NOW, THEREFORE, the City and the Subrecipient do mutually agree as follows:

1. PERFORMANCE REQUIREMENTS

- A. Scope of Services: The Subrecipient agrees to execute this Agreement according to the Program Objectives, Services and Beneficiaries, and Budget set forth in the Proposal attached, as Exhibit A, and hereby made a part of this Contract.

If changes in the Proposal Program Objectives, Services and beneficiaries or budget are found to be necessary during the life of the contract, a copy of these changes must be submitted to the City's Economic Development Director for approval.

Minor and major changes will be approved administratively, unless in the judgment of the City Manager, a change should be approved by the City Council.

The CITY OF BIDDEFORD will request on a regular basis, quantitative and qualitative information concerning the progress and management of this project. The Agency will be responsible for ensuring that the project director shall provide such information upon request of the City.

The Subrecipient further agrees that the Proposal Program Objectives, Services, and Beneficiaries reflect the intent of the Subrecipient and therefore, are a valid basis for monitoring the project.

The Subrecipient understands that performance of the City's obligations under this Contract are subject to Federal allocation of funds, receipt by the City of such funds, allocation by the City to the purposes set forth herein, and to the termination provisions herein.

- B. Records: Records shall be maintained in accordance with requirements prescribed by the City and by the Department of Housing and Urban Development (hereinafter "HUD") with respect to all matters covered by this Contract. Except as otherwise authorized by the City, such records shall be maintained for a period of four years from the date of submission by the City of the annual performance and evaluation report in which the specific activity is reported on for the final time.

The City reserves the right to evaluate the Subrecipient's accounting, reporting and internal control systems, and to require changes when in the sole opinion of the City, deficiencies exist. Failure on the part of the Subrecipient to implement required changes may result in the holdback of Grant funds.

All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

The Subrecipient shall submit to the City monthly performance reports documenting service delivery and beneficiary data. A year-end narrative documenting program outcomes may also be required by the City on a case-by-case basis. At such times and in such forms as the City may also require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Contract. The final report of expenses incurred under this Contract will be submitted to the City within 30 days after the termination date of the Contract.

At any time during normal business hours and as often as the City or HUD may deem necessary, there shall be made available to the City or HUD for examination all of its records with respect to all matters covered by this Contract and will permit the City or HUD to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract and related sub-contracts and sub-grantees. The City reserves the right to withhold final payment under the Contract to the Subrecipient for Grant expenditures until the results of the Subrecipient project's final audit are complete and found to be

satisfactory to the City. A Subrecipient that receives \$300,000 or more in a fiscal year shall have an annual independent audit in accordance with 24 CFR 570.502(b).

The City reserves the right not to further fund Subrecipients whose administrative policies, in the sole and exclusive judgment of the City Manager, are not in the best interest of the recipients receiving Subrecipient services.

- C. Advertising: In all circulars, advertisements (oral and written), posters, pamphlets, etc., the words "A City of Biddeford Community Development Block Grant Assisted Project" or "City of Biddeford CDBG Assisted Project" shall appear. In addition, the Subrecipient shall endeavor to insure that news media coverage regarding its project include prominent reference to the fact that Community Development funds are involved.

- D. Reversion of Assets: The Subrecipient agrees to secure all equipment purchased with Community Development funds at the lowest possible price for acceptable quality. A record shall be maintained for each item of non-expendable property acquired for the program. Non-expendable property is property which will not be consumed or lose its identity by being incorporated into another item of property, which costs \$25 or more per unit and is expected to have a useful life of one year or more. The record shall include (a) description of the item or property, including model and serial number if applicable, (b) date of acquisition, and (c) the acquisition cost or assigned value to the program. A physical inventory of all non-expendable property shall be taken thirty (30) days prior to the termination of this Contract and a copy of the inventory list will be submitted to the CITY OF BIDDEFORD. At the conclusion of this Contract all non-expendable property acquired with Community Development funds shall revert to the CITY OF BIDDEFORD; unless, at the option of the City, the Subrecipient is expressly authorized to take possession. In addition to the foregoing, the Subrecipient shall transfer to the City any CDBG funds on hand (and not obligated) at the time of expiration of this Contract and any accounts receivable attributable to the use of CDBG funds. Any real property under the Subrecipient's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 shall, at the City's option, either be used or disposed of in accordance with 24 CFR 570.503(b)(8).

- E. Conflict of Interest: No person who is an employee, agent, consultant, officer, elected official or appointed official of the City, or of any designated public agencies, or of subrecipients that are receiving funds with respect to the program who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit directly or indirectly, from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter with the program assisted under this grant; and the Subrecipient shall take appropriate steps to assure compliance.

- F. Assurances: 1) The Subrecipient will comply with Title VI of the Civil Rights Act of 1964, codified in United States Code Title 42 S2000 (d), and Title VIII of the Civil Rights Act of 1968 as amended in 1988 and Section 109 of the Housing and Community Development Act of 1974, and in accordance therewith, no person in the United States shall, on the ground of race, color, national origin, religion, handicap, familial status, age, or sex, be excluded from participation in, be denied the benefits, or be subjected to discrimination under, any program or activity funded in whole or in part with the Community Development funds or any other Federal financial assistance. The Subrecipient will immediately take any measures necessary to effectuate this agreement.
- 2) To the extent applicable, the Subrecipient will comply with all ordinances and regulations of the CITY OF BIDDEFORD.
- 3) The Subrecipient will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended; and in accordance, in all work made possible by or resulting from this Contract, affirmative action will be taken to ensure that residents (preferably lower income) of the CITY OF BIDDEFORD are given maximum opportunities for training and employment and that business concerns located in or owned in substantial part by residents of the CITY OF BIDDEFORD are to the greatest extent feasible, awarded contracts.
- G. Political Activity Prohibited-Hatch Act: Neither the Community Development funds provided under this Contract, nor the Community Development funded personnel employed in the administration of this program shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code.
- H. Lobbying Prohibited: None of the funds provided under this Contract shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the Congress, State Legislature, and/or the Biddeford City Council in accordance with the May 29, 1984 revision to OMB Circular -A-122, "Cost Principles for Non-profit Organizations - Lobbying". The Subrecipient agrees to comply with the conditions prescribed by HUD for the use of CDBG funds as they pertain to lobbying as set forth in Exhibit C, which is attached hereto.
- I. Bonding: The Subrecipient will obtain and maintain at all times during the term of this Contract a Fidelity bond covering the activities of all personnel having access to any and all fiscal records under this Contract in an amount not less than \$20,000 cover the funds handled under the terms of this Contract. A certificate of said coverage must be filed with the City prior to execution of this Contract.
- J. Insurance: The Subrecipient will obtain and maintain, at all times during the term of this Contract, public liability insurance in an amount of at least \$400,000 single limit

liability protecting the Subrecipient and the City from any and all claims for personal or bodily injury, death, and property damage arising out of the performance of this Contract.

K. The Subrecipient will obtain and maintain at all times during the term of this Contract, worker's compensation insurance, and employment compensation insurance for all employees performing services in connection with this Contract. A certificate of coverage's required herein must be filed with the City prior to execution of this Contract.

2. **TERM:** The Subrecipient's performance of this Agreement shall commence on the **First** day of July, 2012 and shall continue through and including the **Thirtieth** day of June, 2013 unless continued by agreement of the parties in written amendment executed prior to said termination date.
3. **EXPENDITURES:** The Subrecipient shall expend no more than \$20,000 in the performance of the terms of this Contract, of which \$20,000 is to be (or has been) furnished by the CITY OF BIDDEFORD through HUD Community Development funds. In expending said sum of \$20,000, the Subrecipient shall conform to the line item category set forth in the budget annexed to this Contract and as to each line item, shall expend no more than the amount set forth in said budget, except as the City may otherwise provide. It is expressly understood and agreed that in no event will the total amount to be paid by the City to the Subrecipient under this Contract exceed \$20,000 for full and complete satisfactory performance. It is further understood and agreed that the amount paid to the Subrecipient shall not exceed the approved budget for each line item. Such funds will be made available by the City to the Subrecipient on a monthly reimbursable basis for eligible costs which shall be due and payable only as set forth therein, which are defined as being those costs which are necessary and reasonable for proper and efficient administration and performance of the services to be provided under this Contract. Procedures for such reimbursements shall be in accordance with applicable rules and regulations imposed by the City. The City will entertain requests, based on documented need, for an initial one-time advance not exceeding 10% of the Grant, unless otherwise authorized by the City.
4. **INDEMNIFICATION:** The Subrecipient will indemnify and hold harmless the City from any and all losses, claims, expenses, actions, cause of action, costs, damages and obligations caused by the negligent acts or omissions and/or any violation of applicable law or regulations by the Subrecipient, its officers, employees, agents, applicants or beneficiaries, excepting to the extent such losses, claims, expenses, actions, causes of action, or the violation of applicable law or regulation caused by the City, its officers, employees, or agents. For purposes of this Contract any officers, employees, agents, applicants or beneficiaries of the Subrecipient act in an independent capacity and are not officers or employees or agents of the City.

5. TERMINATION OF CONTRACT:

- A. Termination Contract for Cause: If, through any cause, the Subrecipient shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the Subrecipient shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Subrecipient of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all records, assets, property and documents of any nature, prepared or purchased by the Subrecipient under this Contract shall, at the option of the City, become its property and the Subrecipient shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to the date of termination. Notwithstanding the above, the Subrecipient shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Subrecipient, and the City may withhold any payments to the Subrecipient for the purpose of setoff until such time as the exact amount of damages to the City from the Subrecipient is determined.
- B. Termination for the Convenience of the City: The City may terminate this Contract at any time for any reason, including a decision by the City Council to reallocate funds allocated hereunder to other uses, by giving at least thirty (30) days notice in writing to the Subrecipient and specifying the reasons therefore. If the Contract is terminated by the City as provided herein, the Subrecipient will be paid an amount which bears the same ratio to the total dollars allocated under this Contract, as the Subrecipient's performance, up to the date of notice, bears to the total performance required under this Contract; plus an additional amount for actual expenses incurred in performance during the period after notice and prior to the effective date of termination, not to exceed one/twelfth of the total dollars allocated under this Agreement.
- C. Notwithstanding the foregoing, the City retains all rights to suspend or terminate this Contract for cause or convenience pursuant to 24 CFR 85.43 and 24 CFR 85.44.

6. SUB-CONTRACTS: Prior to execution of Memorandum of Agreements or Contracts for all Line 2 - Consultant and Contract Services (excluding the procurement of office cleaning or equipment maintenance services), the Subrecipient agrees to furnish to the City for approval a copy of the Agreement or Contract. All such sub-agreements must comply with applicable federal, state and City laws and regulations.

7. OPERATING PROCEDURES: The Subrecipient agrees to comply in all respects with all of the duties, responsibilities and requirements imposed by this Contract, and by the City, HUD and other agencies of the United States which are now in existence or may, from time to time, be promulgated during the term of this Contract or any extension hereof. Without limiting the foregoing, the Subrecipient specifically agrees to comply with the following

HUD regulations:

- A. In the event that the City or HUD determines program income as defined in 24 CFR 570.00 (a) (See Exhibit D) has been directly generated by the activities funded hereunder, said program income shall be returned to the City pursuant to 24 CFR 570.504(c).
 - B. The Subrecipient shall comply with all Federal laws and regulations in 24 CFR Subpart K which include Fair Housing laws, Labor Standards, Uniform Relocation Act, Employment and contracting opportunities, lead-based paint, use of debarred, suspended, or ineligible contractors or subrecipients and uniform administrative requirements and cost principles pertaining to procurement and audit procedures under 24 CFR Part 85 and OMB Circulars A-87, A-110 (implemented at 24 CFR part 84), A-122, A-128, and A-133 audit requirements for non-profit agencies as applicable, except that:
 - i.) The Subrecipient does not assume the City's environmental responsibilities described in 24 CFR 570.605; and (ii) the Subrecipient does not assume the City's responsibility for initiating the review process under 24 CFR Part 52.
 - C. To the extent applicable, the Subrecipient agrees to comply with the conditions prescribed by HUD for the use of CDBG funds by religious organizations, a copy of which conditions is attached hereto and incorporated herein as Exhibit B.
8. **REIMBURSEMENT:** Reimbursement will be at a monthly or quarterly rate not to exceed one twelfth or one quarter of the total Community Development funds allocated to the Subrecipient per year, unless the Community Development staff deem it necessary to reimburse expenses at a higher rate due to special circumstances.
 9. **ADVANCE:** Only under extreme circumstances and upon written request outlining such circumstances may a program be advanced funds. Under no circumstances shall an advance exceed 10% of total annual Community Development funds allocated under this Contract.
 10. **INCOME REQUIREMENTS:** During the term of this contract, the Subrecipient is required to have at least fifty-one percent of its clients meet the HUD low to moderate income guidelines. To achieve this requirement, a Subrecipient may select one of two approaches: 1) income verification for every client served or 2) any resident of Biddeford in HUD subsidized housing or who is a HUD Voucher Holder in Biddeford. The CITY OF BIDDEFORD reserves the right to request the Subrecipient to demonstrate its ability to fulfill the above specified residence requirement for periods less than the full term of the contract. The Subrecipient must inform the City of how it will document and achieve the 51% low/mod beneficiary requirement.

IN WITNESS WHEREOF, the City and the Subrecipient have executed this Contract as of the date first above written.

ATTEST:

CITY OF BIDDEFORD, MAINE:

By: *Paul A. Harada*
(Witness)

By: *John D. Bubier*
John D. Bubier, City Manager

Date: 8/1/2012

Date: 8/1/2012

By: *John D. Bubier*
(Witness)

OPERATING AGENCY:
By: *William A. [Signature]*

Date: 8/1/12

Executive Director
(Title or Capacity)

Date: 8/1/12

EXHIBIT B

**Contractual Provisions to be Included in
CDBG Agreements with Religious Organizations
to Provide Public Services**

In addition to, and not in substitution for, other provisions of this Agreement regarding the provisions of public services with CDBG funds, pursuant to title I of the Housing and Community Development Act of 1974, as amended, the Provider:

1. represents that it is, or may be deemed to be, a religious or denominational institution or an organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization;
2. agrees that, in connection with such public services:
 - a. it will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
 - b. it will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;
 - c. It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;
 - d. the funds received under this Agreement shall not be used to construct, rehabilitate, or restore any facility which is owned by the Provider and in which the public services are to be provided; Provided that, minor repairs may be made if such repairs (1) are directly related to the public services, (2) are located in a structure used exclusively for non-religious purposes, and (3) constitute in dollar terms only a minor portion of the CDBG expenditure for the public services.

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$20,000 for each such failure.

Executed this 1st date of August, 2012.

By 

**Definition of Program Income
24CFR 570.500**

(a) Program income means gross income received by the recipient or a subrecipient directly generated from the use of CDBG funds, except as provided in paragraph (a)(4) of this section.

(1) Program income includes, but is not limited to, the following:

- (i.) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
- (ii) Proceeds from the disposition of equipment purchased with CDBG funds;
- (iii) Gross income from the use or rental of real or personal property acquired by the recipient or by a subrecipient with CDBG funds, less costs incidental to generation of the income;
- (iv) Gross income from the use or rental of real property, owned by the recipient or by a subrecipient, that was constructed or improved with CDBG funds, less costs incidental to generation of the income;
- (v) Payments of principal and interest on loans made using CDBG funds, except as provided in paragraph (a)(3) of this section;
- (vi) Proceeds from the sale of loans made with CDBG funds;
- (vii) Proceeds from sale of obligations secured by loans made with CDBG funds;
- (viii) [Reserved]
- (ix) Interest earned on program income pending its disposition; and
- (x) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the assessments are used to recover all or part of the CDBG portion of a public improvement.

(2) Program income does not include income earned (except for interest described in 570.513) on grant advances from the U.S. Treasury. The following items of income earned on grant advances must be remitted to HUD for transmittal to the U.S. Treasury, and will not be reallocated under section 106(c) or (d) of the Act:

- (i.) Interest earned from the investment of the initial proceeds of a grant advance by the U.S. Treasury;
- (ii) Interest earned on loans or other forms of assistance provided with CDBG funds that are used for activities determined by HUD either to be ineligible or to fail to meet a national objective in accordance with the requirements of subpart C of this part, or that fail substantially to meet any other requirement of this part; and
- (iii) Interest earned on the investment of amounts reimbursed to the CDBG program account prior to the use of the reimbursed funds for eligible purposes.

(3) The calculation of the amount of program income for the recipient's CDBG program as a whole (i.e., comprising activities carried out by a grantee and its subrecipients) shall exclude payments made by subrecipients of principal and/or interest on CDBG-funded loans received from grantees if such payments are made using program income received by the subrecipient. (By making such payments, the subrecipient shall be deemed to have transferred program income to the grantee.) The amount of program income derived from this calculation shall be used for reporting purposes, for purposes of applying the requirement under 570.504(b)(2)(iii), and in determining limitations on planning and

administration and public services activities to be paid for with CDBG funds.

(4) Program income does not include:

- (i.) Any income received in a single program year by the recipient and all its subrecipients if the total amount of such income does not exceed \$25,000; and
- (ii) Amounts generated by activities that are financed by a loan guaranteed under section 108 of the Act and meet one or more of the public benefit criteria specified at 570.209(b)(2)(v) or are carried out in conjunction with a grant under section 108(q) in an area determined by HUD to meet the eligibility requirements for designation as an Urban Empowerment Zone pursuant to 24 CFR part 597, subpart B. Such exclusion shall not apply if CDBG funds are used to repay the guaranteed loan. When such a guaranteed loan is partially repaid with CDBG funds, the amount generated shall be prorated to reflect the percentage of CDBG funds used. Amounts generated by activities financed with loans guaranteed under section 108 which are not defined as program income shall be treated as miscellaneous revenue and shall not be subject to any of the requirements of this Part, except that the use of such funds shall be limited to activities that are located in a revitalization strategy area and implement a HUD approved area revitalization strategy pursuant to 91.215(e) of this title. However, such treatment shall not affect the right of the Secretary to require the section 108 borrower to pledge such amounts as security for the guaranteed loan. The determination whether such amounts shall constitute program income shall be governed by the provisions of the contract required at 570.705(b)(1).

(5) Examples of other receipts that are not considered program income are proceeds from fund raising activities carried out by subrecipients receiving CDBG assistance (the costs of fundraising are generally unallowable under the applicable OMB circulars referenced in 24 CFR 84.27), funds collected through special assessments used to recover the non-CDBG portion of a public improvement, and proceeds from the disposition of real property acquired or improved with CDBG funds when the disposition occurs after the applicable time period specified in 570.503(b)(8) for subrecipient-controlled property, or in 570.505 for recipient-controlled property.

(b) Revolving fund means a separate fund (with a set of accounts that are independent of other program accounts) established for the purpose of carrying out specific activities which, in turn, generate payments to the fund for use in carrying out the same activities. Each revolving loan fund's cash balance must be held in an interest-bearing account, and any interest paid on CDBG funds held in this account shall be considered interest earned on grant advances and must be remitted to HUD for transmittal to the U.S. Treasury no less frequently than annually. (Interest paid by borrowers on eligible loans made from the revolving loan fund shall be program income and treated accordingly.)

(c) Subrecipient means a public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under 570.201(o), receiving CDBG funds from the recipient or another subrecipient to undertake activities eligible for such assistance under subpart C of this part. The term excludes an entity receiving CDBG funds from the recipient under the authority of 570.204, unless the grantee explicitly designates it as a subrecipient. The term includes a public agency designated by a unit of general local government to receive a loan guarantee under subpart M of this part, but does not include contractors providing supplies, equipment, construction, or services subject to the procurement requirements in 24 CFR 85.36 or 84.40, as applicable.

[53 FR 8058, Mar. 11, 1988, as amended at 53 FR 41331, Oct. 21, 1988; 57 FR 27120, June 17, 1992; 60 FR 1952, Jan. 5, 1995; 60 FR 17446, Apr. 6, 1995; 60 FR 56914, Nov. 9, 1995]