

RD AN No. 4713 (1944-N)
March 5, 2013

TO: State Directors
Rural Development

FROM: Tammye Treviño (Signed by Tammye Treviño)
Administrator
Housing and Community Facilities Programs

SUBJECT: Clarification of Servicing Issues within the Housing Preservation Grant Program

Purpose/Intended Outcome:

The purpose of this Administrative Notice (AN) is to provide clarification on servicing issues within the Housing Preservation Grant (HPG) program as a result of a Management Control Review for this program completed in Fiscal Year 2012. The AN details corrective actions for weaknesses discovered during the review.

Comparison With Previous AN:

This AN replaces the RD AN No. 4583 (1944-N) dated June 16, 2011, which expired on June 30, 2012.

Implementation Responsibilities:

State Directors will designate a staff person to be responsible for carrying out the training and day-to-day operation of the HPG program. RD personnel should be trained in and knowledgeable of 7 C.F.R. 1944, subpart N, particularly section 1944.661, "Individual Homeowners Eligibility for HPG Assistance;" section 1944.663, "Ownership Agreement between HPG Grantee and Rental Property Owner or Co-op," and section 1944.659, "Replacement Housing". In addition RD personnel should be familiar with the correspondence RD Instruction 1944-N and in particular its Exhibit C.

EXPIRATION DATE:
February 28, 2014

FILING INSTRUCTIONS:
Preceding RD Instruction 1944-N

RECIPIENT FILES:

The HPG filing materials will include, but are not limited to: a) in order to show homeowner eligibility, photocopies of any instrument that serves as evidence for income eligibility and for proper ownership when using marketable title, divided or undivided property interests, leases, life estates, land assignments, etc.; b) the names, racial/ethnic data, and dates of contact for leaders of organizations involved in community outreach activities; c) copies of all advertising in local media, such as, newspapers, including name of the media used and the percentage of its service area by race/ethnic origin; and (d) copies of any other advertising or other printed material, including the application form used. The application shall include the wording: “This is an equal opportunity program. Discrimination is prohibited.”.

CONSTRUCTION WORK:

Part of the required training of RD staff for the HPG program includes the knowledge of building codes in order to determine which repairs are needed and if repairs have been properly completed. One of the recommended methods to accomplish this training is for RD personnel to complete the “MFH Inspection Training” e-learning CD, which was sent to State Architects and Training Coordinators in 2001. If original copies cannot be located within a State, the State Architect should contact Bill Downs, Architect, Program Support Staff at 202 720-1499, for additional copies.

Repairs must be completed exactly as described in the construction contract; so, it is important that the description of repairs include and adequately describe ALL work to be performed.

RD Instruction 1944-N, and 7 C.F.R. 1944.665, requires all repairs to be inspected by a qualified disinterested third party, which could be a local building/code enforcement official or a qualified contract/fee inspector.

FLOOD INSURANCE INFORMATION:

All HPG program recipients must include the completed FEMA Form 81-93, “Standard Flood Hazard Determination,” in each file for properties being repaired. FEMA Form 086-32 identifies and certifies the availability of flood insurance. As required under the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973, flood insurance must be required under certain circumstances as detailed in RD Instruction 426.2.

ENVIRONMENTAL REQUIREMENTS – ENVIRONMENTAL ASSESSMENTS:

The regulations 7 C.F.R. section 1944.672 states that the approval of an HPG grant for repair, rehabilitation, or replacement of dwellings to be located within a particular geographic area, shall

be a Class I Environmental Assessment action. A Class I Environmental Assessment action is further described in 7 C.F.R. part 1940, subpart G. Thus applicants need to submit Form RD 1940-20 “Request for Environmental Information” in accordance with RD Instructions 1944-N Exhibit F-1. For those proposals chosen for funding, the RD processing official will then complete Form RD 1940-21 “Environmental Assessment (EA) for Class I Action” in accordance with 7 C.F.R. part 1940, subpart G. The EA will generally screen the geographic area for potential impacts to the human environment (as listed on the 1940-21, such as, floodplain, wetland, historic resources, etc.), since the specific dwellings for repair are not known by the grantee at this time.

Next, the State Environmental Coordinator will review these preapplications for compliance with 7 CFR section §1944.672 and 1944.673 of this subpart and review Form 1940-21 for compliance with subpart G of part 1940. After review and approval by the State Environmental Coordinator, subpart G of part 1940 requires that a “Finding of No Significant Impact” be included in the file for all environmental assessments.

ENVIRONMENTAL REQUIREMENTS – EXHIBIT F-2, “GUIDE: GRANTEE’S PROCESS FOR IDENTIFYING PROPERTIES REQUIRING RURAL DEVELOPMENT ENVIRONMENTAL ASSESSMENTS:

The regulations at 7 C.F.R. section 1944.672 (b) state that applicants must include in their preapplication a process for identifying dwellings that may receive housing preservation or replacement housing assistance that will require an environmental assessment. This may be accomplished by the adoption of RD Instruction 1944-N, Exhibit F-2, or another process supplying similar information acceptable to RD. However, if such dwellings are located in a floodplain, wetland, or the proposed work is not concurred by the Advisory Council on Historic Preservation under the requirements of 7 C.F.R. section §1944.673, an RD environmental review is required.

RD has entered into a Programmatic Memorandum of Agreement (PMOA) with the National Conference of State Historic Preservation Officers (NCSHPO) and the Advisory Council on Historic Preservation in order to implement the specific requirements regarding historic preservation contained in Section 533 of the Housing Act of 1949, 42 U.S.C. 1490(m (i)). The PMOA, with attachments, can be found in RD Instruction 2000 FF.

The presence of a signed and executed RD Instruction 1944-N, Exhibit F-2 Form within the Grantee Environmental File is required in order to document that all Grantees have agreed to:

- 1) screen ultimate recipient properties for floodplains, wetlands, or historic properties and
- 2) contact RD for completion of an environmental assessment when floodplains or wetlands are present, or consult with the SHPO if the proposed action does not comply with those actions approved in the SHPO agreement as stated in Exhibit F-2.

COMPLIANCE WITH CIVIL RIGHTS LAWS:

RD Instruction 1970-E, “Rural Development Environmental Justice (EJ) and Civil Rights Impact Analysis (CRIA) Certification,” provides guidance on how to implement and integrate environmental justice considerations into all Agency programs’ environmental reviews as part of the public involvement process. Form RD 2006-38 is to be completed prior to obligation of grant funds and completion of grant project to assure that the major civil rights impacts of proposed actions are identified and the potential for negative effects are addressed prior to approval of the Agency’s financial assistance.

Prior to the obligation of the HPG funds and completion of the project, RD Instruction 2006-P, § 2006.754(a) and (b), requests certifying officials to identify and address major civil rights impacts of proposed policy actions and the potential for negative effects based on race, color, sex, national origin, religion, age, disability, or marital and/or familial status; and to complete Form RD 2006-38 to assure the Agency that a civil rights impact analysis has been completed and the potential effects of each proposed policy action have been considered, before the proposed policy action is approved and implemented.

The policies contained in subpart E of part 1901 apply to grantees. As recipients of Federal financial assistance, HPG grant program recipients are required to comply with the applicable Federal, State and local laws. The Fair Housing Act prohibits discrimination by recipients of Federal financial assistance. Grant recipients are required to adhere to specific outreach activities. These outreach activities include, contacting community organizations and leaders that include minority leaders, advertising in local newspapers and other media throughout the entire service area, and including the nondiscrimination slogan, “This is an Equal Opportunity Program. Discrimination is prohibited by Federal Law,” in methods that may include, but not be limited to, advertisements, public broadcasts, printed materials, such as, brochures and pamphlets, and application forms for Fair Housing. These requirements can be found under 7 CFR section 1944.671 (b).

DEBARMENT AND SUSPENSION:

The regulations at 7 C.F.R. section 1944.654(a) requires all Agency program applicants to sign and submit with their pre-application, Form AD-1047, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions,” which states that the applicant has not been debarred or suspended from Government assistance. In addition, all grantees must obtain a signed certification on Form AD-1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions,” from all persons or entities that the program recipient does business with (excluding homeowner recipients) as a result of the program. The HPG program grantee should maintain Form AD-1048 in the HPG program grantee’s files.

RD staff must check the Excluded Parties List System to verify that all program applicants have or have not been debarred and/or suspended from Government assistance at the time the pre-

application is received and immediately prior to providing the loan/grant assistance. The Excluded Parties List System is located at <https://www.sam.gov>.

LEAD-BASED PAINT (LBP):

The Environmental Protection Agency pamphlet entitled “Protect Your Family from Lead in Your Home” should be distributed by the HPG grantee to all prospective ultimate recipients.

Rural Development adopted subparts of the United States Department of Housing and Urban Development’s (HUD) LBP Rule which must be followed for any housing rehabilitation or renovation project. Exemptions to HUD’s LB requirement are detailed in 24 C.F.R. section 35.115. Recipient files must contain applicable LBP documents including initial inspection reports, risk assessments, and/or clearance inspections reports.

CHECKLISTS:

Attachment A contains a checklist detailing the requirements HPG applicants must provide with their HPG preapplications. Attachment B contains a checklist detailing the requirements grantees must maintain in their HPG files. Attachment C contains a checklist detailing the requirements grantees must maintain in their HPG recipient files.

RECYCLING OF HPG FUNDS:

As the purpose of the HPG program is to repair and rehabilitate homes, the grantee may use HPG funds as grants or loans. In accordance with 7 C.F.R. 1944.670(b), “Project Income,” the loan funds that are repaid are encouraged to be recycled into the HPG repair and rehabilitation activities. To continue the HPG repair and rehabilitation activities, a separate trust account should be used that is interest bearing. The interest funds that are earned are to go back into the HPG “pot” and the interest earned is to be reported in an audit.

HPG GRANT EXTENSION REQUESTS:

Information covering all requests to extend the HPG funds until the remaining balance has been expended are located in 7 CFR 1944.684. The State Office personnel may grant these requests.

In instances whereby the grant will be expiring and an extension of the HPG funds is necessary for completion of the project, refer to the Office of Management and Budget (OMB) Circular A-110, 7 CFR part 3019, Uniform Administrative Requirements For Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, Subpart C - Post Award Requirements, 7 CFR 3019.25, (e) (2), “Revision of Budget and Program Plans.” 7 CFR 3019.25(e) (2), states, “Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and

revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. (i) The terms and conditions of award prohibit the extensions. (ii) The extension requires additional Federal funds. (iii) The extension involves any change in the approved objectives or scope of the project.”

Upon the State Office approval, documentation of extending the grant prior to expiration, as well as, amendment to the grant agreement extending the completion time of the HPG project(s), should be placed in the HPG file.

HPG GRANT EXPIRATION:

Information covering evaluation, closeout, suspension and termination of the HPG funds is located in 7 CFR 1944.688. It is important that the State Office personnel continue to monitor the HPG award recipient files to ensure the funds will be used in order to avoid an expiration of the HPG funds.

In instances where the project remains uncompleted and the HPG grant funds have expired, no further grant funds will be advanced as the Housing Preservation Grantee will be unable to receive an extension. In these circumstances, the HPG funds must be returned to RD. The HPG funds will be returned with a Form RD 451-2, “Schedule of Remittance”. Use a Miscellaneous Collection Code 17, Return of unused grant funds. If the Forms Manual Insert is needed, it can be found at: <https://formsadmin.sc.egov.usda.gov/eFormsAdmin/welcomeAction.do?Home>. Upon the State Office personnel documentation of the expired grant, as well as, information that the grant will not be extended to complete the HPG project(s), this information is to be placed in the HPG file.

SF 425 REPLACES SF 269 AND SF 272:

The Office of Management and Budget (OMB) has created the Standard Form (SF) 425, “Financial Report Form,” (and SF 425A, “Federal Financial Report Attachment,”) to take the place of SF 269, “Financial Status Report” and SF 269A, “Financial Status Report (Short Form),” (plus SF 272, “Federal Cash Transactions Report” and SF 272A, “Federal Cash Transactions Report (Continuation),”). In addition, OMB also created the Performance Progress Report (SF PPR) to standardize the grant progress reporting requirements government wide. Based on information pertaining to the form, a grantee is required to submit the SF 425 until the last advance of funds is made. The SF PPR “Performance Progress Report” must be used to report the progress of projects if the grant is \$100,000 or more.

FORM AD 3031 :

The U.S. Department of Agriculture is requiring applicants seeking funding from RD to complete the Form AD 3031, “Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants” Corporations that have been convicted of a felony (or had an officer or agency acting on behalf of the corporation convicted of a felony) within the last 2 years are ineligible for funding. Any Corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been depleted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority in charge of collecting the tax liability, is ineligible for financial assistance provided with funds appropriated by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, P.L. No. 112-55.

Please review this material carefully as it is essential that State Directors ensure that the subject training is provided to all appropriate staff by April 30, 2013. If there are any questions, you may contact Bonnie Edwards-Jackson, Multi-Family Housing Preservation and Direct Loan Division, (202) 690-0759.

Attachment

Housing Preservation Grant Preapplication Checklist

- Application for Federal Assistance; Standard Form 424 (if paper application)
- Statement of Activities
- Statement on Experience and Capacity
- Evidence of Legal Existence
- Financial Statements
- Budget
- Narrative on Area to be Served
- 1944-N, Exhibit F-2, "Guide: Grantee's Process for Identifying Properties Requiring Rural Development Environmental Assessments" signed
- RD Form 1940-20, "Request for Environmental Information" and attachment
- Intergovernmental Review correspondence
- Evidence of 15-day publishing requirement
- Form 400-1, Equal Opportunity Agreement
- Form 400-4, Assurance Agreement
- Form AD 3031, Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants

The following are forms that must be submitted prior to closing:

- Form AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions
- Form AD-1048, Certification Regarding Debarment, Suspension, and Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions
- Evidence Agency verification for debarment with use of Excluded Parties List System
- Form AD-1049, Certification Regarding Drug-free Workplace Requirements (Grants) Alternative I-Grants Other Individuals
- The applicant must demonstrate compliance with other Federal Statutes and Regulations by Adherence and conformance to policies involving:
 - Equal Employment Opportunity (see 7 CFR section 1944.671 for requirements)
 - Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (see 7 CFR section 1944.667 for requirements)
 - Restrictions on Lobbying (see 7 CFR section 1944.657 for guidance.)

Housing Preservation Grantee File Checklist

Grantee Name: _____ Date: _____

Project Name and Address: _____

State: _____ Grant Amount: _____ Fiscal Year: _____

Civil Rights Compliance Review:

_____ Pre-grant

_____ Post-grant

Housing Preservation Grant Recipient File Checklist

Recipient Name: _____ Date: _____

State: _____ County: _____

Grant Amount Request: _____ Fiscal Year: _____

Application Review:

- _____ Signature of Recipient
- _____ Verification of low, or very-low income
- _____ Verification of homeownership

Environmental Review:

- _____ Documentation the Environmental Protection Agency pamphlet, "Protect Your Family From Lead in Your Home," should have been provided to Recipient
- _____ LBP inspection report, risk assessment, and/or clearance inspections report
- _____ Evidence of environmental review of each home per 1944-N, Exhibit C VIII (A)
- _____ Evidence that the home is not historic / consultation with the SHPO (in accordance with 1944-N, Exhibit F-2)
- _____ Completion of FEMA Form 81-93, "Standard Flood Hazard Determination"
(only if substantial repairs)

Specification Review:

- _____ Cost estimate by line item
- _____ Accepted contractor's quote

Field Visits by Rural Development:

- _____ Documentation in file of Field visits to the Recipient's house

Photos:

- _____ Before _____ After

Final Inspection:

- _____ Final inspection by disinterested third party certifying that all work has been performed according to plans and specifications.