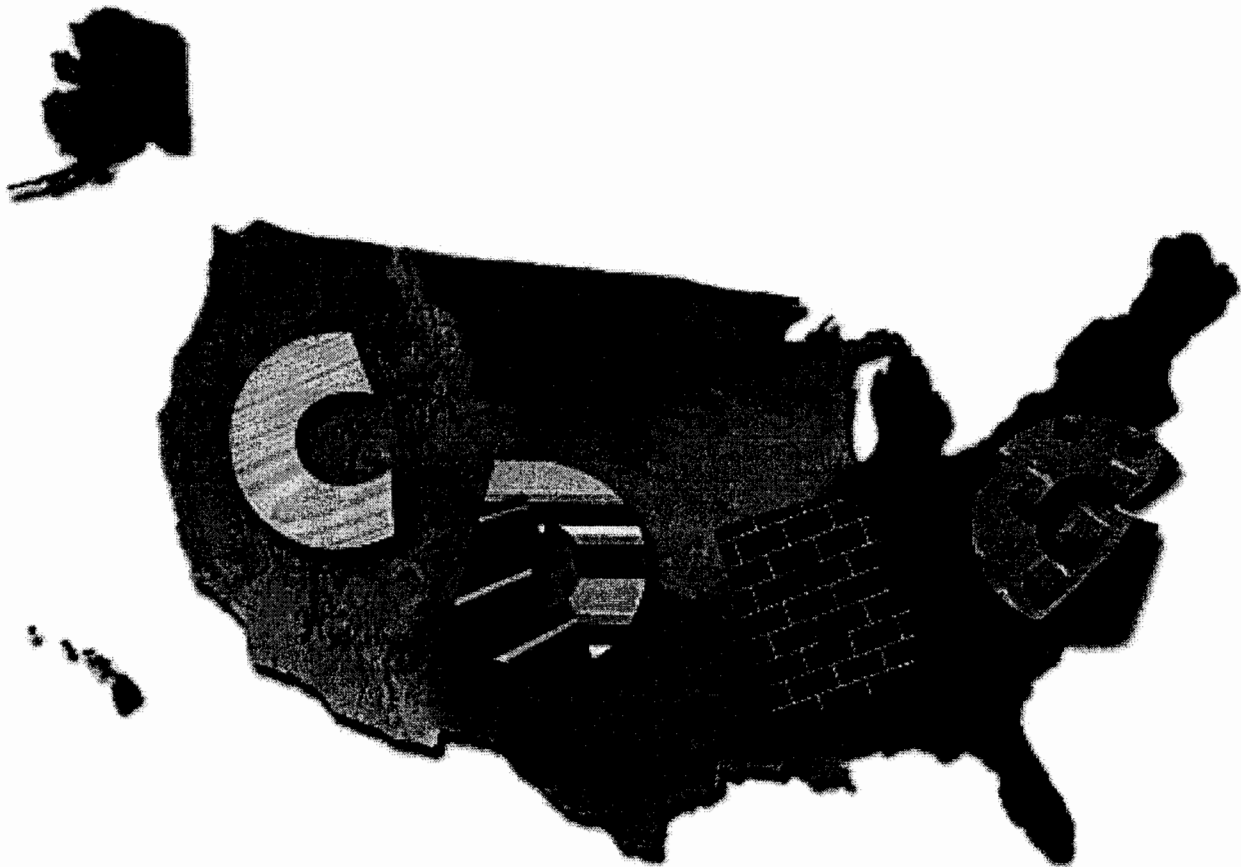




U.S. Department of Housing and Urban Development
Office of Community Planning and Development

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM



*Guide to National
Objectives &
Eligible Activities
for Entitlement
Communities*

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INTRODUCTION

Purpose

This Guide is designed to help public officials and citizens understand what activities are eligible to be assisted under the **Community Development Block Grant (CDBG) Entitlement Program** and to guide them in making wise choices among certain alternatives available within the program for carrying out particular activities. While the statute, as amplified by the regulations, provides the authoritative version of program requirements, this Guide:

- ✓ Organizes eligibility requirements in a more accessible and understandable format;
- ✓ Provides additional explanatory materials, including examples;
- ✓ Provides guidance on the factors to be considered in selecting among alternative categories of eligibility and national objectives, where applicable; and
- ✓ Provides guidance on accessing additional CDBG resources that may be available to a community.

Overview of Contents

Chapter 1 (Selecting Activities that Comply) sets forth several key determinations that a grantee must make in order to be sure that a particular activity that is assisted with CDBG funds will be found to meet relevant program rules.

Chapter 2 (Categories of Eligible Activities) describes each category of basic eligibility under which an activity may be carried out using CDBG funds. Additional considerations related to undertaking an activity under each category are also described, as well as requirements for documenting that activities selected for assistance under the program fall under a particular category of eligibility specified by the grantee. The requirement that each assisted activity must address at least one of the national objectives of the CDBG program is emphasized and examples are provided.

Chapter 3 (Meeting a National Objective) describes the several categories under which the national objectives of the program may be addressed, the criteria that must be met for each category and the records which must be maintained to verify that an activity qualifies as either:

- ✓ Benefiting low and moderate (L/M) income persons;
- ✓ Addressing slums or blight; or
- ✓ Meeting a particularly urgent community development need.

Chapter 4 (Overall Expenditures Level - Benefit to L/M Income Persons) describes the methodology each grantee must follow in determining if it is in compliance with the requirement that at least 70% of all CDBG funds expended during the period of one, two, or three consecutive program years, as selected by the grantee for this purpose, be used for activities which are considered under program rules to benefit L/M income persons. (This requirement is distinct from the requirement that individual activities which are considered under program rules to meet the L/M income national objective must generally benefit persons at least 51% of whom are L/M income.)

Appendices: The Guide also includes several appendices, each of which can provide useful information to be considered in making choices about how to use program funds:

- (1) The first appendix (A) is a fact sheet that provides an overview of the CDBG Entitlement program. The reader should find it useful in describing the program to others.
- (2) The second appendix (B) contains a discussion of the requirement that Public Benefit must be commensurate with the amount of CDBG funds used for certain activities of an economic development nature. The standards for measuring Public Benefit are described.
- (3) The third appendix (C) describes policies relating to special assessments under the CDBG program which are also referenced in the Guide.
- (4) The fourth appendix (D) provides guidance in determining the area served by certain activities.
- (5) The fifth appendix (E) provides the criteria by which HUD will determine if it will approve a Neighborhood Revitalization Strategy submitted by a grantee, and the benefits that will accrue to the grantee upon such approval.
- (6) The sixth appendix (F) identifies three approaches a grantee may consider taking to make available to itself additional CDBG funds to meet its needs.

(7) The seventh appendix (G) discusses securitizing CDBG-funded rehabilitation and economic development loans using the Section 108 Loan Guarantee program or selling the loans to secondary markets. Issues that communities encounter and solutions for common problems are also described.

**Important
Note to
Guidebook
Users**

Considering the broad range of activities which may be carried out with CDBG funds and the need for interpretation of the applicability of requirements to many differing factual situations, this Guide will not provide answers to all questions about activity eligibility.

To avoid potential problems, grantees are encouraged to ask the local HUD field office for clarification when requirements appear unclear and to bring ambiguous situations to that office's attention.

Moreover, program requirements may change subsequent to the publication of this Guide. It is therefore also important that grantees stay in close contact with their local HUD field office to keep abreast of program changes.

Information about HUD field offices may be found at HUD's Home Page on the World Wide Web at <http://www.hud.gov/local.html>.

SELECTING ACTIVITIES THAT COMPLY

Scope of Selection Decisions

While there are many aspects that must be considered in selecting activities to assist under the CDBG program, there are **six** key steps a grantee should take in the early stages of the process of determining if CDBG funds may be used to assist a proposed activity.

The **first step** is to determine if the activity is included within the listing of eligible activities in the CDBG statute, as amplified by regulation. This Guide describes all categories of basic eligibility which were authorized at the time of publication.

The **second step** is to determine if the proposed activity falls within a category of explicitly ineligible activities, despite its apparent inclusion within an authorized category. For example, while public facilities are generically eligible for assistance with CDBG funds, there is an explicit statutory bar to providing assistance to “buildings for the general conduct of government” under the category of Public Facilities and Improvements. The explicitly ineligible activities are identified in this Guide, as well as those that may be made eligible under particular categories.

The **third and arguably most important step** is to determine if the proposed activity can meet one of the national objectives of the program. This Guide describes this requirement in some detail.

The **fourth step** is to ensure that carrying out the activity with CDBG funds will not result in the grantee violating its certification that at least 70% of CDBG expenditures will be for activities that are considered to benefit L/M income persons over the one, two, or three consecutive program years specified by the grantee. The procedure for calculating overall program expenditures for this purpose is described in this Guide.

The **fifth step** is to review proposed costs of the activity to determine if they appear to be necessary and reasonable and will otherwise conform with the requirements of OMB Circulars A-87, “Cost Principles for State, Local, and Indian Tribal Governments,” A-122, “Cost Principles for Non-Profit Organizations,” A-21, “Cost Principles for Educational Institutions,” 24 CFR Part 84, “Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations;” or 24 CFR Part 85, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” as applicable.

The **sixth step** is to complete the environmental review and clearance procedures for the project of which the activity is a part. Those procedures are set forth in 24 CFR Part 58. HUD is prohibited by law from releasing funds for a CDBG activity until the grantee certifies that it has met its responsibilities with respect to environmental protection.

Waivers

Any provision of the regulations covering the CDBG program that is not required by the statute may be waived by HUD. The statute itself also provides that HUD may waive certain statutory provisions in the case of the use of CDBG funds to respond to a Federally-designated disaster (section 122 of the Housing and Community Development Act of 1974, as amended). If a grantee wants to determine if a particular provision of the regulation can be waived, it should contact its local HUD field office to discuss the matter.

Under the General HUD Program Requirements regulation at 24 CFR 5.110, HUD may waive a requirement for good cause if the grantee can show that applying the provision in the particular situation would result in “undue hardship” and “adversely affect” the purposes of the HCD Act. This two-pronged threshold test is considered a subcategory of the “good cause” waiver standard which is cross-referenced in the CDBG regulations at 24 CFR 570.5. Again, the local HUD field office can help the grantee with determining whether the test can be met. Waivers may only be granted at HUD Headquarters and must be published in the *Federal Register* describing the basis upon which the waiver was granted. Since rulemaking involves public participation, waiving any provision can have serious implications for the proper administration of the program. HUD therefore uses its waiver authority judiciously.

CATEGORIES OF ELIGIBLE ACTIVITIES

Purpose

This chapter describes in some detail the many categories of activity types which may be assisted using CDBG funds. It also discusses a number of activities that may not be so assisted. The chapter also contains guidance on documenting compliance and making the best choice for selecting the category to carry out an activity when more than one may apply.

The purpose of the chapter is to help ensure that grantees will: (1) use CDBG funds only for activities that fall under an authorized category of basic eligibility; (2) properly classify the activity; and (3) provide adequate documentation as required by the category it selects for each such activity. The importance of using CDBG funds only for eligible activities is self-evident. The proper classification of each assisted activity by one of these categories of eligibility is also important because the statute and regulations place specific requirements on particular categories and not on others. For example, there is a statutory and regulatory limitation on the amount of CDBG funds which may be used for activities assisted under the category of Public Services. Some services that are assisted under the program may also be eligible under a category other than Public Services and, if properly classified by the grantee as such, would therefore not be subject to the 15% public service cap. There is also a limitation on the amount of CDBG funds which may be used for activities under the categories of Planning and Capacity Building and Program Administration. Likewise, there are other categories under which these types of activities might also qualify and thus not be subject to that cap.

The statute and regulations also place special requirements on certain categories of eligible activities, such as Code Enforcement and Special Economic Development Activities. An improperly classified activity may be unnecessarily subject to additional program requirements. Conversely, an activity may be carried out in a manner that does not meet the requirements of the selected category but it might be eligible under the requirements of another category not selected by the grantee for that activity.

**Activity
Categories**

This chapter describes separately each category of basic eligibility under the program, in the following order:

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This chapter also discusses activities that are specifically ineligible and further covers ways of documenting compliance with the activity selected and how grantees can make the best choices, given the available options.

Acquisition of Real Property

Eligible Activities

The statute and regulations authorize the use of CDBG funds by a grantee or a public or private nonprofit entity to acquire real property in whole or in part by purchase, long-term lease, donation, or otherwise. In order to be considered acquisition, a permanent interest in the property must be obtained. Long-term leases are considered to constitute a permanent interest for this purpose if the lease is for a period of 15 years or more.

More specifically, CDBG funds may be used under this category by:

- ✓ The grantee,
- ✓ Any other public agency,
- ✓ A public nonprofit entity, or
- ✓ A private nonprofit entity.

to acquire real property for any public purpose. This authority is subject to the limitations at §570.207 (a)(1) which would preclude the acquisition cost attributable to a building to be used for the general conduct of government and §570.207(a)(3) which would preclude the acquisition of property to be used for political activities. *Reference: §570.201(a)*

Example

Real property to be acquired may be:

- Land,
- Air rights,
- Easements,
- Water rights,
- Rights-of-way,
- Buildings and other real property improvements, or
- Other interests in the real property.

Costs that may be paid for with CDBG funds under this category include the cost of surveys to identify the property to be acquired, appraisals, the preparation of legal documents, recordation fees, and other costs that are necessary to effect the acquisition.

*Real property acquisition under this category does **not** include:*

- ❖ The costs of moveable equipment, furnishings, or machinery if this is the principal purpose of the activity, since such items are not real property. They may, however, qualify under another category, such as Special Economic Development Activities when needed for

carrying out an economic development project, or under Public Services. (See discussion of these categories later in this chapter.)

- ❖ Acquisition of property which is then expected to be donated or sold at less than the purchase price to the same entity from which the property was purchased. This is not an eligible activity since it is not considered to involve a legitimate change of ownership.
- ❖ Acquisition of newly-constructed housing or an interest in the construction of new housing, unless such housing is already constructed and for sale on the open market at the time that a commitment is made to use CDBG funds for such a purchase. The prohibition of this type of acquisition is based on the fact that such acquisition would be considered to constitute assisting new new housing construction, which is generally ineligible for CDBG assistance. *Reference: §570.207(b)(3)*

Note: Acquisition of real property that does not meet the limitations for eligibility under this category may be eligible for CDBG assistance under other categories of basic eligibility. For example, CDBG funds may be provided to private individuals and private for-profit entities to acquire real property in the following situations:

- ❖ Under certain circumstances, CDBG funds may be provided to private individuals and private for-profit entities to acquire property to be rehabilitated, if the property is then rehabilitated and used or sold for residential purposes. *Reference: §570.202(b)(1)*
- ❖ Private non-profit entities may use CDBG funds to acquire real property for commercial or industrial uses, and private for-profit entities may also do so when appropriate for an economic development project. *References: §570.203(a) and (b)*

Complying With National Objectives— Acquisition of Real Property

Qualifying an acquisition activity under one of the CDBG national objectives depends entirely on the use of the acquired real property following its acquisition. A preliminary determination of compliance may be based on the planned use. The final determination must be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity may be considered the actual use of the property. However, any subsequent use or disposition of the cleared property must be treated as a “change of use” under §570.503(b)(8) or §570.505, as applicable. If property is to be acquired for a general purpose, such as housing or economic development, and the actual specific project is not yet identified, the grantee must document the general use it intends for the property, the national objective category it expects will be met, and make a written commitment to use the property only for a specific project under that general use that will meet the specified national objective.

Acquisition of real property may qualify as meeting a national objective in any of the ways shown in the charts that follow.

Additional Considerations

If property acquired with CDBG funds, or any interest therein, is subsequently transferred to another entity, the property or interest must be sold to the entity at **the current fair market value** unless the property will be used for an activity which meets a CDBG national objective. Sale proceeds would be program income.

The purchase of real property by the grantee or other entities under this eligibility category is subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Among other things, this could mean that persons displaced as a result of the acquisition must be provided with financial assistance. Temporary easements, acquisition from another public agency, and voluntary offers in response to a public solicitation are exempt from Uniform Act requirements. *Reference: §570.606.*

Since the ultimate use of the property determines how a national objective will be met, whenever the use differs from that contemplated at the time of acquisition, a review must be made of the new use to ensure it will meet a national objective. When such review results in the determination that the national objective being met differs from that ascribed to the activity initially, an adjustment must be made to the program records for the program year in which the acquisition occurred to reflect this change, provided that the records for that year are still available at the time the new use is determined. If the objective claimed for the original acquisition costs was that of benefit to L/M income persons, and the objective being met by the new use falls under either of the other two national objectives, the new use of the property would be authorized only if the classification of the acquisition costs to the new objective would not result in a violation of the “overall expenditures certification” that the grantee made for the program year in which such costs were incurred. See Chapter 4 of this Guide for further information on this certification issue.

NATIONAL OBJECTIVES— ACQUISITION OF REAL PROPERTY			
Objective	Qualifies If	Example	Additional Information
L/M Income Area Benefit	The property will be used for an activity the benefits of which are available to all the residents in a particular area that is primarily residential, and at least 51% of those residents (or fewer if the exception criteria apply) are L/M income persons.	Purchasing land to be used as a park serving a primarily residential neighborhood that is predominantly L/M income.	For more information, see page 3-7.
L/M Income Limited Clientele	The property will be used for an activity the benefits of which will be limited to a specific group of people, at least 51% of whom are L/M income persons.	Buying a building to be converted into a shelter for the homeless.	For more information, see page 3-14.
L/M Income Housing	The property will be used for housing to be occupied by L/M income persons.	Buying an apartment house to provide dwelling units to L/M income households at affordable rents, where at least 51% of the units will be occupied by L/M income households.	For more information, see page 3-19.

NATIONAL OBJECTIVES— ACQUISITION OF REAL PROPERTY

Objective	Qualifies If	Example	Additional Information
L/M Income Jobs	The property acquired is to be used for an economic development project that will create or retain permanent jobs at least 51% of which will benefit L/M income persons.	Acquiring vacant property that is planned to be used for a commercial purpose, and will be made available for that purpose only if the business commits to provide at least 51% of the new permanent jobs that will be created to L/M income persons.	For more information, see page 3-24.
Slum or Blighted Area	The acquired property is in an area designated by the grantee as a slum or blighted area, and the property will be used in a manner which addresses one or more of the conditions which contributed to the deterioration of the area.	Using CDBG funds to acquire several deteriorated buildings located in a slum/blight area for rehabilitation or demolition.	For more information, see page 3-35.
Spot Blight	The acquisition of property is located outside a designated slum/blight area and the acquisition is a prerequisite for clearance which will eliminate specific conditions of blight or physical decay on a spot basis.	The acquisition of a dilapidated property being used as a "crack house" for the purpose of eliminating that use, which is detrimental to public health and safety, through demolition and clearance.	For more information, see page 3-38.

NATIONAL OBJECTIVES— ACQUISITION OF REAL PROPERTY

Objective	Qualifies If	Example	Additional Information
Urban Renewal Completion	The real property acquired is located within an urban renewal project area or an NDP (Neighborhood Development Program) action area designated under Title 1 of the Housing Act of 1949 and the acquisition is necessary to complete the current urban renewal plan.	The current, approved plan calls for a specific property to be used for middle-income housing which is currently being used for other purposes. The acquisition will allow the property to be cleared and to be included with other contiguous parcels for sale to an interested housing developer.	For more information, see page 3-40.
Urgent Needs	The acquisition is part of an activity designated to alleviate existing conditions and the grantee certifies that those conditions are a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.	Acquisition of property located in a flood plain which was severely damaged by a recent flood.	For more information, see page 3-41.

Disposition

Eligible Activities

Under this category, CDBG funds may be used to pay costs incidental to disposing of real property acquired with CDBG funds, including its disposition at less than fair market value, provided the property will be used to meet a national objective of the CDBG program.

The property may be disposed of through:

- ✓ Sale,
- ✓ Lease,
- ✓ Donation, or
- ✓ Otherwise.

CDBG funds may also be used under this category to pay reasonable costs of temporarily managing such property (or property acquired with Urban Renewal funds) until final disposition of the property is made. *Reference: §570.201(b).*

Example

Disposition costs include preparation of legal documents, as well as fees paid for:

- Surveys,
- Marketing,
- Financial services, and
- Transfer taxes and other costs involved in the transfer of ownership of property.

Caveat: Because this category only authorizes the costs of temporarily managing property pending its disposition, care should be taken to avoid spending CDBG funds to manage properties for which there are no plans for disposition in the near future or where the market is such that it is not likely to be sold in the near future, such as properties acquired many years ago under the Urban Renewal program.

Complying with National Objectives—Disposition

For disposition costs to be eligible, the use of the CDBG-acquired property after disposition must meet a national objective of the CDBG program. When property is disposed of for the same purpose as that for which it was acquired, the costs of disposition will be considered to meet the same national objective ascribed to the CDBG funds spent on its acquisition. For examples on how such acquired property may meet a national objective, see the charts on National Objectives—Acquisition of Real Property on pages 2-6 through 2-8.

If the property is being disposed of for a purpose other than that for which it was acquired, the new activity must be reviewed to determine whether a national objective will be met by the new use. See the discussion in the preceding section on Acquisition of Real Property on page 2-4 for more details. Property acquired with CDBG funds may be used for purposes that do not meet a national objective, but only under conditions specified under §570.503(b)(8) and §570.505.

Additional Considerations

Gross proceeds from the disposition of real property acquired with CDBG funds that are received by the grantee or a subrecipient are program income.

References: §570.201(b) and §570.500(a)(1)

Public Facilities and Improvements

Eligible Activities

CDBG funds may be used by the grantee or other public or private nonprofit entities for the:

- ✓ Acquisition (including long term leases for periods of 15 years or more),
- ✓ Construction,
- ✓ Reconstruction,
- ✓ Rehabilitation (including removal of architectural barriers to accessibility), or
- ✓ Installation.

of public improvements or facilities (except for buildings for the general conduct of government). *Reference: §570.201(c)*

Neither the statute nor the regulations define the terms “public facilities” or “public improvements.” However, in the CDBG program, these terms are broadly interpreted to include all improvements and facilities that are either publicly owned or that are traditionally provided by the government, or owned by a nonprofit, and operated so as to be open to the general public. This would include neighborhood facilities, firehouses, public schools, and libraries. Public improvements include streets, sidewalks, curbs and gutters, parks, playgrounds, water and sewer lines, flood and drainage improvements, parking lots, utility lines, and aesthetic amenities on public property such as trees, sculptures, pools of water and fountains, and other works of art. The regulations specify that facilities that are designed for use in providing shelter for persons having special needs are considered to be public facilities (and not permanent housing), and thus are covered under this category of basic eligibility. Such shelters would include nursing homes, convalescent homes, hospitals, shelters for victims of domestic violence, shelters and transitional facilities/housing for the homeless, halfway houses for run-away children, drug offenders or parolees, group homes for the developmentally disabled, and shelters for disaster victims.

In the CDBG program, site improvements of any kind that are made to property that is in public ownership are considered to be a “public improvement” eligible for assistance under this category. This distinction would be of particular importance if new housing is to be constructed on the property and direct CDBG assistance to that construction would not be eligible under program rules.

With one notable exception, this category does not authorize expenditures for “buildings for the general conduct of government.” The exception is that CDBG funds may be used to remove from such buildings material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons. *Reference: §570.207(a)(1)*

- ❖ As defined in the statute, the term “buildings for the general conduct of government” means “city halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of government are conducted.” The term includes court houses but does not include jails or prisons. It does not include buildings which are used to deliver services to the public, such as police stations or fire stations. “Mini-city halls,” which are used by some large communities to make certain services available closer to the public, are also not included under this term. Generally speaking, buildings which house administrative functions of the government are considered to be “buildings for the general conduct of government.” Thus, CDBG assistance to a building in which the chief of police and the fire captain of a city have their offices would generally be ineligible. For small communities where one building provides both the administrative functions and services directly to the public, a determination should be sought from HUD as to whether the building may be assisted under this category.

Public facilities and improvements authorized under this category also do **not** include:

Reference

❖ Costs of <i>operating or maintaining</i> public facilities/improvements;	<i>§570.207(b)(2)</i>
❖ Costs of purchasing construction equipment;	<i>§570.207(b)(1)(i)</i>
❖ Costs of furnishings and other personal items such as uniforms; or	<i>§570.207(b)(1)(iii)</i>
❖ New construction of public housing.	<i>§570.207(b)(3)</i>

**Complying with
National
Objectives—
Public Facilities
and
Improvements**

Except for highly specialized facilities, public facilities and improvements by their nature are intended to benefit all the residents of an area. Thus, to qualify under the national objective of benefit to L/M income persons, in most cases they must serve an area having a sufficiently high percentage of L/M income persons. The general rule is that the primarily residential area must have at least 51% L/M income residents. Certain grantees are authorized to use what is called the “upper quartile” percent in lieu of 51% or more in the area served. See §570.208(a)(1)(ii). The charts following Additional Considerations, below, show several ways that facilities and improvements eligible under this category may meet a national objective of the CDBG program. Note that public facilities that serve the entire jurisdiction of the grantee, a main library for example, may qualify under the L/M Income Benefit national objective only if the percentage of L/M income persons in the entire jurisdiction is sufficiently high to meet the “area benefit” test. Jails are considered to benefit the entire community served by the facility and thus would have this same restriction. Some facilities by their nature serve an area that is larger (sometimes much larger) than the grantee’s jurisdiction. Regional parks and prisons fall into this category. In such cases, it is important to note that the entire area served by the facility must be considered in determining if it can meet the L/M Income Area Benefit subcategory of the L/M Income Benefit national objective.

**Additional
Considerations**

Title to public facilities:

- ❖ Nonprofit entities frequently hold title to and operate facilities such as senior centers, centers for the handicapped and neighborhood facilities. When such facilities are owned by nonprofit entities, they may qualify for assistance under this category only if they are made available to the general public. Where applicable, facilities owned by a nonprofit must be open for use by the general public during all normal hours of operation. *Reference: §570.201(c)*

Facilities containing both eligible and ineligible uses:

- ❖ If a public facility contains both eligible and ineligible uses, §570.200(b)(1) of the regulations should be consulted for special qualifying criteria for the eligible portion of the facility.

Fees:

- ❖ Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges, such as excessive membership fees, which will have the effect of precluding L/M income persons from using the facilities are not permitted. *Reference: §570.200(b)(2)*

Special assessments:

- ❖ Because many communities levy special assessments against property owners to help pay for the costs of certain public facilities, it is important to be aware of limitations, implications, and requirements that are unique to the CDBG program in this regard.
- ❖ For purposes of the CDBG program, “special assessment” is defined as the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through:
 - a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of a benefit derived from the installation of a public improvement; or
 - a one-time charge made as a condition of access to the public improvement.
- ❖ Where CDBG funds are used to pay all or part of the cost of a public improvement, the rules (described in Appendix C to this Guide) apply if special assessments are used to recover capital costs.
Reference: Section 104(b)(5) of the HCD Act
- ❖ There is no special category of basic eligibility authorizing the use of CDBG funds to pay for special assessments. However, because of the broad use of this technique for funding public improvements, the use of CDBG funds to pay special assessments on behalf of property owners for a public improvement has been considered to constitute a form of using CDBG funds to assist the public improvement and is thus authorized under this category. Therefore, all the rules applicable to a CDBG-assisted public improvement apply even if CDBG funds are only used to pay special assessments for that improvement, but do not assist in the construction. This means that Davis-Bacon applies, and the rules described in Appendix C about the requirements to pay assessments on behalf of L/M income property owners also apply.

NATIONAL OBJECTIVES — PUBLIC FACILITIES AND IMPROVEMENTS

Objective	Qualifies If	Example	Additional Information
L/M Income Area Benefit	The public facility or improvement will be used for a purpose the benefits of which are available <i>to all the residents in a particular area</i> that is primarily residential, and at least 51% of those residents (or less if grantee qualifies to use the exception rule) are L/M income persons.	Paving of gravel streets and the installation of curbs, gutters, and sidewalks in a predominantly L/M income neighborhood.	For more information, see page 3-7.
L/M Income Limited Clientele	The public facility or improvement will be used for an activity designed to benefit a particular group of persons at least 51% of whom are L/M income persons.	Rehabilitation of a building to be used as a center for training severely disabled persons to enable them to live independently.	For more information, see page 3-14.
L/M Income Housing	The public facility or improvement exclusively assists in the provision of housing to be occupied by L/M income persons.	Site improvements on publicly-owned land to serve a new apartment structure to be rented to L/M income households at affordable rents.	For more information, see page 3-19.

NATIONAL OBJECTIVES— PUBLIC FACILITIES AND IMPROVEMENTS

Objective	Qualifies If	Example	Additional Information
L/M Income Jobs	The provision of a particular public improvement needed by one or more businesses to allow creation or retention of jobs, primarily for L/M income persons.*	Rebuilding a public road adjacent to a factory to allow larger and heavier trucks access to the facility, determined to be necessary for plant expansion and the creation of new jobs, where the business agrees to fill 51% of the jobs with L/M income persons.*	For more information, see page 3-24.
Slum or Blighted Area	The public facilities and improvements are located in a designated slum or blighted area and are designed to address one or more conditions which contributed to the deterioration of the area.	Reconstruction of a deteriorated public park located in an area designated by the grantee as slum or blighted pursuant to CDBG rules.	For more information, see page 3-35.
<p>* <i>In certain cases, the area served by a public improvement that enables a business to create or retain jobs may also include other properties (e.g., bringing new water or sewer service to a fringe area of a community that will not only help a business to locate there but that also will bring that new water/sewer service to houses that are located in that area). When, overall, the properties served by the public improvement are primarily residential, the benefits to the residents must also be considered. Therefore, the assisted public improvement in such a case must not only meet the L/M Income Benefit based on the Jobs criteria but must also meet the Area Benefit criteria</i> Reference: §570.208(d)(3)</p> <p><i>(See also the discussion on page 3-27 of this Guide concerning the case where more than one business may create or retain jobs as a result of a public improvement.)</i></p>			

NATIONAL OBJECTIVES — PUBLIC FACILITIES AND IMPROVEMENTS

Objective	Qualifies If	Example	Additional Information
Spot Blight	The public facilities or improvements are for the historic preservation or rehabilitation of blighted or decayed public facilities/improvements located outside of a designated slum or blighted area. Rehabilitation must be limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.	Rehabilitation/restoration of a severely deteriorated building of historic significance that is being used as a museum that is located outside a designated slum or blighted area (and does not serve a L/M income area).	For more information, see page 3-38.
Urban Renewal Completion	The public facilities and improvements are located within an urban renewal project area (or an NDP action area), designated under Title I of the Housing Act of 1949, and the public facilities/improvements are necessary to complete the urban renewal plan.	Construction of a publicly-owned parking garage in an urban renewal project area where the garage is specified in the urban renewal plan and is necessary to complete the plan.	For more information, see page 3-40.
Urgent Needs	The acquisition, construction, or reconstruction of a public facility or improvement designed to alleviate existing conditions and the grantee certifies that those conditions are a serious and immediate threat to the health or welfare of the community, the conditions are of recent origin, and there is no other known source of funds it can use to implement the activity.	Reconstruction of a publicly-owned hospital that was severely damaged by a tornado.	For more information, see page 3-41.

Clearance

Eligible Activities

Under this category, CDBG funds may be used for:

- ✓ Demolition of buildings and improvements;
- ✓ Removal of demolition products (rubble) and other debris;
- ✓ Physical removal of environmental contaminants or treatment of such contaminants to render them harmless; and
- ✓ Movement of structures to other sites.

Reference: §570.201(d)

Caveat: Demolition of HUD-assisted housing may be undertaken only with the prior approval of HUD.

Complying with National Objectives—Clearance

Clearance activities may qualify as meeting a national objective of the CDBG program in the ways depicted in the charts on the following pages.

Additional Considerations

Where activities under this category are integral to the construction of a building or improvement on the cleared property, and where such construction is also to be assisted with CDBG funds, the clearance activities may be treated as a part of the construction costs and need not be qualified separately under the program.

NATIONAL OBJECTIVES — CLEARANCE

Objective	Qualifies If	Example	Additional Information
L/M Income Area Benefit	The cleared property will be used for a purpose the benefits of which are available to <i>all</i> the residents in a particular area, and at least 51% of those residents (or less if the exception criteria are applicable) are L/M income persons.	Demolishing a vacant structure and removing the debris to make a neighborhood park and playground serving a predominantly residential L/M income neighborhood.	For more information, see page 3-7.
L/M Income Limited Clientele	The cleared property will be used for an activity the benefits of which are limited to a specific group of people, at least 51% of whom are L/M income persons.	Demolishing a dilapidated structure from the site on which a neighborhood center will be built, the use of which will be limited to the elderly.	For more information, see page 3-14.
L/M Income Housing	The cleared property will be used for providing housing to be occupied by L/M income persons. Rental units for L/M income persons must be occupied at affordable rents.	Demolishing an abandoned warehouse to make room for new apartments, where at least 51% of the units will be occupied by L/M income households at affordable rents.	For more information, see page 3-19.

NATIONAL OBJECTIVES — CLEARANCE

Objective	Qualifies If	Example	Additional Information
L/M Income Jobs	The clearance is part of an activity that will create or retain permanent jobs, at least 51% of which are for L/M income persons.	Using CDBG funds to clear a site on which a new business will locate and agrees that at least 51% of the jobs to be created will be for L/M income persons.	For more information, see page 3-24.
Slum or Blighted Area	The clearance activities are in a designated slum or blighted area and are designed to address one or more conditions which contributed to the deterioration of the area.	Using CDBG funds to demolish one or more deteriorated buildings located in a designated slum or blighted area.	For more information, see page 3-35.
Spot Blight	The clearance activity is undertaken to eliminate specific conditions of blight or physical decay on a spot basis not located in a designated slum or blighted area.	Demolition of an abandoned and deteriorated structure located in an area that is not designated as a slum or blighted area.	For more information, see page 3-38.

NATIONAL OBJECTIVES — CLEARANCE

Objective	Qualifies If	Example	Additional Information
Urban Renewal Completion	The clearance activities are located within an urban renewal project area (or an NDP action area), designated under Title I of the Housing Act of 1949, and such activities are necessary to complete the urban renewal plan.	Clearance of a property located in an urban renewal project area and which is specified in the urban renewal plan and necessary to complete the plan.	For more information, see page 3-40.
Urgent Needs	The clearance is part of an activity designed to alleviate existing conditions and the grantee certifies that those conditions are a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.	Clearance of a building that was destroyed by a major earthquake and that constitutes a safety hazard to the community.	For more information, see page 3-41.

Public Services

Eligible Activities

Under this category, CDBG funds may be used to provide public services (including labor, supplies, materials and other costs), provided that each of the following criteria is met:

(1) The *public service* must be either:

- ✓ A new service; or
- ✓ A quantifiable increase in the level of a service.

above that which has been provided by or on behalf of the unit of general local government through funds raised by such unit, or received by such unit from the State in which it is located during the 12 months prior to submission of the grantee's applicable Action Plan. (This requirement is intended to prevent the substitution of CDBG funds for recent support of public services by the grantee using local or State government funds.)

An exception to this limitation may be granted by HUD if it is determined that the level of service from the previous period has decreased for reasons beyond the unit of local government's control. *Reference: §570.201(e)*

(2) The amount of CDBG funds obligated within a program year to support public service activities under this category may not exceed 15% of the total grant awarded to the grantee for that year plus 15% of the total program income it received in the preceding program year or, where applicable, the amount determined as described in the next paragraph. (Specific description of how to calculate the Public Services Cap is located on page 2-27.)

(3) A grantee that obligated more than 15% of its FY 1982 or of its 1983 grant for public service activities during its 1982 or 1983 program year, respectively, may instead use for this purpose a limitation that exceeds that described in (2), above. The amount of the alternative cap for such a grantee shall be as follows:

The maximum amount that the grantee may obligate for public services under this category is 15% of the program income it received during the preceding program year; plus the greater of

- the actual dollar amount it obligated during the 1982 or 1983 program year; or
- the percentage of public service obligations comprised of the grant it received for the 1982 or 1983 program year multiplied by the grant it will receive for the program year for which the alternative limitation is being computed. *Reference: §570.201(e)(2).*

Note: The exception to the straight 15% limitation that is described in (3) above is only available to those grantees that received authority from HUD to exceed the 10% cap on public services for their 1982 or 1983 program year and legally obligated in excess of 15% for public services that program year.

Public services that are not subject to the cap: Certain types of services fall under other categories of basic eligibility and are not subject to the dollar limitation that applies to services carried out under this category. (See especially the categories of Homeownership Assistance, Special Economic Development Activities, Microenterprise Assistance, and Special Activities by CBDOs.) Moreover, under special circumstances, services that would otherwise be subject to the dollar limitation under this category are exempted from this limitation. (See especially Appendix E.) A discussion of the factors to consider in deciding how to categorize public services that a grantee may be interested in assisting with CDBG funds may be found in the subsection entitled Making the Best Choice, at the end of this chapter on page 2-92.

Example

Public services include, but are not limited to:

- Child care,
- Health care,
- Job training (including training a qualified pool of candidates for unspecified jobs but see Special Economic Development Activities and Special Activities by CBDOs categories),
- Recreation programs,
- Education programs,
- Public safety services,
- Fair housing activities (but see Program Administration category),
- Services for senior citizens,
- Services for homeless persons,
- Drug abuse counseling and treatment,
- Energy conservation counseling and testing,
- Homebuyer downpayment assistance, and
- Welfare (but excluding provision of income payments described at §570.207(b)(4)).

Paying the cost of operating and maintaining that portion of a facility in which the service is located is also considered to fall under the basic eligibility category of Public Services, even if such costs are the only contributions made by CDBG for those services.

The following Public services **are not** eligible under this category:

Reference

- | | |
|--|----------------|
| ❖ Political activities; | §570.207(a)(3) |
| ❖ Ongoing grants or non-emergency payments (defined as more than 3 consecutive months) to individuals for their food, clothing, rent, utilities, or other income payments. | §570.207(b)(4) |

Complying with National Objectives—Public Services

Public service activities may qualify as meeting a national objective of the CDBG program as depicted in the charts on the following pages.

Additional Considerations

Applicability of Public Services Cap to subrecipients:

- ❖ Public services carried out by subrecipients and some such services carried out by CBDOs are subject to the Public Services Cap.

Substitution of CDBG funds for private or other Federal funds:

- ❖ The prohibition on substituting CDBG funds for recent local or State government funding of a public service, as described on page 2-22, does not extend to prohibiting the substitution of CDBG funds for **private** or other **Federal** funding of a public service.
- ❖ It also does not prevent continued funding of a CDBG-funded public service at the same or smaller level in the subsequent program year.
Reference: §570.201(e)

Purchase or lease of personal property for a public service:

- ❖ The purchase or lease of furnishings, equipment, or other personal property needed for an eligible public service may be paid for with CDBG funds. *Reference: §570.207(b)(1)(iii)*

NATIONAL OBJECTIVES — PUBLIC SERVICES			
Objective	Qualifies If	Example	Additional Information
L/M Income Area Benefit	The public service is available to <i>all</i> the residents in a particular primarily residential area, and at least 51% of those residents (or less if the exception criteria are applicable) are L/M income persons.	Increased police and fire protection services in a predominantly L/M income neighborhood.	For more information, see page 3-7.
L/M Income Limited Clientele	The public service is limited to a specific group of people, at least 51% of whom are L/M income persons. Services qualifying under this category serve a specific clientele, rather than providing service to all the persons in a geographic area.	Provision of meals to the homeless. (Most public services qualify under this category.)	For more information, see page 3-14.
L/M Income Housing	Not applicable.	Not applicable.	Not applicable.
L/M Income Jobs	Not applicable.	Not applicable.	Not applicable.

NATIONAL OBJECTIVES — PUBLIC SERVICES			
Objective	Qualifies If	Example	Additional Information
Slum or Blighted Area	The public service is provided within a designated slum or blighted area, and is designed to address one or more conditions which contributed to the deterioration of the area.	Provision of crime prevention counseling to residents of a designated slum/blight area.	For more information, see page 3-35.
Spot Blight	Not applicable.	Not applicable.	Not applicable.
Urban Renewal Completion	Not applicable.	Not applicable.	Not applicable.
Urgent Needs	The public service is designed to alleviate existing conditions that pose a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, and the grantee is unable to find other available funds to support the activity.	Additional police protection to prevent looting in an area damaged by a tornado.	For more information, see page 3-41.

Public Services Cap

Follow the steps below in order to determine the maximum amount which your entitlement community may obligate for Public Services during a program year:

1. Enter the amount of the Entitlement Grant awarded for the program year, as shown in the Grant Agreement on line 11.b of the Funding Approval Form (HUD-7082 dated 4/14/93). \$ _____
2. Multiply the amount on line 1 by 0.15 and enter the product here. \$ _____
3. *If applicable to this community*, enter here the amount determined as described in the note below. \$ _____
4. Enter here the total amount of program income received by the grantee and all of its subrecipients during the program year preceding the year for which this cap is being determined. \$ _____
5. Multiply the amount on line 4 by 0.15 and enter the product here. \$ _____
6. Add the amount on line 5 to the amount on line 2 (or, where applicable, to the amount on line 3) and enter the sum here. This is the maximum amount that this community may obligate during the program year for activities carried out under the category of Public Services and under the category of Special Activities by CBDOs which are not expressly exempt from the cap. \$ _____

***Note:** If the grantee, *with the expressed consent of HUD*, obligated more than 15% of its annual entitlement grant during either its 1982 or 1983 program year for public services, the grantee may use for this calculation, in lieu of 15% of its current grant, the *greater* of the following two amounts:

enter here the amount the grantee actually obligated for public services during that program year \$ _____ ;

or

identify the percentage of the grant obligated for public services during that program year and multiply the amount on line 1., above, by the decimal equivalent of this percentage in lieu of 0.15 and enter the product here \$ _____.

Determining Compliance with the Cap

Compliance with the public service cap for entitlement grantees is determined by performing the following calculation at the end of each program year:

Determine the total amount of CDBG funds expended during program year for activities that are classified as eligible under §570.201(e) plus any public services carried out by a CBDO under §570.204 that are not exempt from the cap as provided under §570.204(b)(2)(i) or (ii) and enter the total here: \$ _____

Identify the total amount of unliquidated obligations for activities under these same two categories, as of the end of the program year and enter the total here: \$ _____

Add the above two numbers and enter the subtotal here: \$ _____

Identify the total amount of unliquidated obligations for these two categories, as of the end of the preceding program year and enter that amount here: \$ _____

Subtract the figure in the line directly above from the preceding subtotal and enter the balance here. (This is the amount of net obligations for public services that were incurred during the program year and are subject to the cap.) \$ _____

If the amount of net obligations incurred during the program year does not exceed the amount determined on the previous page as the maximum amount allowed for the year, the grantee is in compliance with this limitation.

Interim Assistance

Eligible Activities

CDBG funds may be used for certain activities on an interim basis, provided that the activities meet a national objective.

There are two subcategories of interim assistance activities:

(1) The first subcategory covers limited improvements to a deteriorating area as a prelude to permanent improvements. To qualify under this subcategory:

- ❖ The area must be exhibiting objectively determinable signs of physical deterioration.
- ❖ The grantee must determine that immediate action is needed to arrest the deterioration and that permanent improvements will be undertaken as soon as practicable. Documentation of this determination must be maintained.
- ❖ The activities that may be carried out with CDBG funds under this subcategory are *limited* to:

(A) The repair of:

- streets,
- sidewalks,
- public buildings,
- parks and playgrounds, and
- publicly-owned utilities.

(B) The execution of *special* (i.e., beyond that normally provided):

- garbage,
- trash, and
- debris removal, including neighborhood cleanup campaigns.

References: §570.201(f)(1) and §570.200(e)

(2) The second subcategory covers activities to alleviate an emergency condition. To qualify under the second subcategory:

- ❖ The grantee’s chief executive officer must determine that emergency conditions threatening the public health and safety exist in the area and require immediate resolution. Documentation of that determination must be maintained.
- ❖ The activities that may be carried out with CDBG funds under this subcategory are *limited* to:
 - activities eligible under the first subcategory, except for the repair of parks and playgrounds;
 - clearance of streets, including snow removal and similar activities; and
 - improvements to private properties.

These activities may not go beyond what is necessary to alleviate the emergency condition. *References: §570.201(f)(2) and §570.200(e)*

**Complying
with National
Objectives—
Interim
Assistance**

Interim assistance activities may qualify as meeting a national objective of the CDBG program as shown in the charts on the following pages.

**Additional
Considerations**

Because activities carried out under this category might otherwise be either ineligible or subject to the cap on public services, it is critical that the grantee maintain the documentation that is called for above to make the activities eligible as Interim Assistance.

NATIONAL OBJECTIVES— INTERIM ASSISTANCE			
Objective	Qualifies If	Example	Additional Information
L/M Income Area Benefit	The interim assistance activities benefit all persons in a primarily residential area where at least 51% (or less if the upper quartile applies) are L/M income persons residing in the area and who are benefiting from those activities.	Removal of storm damaged tree limbs from streets in a predominantly L/M income neighborhood and blocking emergency vehicle entrance.	For more information, see page 3-7.
L/M Income Limited Clientele	Not applicable.	Not applicable.	Not applicable.
L/M Income Housing	Not applicable.	Not applicable.	Not applicable.
L/M Income Jobs	Not applicable.	Not applicable.	Not applicable.

NATIONAL OBJECTIVES— INTERIM ASSISTANCE

Objective	Qualifies If	Example	Additional Information
Slum or Blighted Area	The interim assistance activities are carried out in a designated slum or blighted area.	Improvements to private properties in a designated slum/blight area which require immediate resolution because of public safety concerns.	For more information, see page 3-35.
Spot Blight	Not applicable.	Not applicable.	Not applicable.
Urban Renewal Completion	Not applicable.	Not applicable.	Not applicable.
Urgent Needs	The interim assistance is designed to alleviate existing conditions that the grantee certifies as posing a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.	Emergency treatment of health problems caused by a flood.	For more information, see page 3-41.

Relocation

Eligible Activities

CDBG funds may be used for relocation payments and assistance to displaced persons, including:

- ✓ Individuals,
- ✓ Families,
- ✓ Businesses,
- ✓ Non-profit organizations, and
- ✓ Farms

where **required** under section 570.606 of the regulations.

CDBG funds may be used for **optional** relocation payments and assistance to persons (individuals, families, businesses, non-profit organizations, and farms) displaced by an activity that is not subject to the requirements described above. This may include payments and other assistance for temporary relocation (when persons are not permanently displaced.)

Optional relocation payments and assistance may also include payments and assistance at levels higher than those required.

Unless optional payments and assistance are made pursuant to State or local law, the grantee may make such payments and assistance only upon the basis of a written determination that such payments and assistance are appropriate, and only if the grantee adopts a written policy available to the public setting forth the relocation payments and assistance it elects to provide.

This written policy must also provide for equal payments and assistance within each class of displaces. *References: §570.201(i) and §570.606(d)*

Complying With National Objectives— Relocation

The compliance of relocation activities with the national objectives of the CDBG program must be determined in one of two ways, depending on whether the relocation assistance is mandatory for the grantee.

Where such assistance is **required** under the Uniform Act or the CDBG statute, the activity may qualify as meeting the national objective of benefiting L/M income persons only where the acquisition or rehabilitation causing the relocation can also qualify under that objective.

If the grantee acquires property for construction of a public facility that will serve an area that qualified under the slums/blight objective, but cannot qualify as benefiting L/M income persons, the payment of assistance to those displaced by such activity would qualify under the slums/blight objective *even if most or all of the displacees are L/M income.*

This is because the grantee is required by law to make such payments and therefore it must be viewed as an integral part of the displacing activity.

In any case where the payment of such assistance is **voluntary** on the part of the grantee, however, the relocation payments could qualify either on the basis of the re-use of the property or the income of the recipients of the relocation assistance, at the grantee's option.

Thus, HUD would accept a claim of addressing the L/M income benefit objective where the voluntary payment of relocation benefits is made to L/M income persons who were displaced by an activity that could not be considered to meet that objective. This is because the payment of such benefits clearly would not be needed to make possible the activity causing the displacement.

Additional Considerations

Because of the relationship of the optional versus mandatory aspects of relocation payments to the national objectives determinations, it is critical that the grantee make this distinction in its program files and identify the displacing project.

Loss of Rental Income

Eligible Activities

CDBG funds may be used to pay housing owners for the loss of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by CDBG-assisted activities.

The statutory requirements concerning displacement require certain replacement housing to be made available to displacees. If the displaced household requires a type of housing unit that is scarce in that community, it may be necessary for the grantee to have an existing, available unit held open for the household for a short period until the displacement actually occurs.

Reference: §570.201(j)

Complying with National Objectives— Loss of Rental Income

Compliance of this activity with the national objectives of the CDBG program must be determined based on the underlying relocation activity.

If the activity resulting in the relocation assistance to the displaced household qualified on the basis of benefit to L/M income persons, then paying housing owners for losses incurred in holding units for those displacees also qualifies as benefiting L/M income persons, even if the displaced household itself is not L/M income.

Note: If the relocation assistance to displacees qualified under the “Slum/Blight” or “Urgent Needs” national objectives, then paying housing owners for losses incurred in holding units for those displacees also would qualify under “Slum/Blight” or “Urgent Needs,” as applicable.

Additional Considerations

Because the eligibility of this activity is dependent upon the housing unit being required to relocate a household displaced by another CDBG-funded activity, it is critical that the displacing activity and the displaced household be documented as well as the basis upon which the grantee determined that the housing was needed to be kept available for the displaced household.

Privately-Owned Utilities

Eligible Activities

The grantee, other public agencies, private nonprofit entities, and for-profit entities may use CDBG funds to:

- ✓ Acquire,
- ✓ Construct,
- ✓ Reconstruct,
- ✓ Rehabilitate, or
- ✓ Install

the distribution lines and related facilities for privately-owned utilities.
Reference §570.201(1)

Definition: A privately-owned utility may be defined as a publicly-regulated service which is provided through the use of physical distribution lines to private properties and that is owned and operated by a non-public entity. Utilities include, but are not necessarily limited to, natural gas, electricity, telephone, water, sewer, and television cable services.

Example:

A grantee could use CDBG funds to:

- Pay the costs of placing underground new or existing power lines and telephone lines where such lines are owned by private companies.
- Pay the costs of installing water lines where the water service is owned and operated by a private company.

Complying with National Objectives—Private-Owned Utilities

Privately-owned utilities may qualify as meeting a national objective of the CDBG program in the same ways as are applicable to **Public Facilities and Improvements** (see page 2-11).

**Additional
Considerations**

The inclusion of this category of basic eligibility serves to ensure that publicly-regulated utilities may be assisted with CDBG funds without regard to whether the utility is publicly- or privately-owned. Thus, the CDBG program does not constitute a barrier to a community's determination to shift one or more of its publicly-owned utilities to private ownership where economic considerations dictate.

Rehabilitation

Eligible Activities

CDBG funds may be used to finance the costs of rehabilitation as shown below.

Eligible types of property

Residential—Residential property, whether privately or publicly owned. This includes manufactured housing when such housing constitutes part of the community’s housing stock.

Commercial/industrial—Commercial or industrial property, but where such property is owned by a for-profit, rehabilitation under this category is limited to exterior improvements of the building and the correction of code violations. (Further improvements for such buildings may qualify under the category of Special Economic Development Activities.)

Other—Nonprofit-owned, nonresidential buildings and improvements that are not considered to be public facilities or improvements under §570.201(c) of the CDBG program regulations.

Note: Additions to existing buildings may be assisted under this category when they are incidental to the rehabilitation of the property, and may be provided as a part of other rehabilitation if the addition does not materially increase the size or function of the building.

Eligible types of assistance

Costs—Costs of labor, materials, supplies and other expenses required for the rehabilitation of property, including repair or replacement of principal fixtures and components of existing structures (e.g., the heating system).

Financing—Grants, loans, loan guarantees, interest supplements and other forms of financial assistance may be provided under this category. (A grantee may make a “lump sum draw down” for the purpose of financing rehabilitation of privately-owned properties. See §590.513 for details.)

Refinancing—Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds, if such refinancing is determined by the grantee to be necessary or appropriate to achieve its community development objectives.

Property acquisition—Assistance to private individuals and entities (whether profit or not-for-profit) to acquire for the purpose of rehabilitation and to rehabilitate properties *for use or resale for residential purposes*.

Security devices—Installation costs of sprinkler systems, smoke detectors and dead bolt locks, and other devices for security purposes.

Insurance—The costs of *initial* homeowner warranty premiums and, where needed to protect the grantee's interest in properties securing a rehabilitation loan, hazard insurance premiums as well as flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, as amended, pursuant to §570.605.

Conservation—Costs required to increase the efficient use of water (e.g., water saving faucets and shower heads) and improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, insulation, and modification or replacement of heating and cooling equipment.

Water and sewer—Costs of connecting existing residential structures to water distribution lines or local sewer collection lines.

Tools—Costs of acquiring tools to be lent to owners, tenants and others who will use the tools to carry out rehabilitation.

Barrier removal—Costs to remove material and architectural barriers that restrict the mobility and accessibility of elderly and severely disabled persons to buildings and improvements that are eligible for rehabilitation under this category.

Landscaping, sidewalks, and driveways—The costs of installation or replacement of landscape materials, sidewalks, and driveways *when incidental to other rehabilitation of the property*.

Renovation of closed buildings—The conversion of a closed building from one use to another (e.g., the renovation of a closed school building to residential use).

Historic preservation—This category also authorizes the costs of preserving or restoring properties of historic significance, whether privately- or publicly-owned, except that buildings for the general conduct of government may not be restored or preserved with CDBG assistance (see the section on Public Facilities and Improvements concerning this limitation). Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local inventory of historic places, or designated as a State or local landmark or historic district by appropriate law or ordinance.

Lead-based paint hazard evaluation and reduction—The costs of evaluating and treating lead-based paint may be undertaken under this category whether alone or in conjunction with other rehabilitation.

Rehabilitation services—Staff costs and related expenses required for outreach efforts for marketing the program, rehabilitation counseling, screening potential applicant households and structures, energy auditing, preparing work specifications, loan underwriting and processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities who are participating or seeking to participate in rehabilitation activities eligible under this category; under the Section 312 of the Housing Act of 1964, as amended; under Section 810 of the Act; or under Section 17 of the United States Housing Act of 1937.

Business in a residence—In some cases where a business is conducted in a residential unit, it may be necessary to make improvements to the residence in order to conduct the business. (This would be the case where, for example, the business is providing child care and local requirements for such business dictate that modifications be made to the housing unit.) In any case where the improvements are of such nature that, in addition to facilitating the business, they also provide a benefit to the resident(s), such rehabilitation costs may be covered under this category. Other improvements not meeting this test needed for such a business could be eligible under the category of Special Economic Development.

Reference: §570.202

*Rehabilitation does **not** include:*

- ❖ Creation of a secondary housing unit attached to a primary unit;
- ❖ Installation of luxury items, such as a swimming pool;
- ❖ Costs of equipment, furnishings, or other personal property not an integral structural fixture, such as:
 - a window air conditioner; or
 - a washer or dryer (but a stove or refrigerator is allowed); or
- ❖ Labor costs for homeowners to rehabilitate their own property.

Use of Subrecipients

Nonprofit entities are often used by grantees in carrying out a rehabilitation program. Where the nonprofit entity is acting in the same capacity as the grantee in selecting properties to be rehabilitated, they are appropriately designated as a subrecipient under the CDBG program and thus subject to subrecipient requirements. However, there are instances where a nonprofit entity may not be considered to be a subrecipient with respect to the use of CDBG funds for rehabilitation. Simply put, where the nonprofit owns property that is in need of rehabilitation and they take advantage of the grantee's program of using CDBG funds for such rehabilitation (in the same manner as other property owners do), the entity should not be considered to be a subrecipient for purposes of the program. Perhaps the most significant aspect of this is that any income the nonprofit might receive from the use or rental of the rehabilitated property would not be considered to be CDBG program income. If there is any question as to whether a nonprofit entity should be considered to be a subrecipient with respect to a particular use of CDBG funds for rehabilitation, contact the local HUD field office for advice.

Drawing Down Funds for Rehabilitation

The general Treasury rules for drawing Federal funds require that funds not be drawn until needed. In the CDBG program, this usually means that the grantee or subrecipient should not draw funds from the line of credit (the Treasury) in an amount greater than that which it expects to use within the next three business days. The rules also require that any program income on hand must be used before drawing additional funds from the Treasury [but see the special rule applying to revolving funds at §§570.500(b) and 570.504(b)(2)]. There are, however, two regulatory provisions that allow drawing funds from the Treasury in advance which apply with respect to rehabilitation. They are: (a) Lump Sum Drawdown; and (b) Escrow Accounts. Each of these is discussed below.

Lump Sum Drawdown—The grantee may draw, as a single amount, the total amount needed for rehabilitation if it enters into an agreement with a financial institution that meets the requirements set forth in §570.513(b)(2) and if the grantee complies with other requirements under §570.513. Some of the key requirements outlined in that provision include: the agreement may not exceed two years; the financial institution must agree to provide certain benefits in conjunction with the activities paid for from the account; there are time benchmarks for when the rehabilitation carried out with funds in the account must begin and the pace at which the funds must be used; and there are limits to what the funds can be used for. If the grantee is interested in using this authority but has questions about the requirements, it should consult with its local HUD field office for assistance. *Reference: §570.513*

Escrow Account—Some grantees have experienced difficulty in making timely payments from their CDBG account to contractors engaged in rehabilitation. Where the grantee’s program makes use of small and minority contractors or subcontractors, delays in making payment for invoices presented by such entities can mean that the contractors or subcontractors are unable to participate in CDBG-assisted rehabilitation, since they cannot afford to wait long for payment. In such cases, the grantee may establish an escrow account for purposes of making timely payments from that account rather than from the program account, provided it does so in conformance with the requirements set forth at §570.511. Some of the key requirements contained in that provision include: the use of this feature must be limited to residential rehabilitation; the account may not hold more than the amount expected to be disbursed within ten working days; and interest earned on the funds on deposit is to be returned to HUD at least quarterly. It should be noted that, if the grantee has a lump-sum account, as described in the subsection above, it may serve the same purpose as an escrow account and the two may not need to be used together. If a grantee has an interest in establishing an escrow account but has some questions or concerns about the matter, the local HUD field office should be contacted for advice. *Reference: §570.511*

**Complying
with National
Objectives—
Rehabilitation**

Section 105(c)(3) of the authorizing statute, the Housing and Community Development Act of 1974, requires that, in order for an activity that involves the acquisition or improvement of property for housing to qualify as benefiting L/M income persons, the housing must be occupied by such persons. Even though a particular housing activity may provide a clear benefit to an area containing predominantly L/M Income residents, it cannot qualify on that basis. Instead, the housing must be occupied by L/M Income households. (See page 3-3 of the Guide for a discussion about the distinction between L/M households and L/M persons in this regard.) That limitation is reflected in the charts that follow which provide general guidance on how rehabilitation activities may qualify as meeting a national objective under the CDBG program. This section of the statute also limits the extent to which CDBG expenditures for housing activities may count towards the Overall Expenditures Benefit requirement, as discussed in Chapter 4 of this Guide. It should also be noted that the section on L/M Income Benefit for housing in Chapter 3 of this Guide covering National Objectives contains important information on the rules that must be followed concerning housing activities that are not covered in the following charts in this section. That chapter also discusses the circumstances under which occupancy of a CDBG-assisted housing unit by a L/M income household may qualify for the assistance to that unit without regard to the income of households occupying any other units that may be located in the same structure.

Additional Considerations

When CDBG funds are used under this category for refinancing, the grantee should maintain documentation showing that the rehabilitation was done with CDBG funds and that the borrower needed the refinancing in order to make the rehabilitation affordable. *References: §570.202(b)(3) and §570.200(e)*

If the grantee or a subrecipient makes a number of loans for rehabilitation, it will be important that appropriate steps be taken to manage its portfolio of loans. Some guidance and advice on this matter is contained in Appendix G, Selling or Securitizing CDBG Loans.

NATIONAL OBJECTIVES—REHABILITATION			
Objective	Qualifies If	Example	Additional Information
L/M Income Area Benefit	Rehabilitation of a building to be used for a purpose that will benefit all the residents of a qualifying L/M income primarily residential area.	Facade improvements to a commercial structure serving a predominantly L/M income primarily residential area.	For more information, see page 3-7.
L/M Income Limited Clientele	Not applicable.	Not applicable.	Not applicable.
L/M Income Housing	Rehabilitation of housing to be occupied by L/M income persons. Rental units must be occupied at affordable rents.	Conversion of an abandoned warehouse into rental housing for L/M income households at affordable rents. Also improvements to a single family residence used as a place of business provided the improvements generally benefit the unit's residential occupants.	For more information, see page 3-19.
L/M Income Jobs	Rehabilitation of nonresidential property that will create or retain jobs for L/M income persons	Correction of code violations that will enable a business to survive and retain jobs the majority of which are held by L/M income persons.	For more information, see page 3-24.

NATIONAL OBJECTIVES— REHABILITATION

Objective	Qualifies If	Example	Additional Information
Slum or Blighted Area	Rehabilitation of residential structures located in a designated slum or blighted area; the structure to be rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making the structure substandard are corrected before less critical work is undertaken. <i>Reference: §570.208(b)(1)(iv)</i>	Rehabilitation of substandard housing located in a designated blighted area and where the housing is expected to be brought to standard condition and sold to non-L/M income households.	For more information, see page 3-35.
Spot Blight	Rehabilitation of a structure located outside a designated slum or blighted area, where the rehabilitation is limited to the extent necessary to eliminate specific conditions of blight or decay that are detrimental to public health and safety.	Rehabilitation of the deteriorated exterior of an abandoned building located in an area that has not been designated as slum or blighted and where the rehabilitation is limited to removal of the exterior blight. Rehabilitation of plumbing in a building located in an area that has not been designated as slum or blighted and where rehabilitation is limited to corrections of code violators that are detrimental to public health and safety.	For more information, see page 3-38.

NATIONAL OBJECTIVES—REHABILITATION

Objective	Qualifies If	Example	Additional Information
Urban Renewal Completion	Rehabilitation of property located in an Urban Renewal area and for a use that is specified in the latest approved plan for the area.	Conversion of a warehouse to residential housing in an Urban Renewal project area, necessary to complete the urban renewal plan.	For more information, see page 3-40.
Urgent Needs	The rehabilitation is part of an activity designed to alleviate existing conditions for which the grantee certifies are a serious and immediate threat to the health or welfare of the community, the conditions are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.	Rehabilitation of housing that has been badly damaged by an earthquake.	For more information, see page 3-41.

Construction of Housing

Eligible Activities

Under this category, CDBG funds may be used in certain specified circumstances to finance the construction of new permanent residential structures. The following identifies those limited circumstances:

- ✓ Grantees may use CDBG funds in a housing construction project that has received funding through a Housing Development Grant (a HODAG). *Reference: §570.201(m)*
- ✓ Grantees may construct housing of last resort under 24 CFR Part 42, Subpart I. (This is housing that the grantee has determined must be constructed in order to provide suitable replacement housing for persons to be displaced by a contemplated CDBG project, subject to the Uniform Act, and where the project is prevented from proceeding because the required replacement housing is not available otherwise.) *Reference: §570.207(b)(3)*

Note: Other than these two situations, new housing construction is ineligible under the CDBG program, unless carried out under the authority of the basic eligibility category, “Special Activities by CBDOs.”

Reference: §570.207(b)(3)

Complying with National Objectives—Construction of Housing

New housing construction may qualify as meeting a national objective of the CDBG program as depicted in the charts on the following pages.

Additional Considerations

It is important to note that several activities which support new housing may be carried out using CDBG funds even though the actual housing construction costs are being supported by other resources. The following are examples of supportive activities:

- ❖ Acquisition of sites on which buildings will be constructed for use or resale as housing. *Reference: §570.201(a);*
- ❖ Clearance of toxic contaminants of property to be used for the new construction of housing. *Reference: §570.201(d);*

- ❖ Site improvements to publicly-owned land to enable the property to be used for the new construction of housing, provided the improvements are undertaken while the property is *still in public ownership* Reference: §570.201(c); and
- ❖ The cost of disposing of real property, acquired with CDBG funds, which will be used for new construction of housing. Reference: §570.201(b).

In addition, certain “soft costs” necessary for the new construction of housing that would otherwise be ineligible may be eligible if the limitations of §570.206(g) are waived by HUD. Such soft costs include:

- ❖ Surveys,
- ❖ Site and utility plans, and
- ❖ Application processing fees.

Note: A waiver of §570.206(g) is needed because the regulatory provision currently limits costs to that associated with developing new housing identified in the grantee’s HUD-approved Housing Assistance Plan (HAP). Since the HAP is no longer required in the program, the use of this provision must be authorized by HUD by waiving this limitation. HUD would consider granting such a waiver if the grantee could meet the threshold requirements of §570.5 and demonstrate that the housing is clearly needed to support the grantee’s housing and community development objectives, as shown in the grantee’s Consolidated Plan. However, soft costs incurred in support of **eligible** new housing construction activities may be paid for as part of the cost of the new construction itself.

Conversion: It should be noted that the cost of converting an existing non-residential structure to residential is not generally considered to constitute new construction under the CDBG program and is thus covered under the basic eligibility category of Rehabilitation. However, in some cases, the conversion may involve construction that goes beyond the envelope of the non-residential structure. Where this is the case, the grantee should consult with the local HUD field office to ensure that the extent of such construction would not constitute new construction of housing and thus be ineligible for CDBG assistance. Reference: §570.202

NATIONAL OBJECTIVES— CONSTRUCTION OF HOUSING

Objective	Qualifies If	Example	Additional Information
L/M Income Area Benefit	Not applicable.	Not applicable.	Not applicable.
L/M Income Limited Clientele	Not applicable.	Not applicable.	Not applicable.
L/M Income Housing	The new housing will be occupied by L/M income households. Rental units must be occupied at affordable rents.	New construction of “last resort” housing needed for a L/M income household being displaced by a CDBG-assisted project.	For more information, see page 3-19.
L/M Income Jobs	Not applicable.	Not applicable.	Not applicable.

NATIONAL OBJECTIVES— CONSTRUCTION OF HOUSING			
Objective	Qualifies If	Example	Additional Information
Slum or Blighted Area	New housing qualifies if: (1) The new housing is located with a designated slum or blighted area, and (2) Development of new housing addresses one of the conditions which contributed to the deterioration of the area.	Luxury apartments constructed with HODAG assistance on a site in a designated slum/blight area.	For more information, see page 3-35.
Spot Blight	Not applicable.	Not applicable.	Not applicable.
Urban Renewal Completion	The new housing is: (1) Located within an Urban Renewal project or an NDP action area designated under Title I of the Housing Act of 1949, and (2) Necessary to complete the Urban Renewal plan.	Last resort housing constructed in the Urban Renewal project area on a site calling for such housing in the Urban Renewal plan.	For more information, see page 3-40.
Urgent Needs	The new housing is needed to respond to a threat to the health or welfare of the community of recent origin and no other funding is available to meet the threat and the new construction is eligible (or the statutory waiver Authority for Presidentially-declared disasters is exercised.	Housing needed to replace units completely destroyed by a flood and needed to be built in a new location.	For more information, see page 3-41.

Code Enforcement

Eligible Activities

Code enforcement involves the payment of salaries and overhead costs directly related to the enforcement of state and/or local codes.

CDBG funds may be used for code enforcement only in deteriorating or deteriorated areas where such enforcement, together with public or private improvements, rehabilitation, or services to be provided, may be expected to arrest the decline of the area. *Reference: §570.202(c)*

Example

CDBG funds may be used to pay the salaries of inspectors enforcing codes in a blighted area being renewed through comprehensive treatment.

*Code enforcement does **not** include:*

- ❖ Inspections for the purpose of processing applications for rehabilitation assistance and overseeing such rehabilitation. Such inspections may be eligible under the Rehabilitation category and they are not limited by the restrictions on the eligibility of code enforcement.

- ❖ Correcting code enforcement violations identified during inspections.

Compliance with National Objectives—Code Enforcement

Code enforcement may qualify as meeting a national objective of the CDBG program as shown in the charts on the following pages.

Additional Considerations

Code enforcement expenditures should not be included in costs subject to the 20% limit on planning and administration, even though all expenditures are for staff and related costs because they are considered to be an activity delivery cost.

NATIONAL OBJECTIVES— CODE ENFORCEMENT

Objective	Qualifies If	Example	Additional Information
L/M Income Area Benefit	The code enforcement is targeted at a deteriorated or deteriorating area delineated by the grantee and: (1) At least 51% (or less if the upper quartile applies) of the residents of the area are L/M income persons; and (2) The code enforcement, together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area.	Code enforcement efforts in a L/M income deteriorated neighborhood targeted for rehabilitation assistance, construction of a neighborhood facility, and street reconstruction.	For more information, see page 3-7.
L/M Income Limited Clientele	Not applicable.	Not applicable.	Not applicable.
L/M Income Housing	Not applicable.	Not applicable.	Not applicable.
L/M Income Jobs	Not applicable.	Not applicable.	Not applicable.

NATIONAL OBJECTIVES— CODE ENFORCEMENT

Objective	Qualifies If	Example	Additional Information
Slum or Blighted Area	The code enforcement is targeted at a designated slum or blighted area and: (1) Is designed to address one or more of the conditions which contributed to the deterioration of the area; and (2) The code enforcement, together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area.	Building inspections for code violations in a designated blighted area, which are part of a comprehensive effort to arrest decline in that area.	For more information, see page 3-35.
Spot Blight	Not applicable.	Not applicable.	Not applicable.
Urban Renewal Completion	While this situation is unlikely to occur, it is possible for code enforcement to qualify under this category if the code enforcement is necessary to complete an Urban Renewal plan.	Building inspections for code violations in a designated blighted area, which are part of a comprehensive effort to arrest decline in an Urban Renewal area.	For more information, see page 3-40.

NATIONAL OBJECTIVES— CODE ENFORCEMENT

Objective	Qualifies If	Example	Additional Information
Urgent Needs	<p>While this situation is likely to be infrequent, it is possible for code enforcement to qualify if:</p> <p>(1) The code enforcement is targeted at a deteriorated or deteriorating area;</p> <p>(2) The code enforcement, together with public or private improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area; and</p> <p>(3) The grantee is able to certify that the existing conditions which the code enforcement is designed to alleviate pose a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.*</p>	<p>Code enforcement activities taking place in an area that has been severely affected by a flood, and is part of the community's overall response to the emergency.</p>	<p>For more information, see page 3-41.</p>
	<p><i>* In cases where disaster causes the blight of an area, it may be easier to qualify the code enforcement under the "Slum or Blighted Area" category than under the "Urgent Need" category.</i></p>		

Special Economic Development Activities

Preface

The purpose of this preface is to distinguish the concept of “**economic development**” from the term “**special economic development activities**” as used in the CDBG program. “**Economic development**” is generally thought of in two ways within the context of CDBG activities: the very broad concept of the term as distinguished from “**special economic development activities**” as that term is used at 24 CFR 570.203.

“**Economic development**” can be interpreted very broadly to include all endeavors aimed at sustaining or increasing the level of business activity. Under this broad concept, most CDBG activities could, under the right circumstances, be viewed as economic development. For example, the level of business activity in a jurisdiction could be helped through development of a community economic development plan, improvements to the public infrastructure, through better housing, or an enhanced level of public services.

When the Consolidated Plan regulations were published in January 1995, the term “expanded economic opportunities” was defined at 24 CFR 91.1 (a)(1)(iii) as including:

“...job creation and retention; establishment, stabilization and expansion of small businesses (including microbusinesses); the provision of public services concerned with employment; the provision of jobs involved in carrying out activities under programs covered by this plan to low-income persons in areas affected by those programs and activities; availability of mortgage financing for low-income persons at reasonable rates using nondiscriminatory lending practices; access to capital and credit development activities that promote the long-term economic and social viability of the community; and empowerment and self-sufficiency opportunities for low-income persons to reduce generational poverty in federally assisted and public housing.”

This was a very broad statement of purpose for Consolidated Plan goal-setting purposes and was designed, in part, to cover what is the primary objective of the CDBG program (section 101(c) of the Housing and Community Development Act of 1974 as amended).

In contrast, the term “**special economic development activities**” is used in the CDBG program to identify three types of activities described below and at §570.203(a), (b), and (c) of the regulations.

As a consequence of changes to the CDBG program legislation in 1992, significant alterations were made to the program regulations to facilitate the use of CDBG funds for economic development purposes, both in terms of eligibility and national objectives. The resultant flexibility has sprinkled activities often considered as more directly linked to “special economic development activities,” such as microenterprise assistance and technical assistance to nonprofits to build economic development capacity, more broadly throughout the eligible activities in the regulations (Subpart C), thus removing them from the requirements specific to funding activities under §570.203.

An economic development *project* in the CDBG program may be supported by a range of CDBG-funded activities, including both special economic development activities and other categories of basic eligibility, each of which must meet a national objective of the CDBG program.

Eligible Activities

CDBG funds may be used for the following **special economic development activities**:

- ❖ Commercial or industrial improvements carried out by the **grantee** or a **nonprofit subrecipient**, including:
 - acquisition,
 - construction,
 - rehabilitation,
 - reconstruction, or
 - installation of commercial or industrial buildings or structures and other related real property equipment and improvements.

- ❖ Assistance to **private for-profit entities** for an activity determined by the grantee to be appropriate to carry out an economic development project. This assistance may include, but is not limited to:
 - grants;
 - loans;
 - loan guarantees;
 - interest supplements;
 - technical assistance; or
 - any other form except for those described as ineligible in §570.207(a), such as political activities.

Under this type of assistance, the grantee shall minimize, to the extent practical, displacement of existing businesses and jobs in neighborhoods.

- ❖ Economic development services in connection with the above subcategories, including outreach efforts to market available forms of assistance, screening of applicants, reviewing and underwriting applications for assistance, preparation of agreements, management of assisted activities, and the screening, referral, and placement of applicants for employment opportunities generated by CDBG-eligible economic development activities. The costs of providing necessary job training for persons filling those positions may also be provided.

Reference: §570.203(a), (b) and (c)

Example

Special economic development activities may include:

- Construction by the grantee or subrecipient of a business incubator designed to provide inexpensive space and assistance to new firms to help them become viable businesses,
- Loans to pay for the expansion of a factory or commercial business,
- Technical assistance to a business facing bankruptcy, and
- Providing training needed by persons on welfare to enable them to qualify for jobs created by CDBG-assisted special economic development activities.

Public Benefit: The previous requirement that certain Special Economic Development Activities meet a particular kind of financial analysis (known as the “appropriate” determination) has been replaced with a requirement that the level of public benefit to be derived from the activity must be appropriate given the amount of CDBG assistance being provided. This requirement, which is found at §570.209 and is further discussed in Appendix B of this Guide, applies to **all** activities under the category of Special Economic Development Activities at §570.203. Grantees are still expected to perform due diligence through financial underwriting of any assistance being provided to a for-profit business and HUD has provided some guidelines which a grantee may use for this purpose. *It is important to note, however, that grantees are not required to use the HUD-supplied underwriting guidelines.*

*Special economic development activities do **not** include:*

- ❖ Assistance to a for-profit business in the form of lobbying or other political activities. *Reference: §570.207(a)(3)*
- ❖ Public facilities and improvements carried out to support or benefit a private for-profit business. (These activities may, however, be eligible under the category of Public Facilities and Improvements.) *Reference: §570.201(c)*
- ❖ New Housing Construction. This activity may be eligible under either of the categories of Construction of Housing or Special Activities by CBDOs. When a project to be assisted includes new construction of housing as part of a commercial structure (e.g., a “mixed use” project), those costs clearly attributable to the commercial portion of the project may be eligible as a special economic development activity. *References: §570.201(m) and §570.204*
- ❖ Planning for economic development projects, including conducting market surveys to determine an appropriate type of business to attempt to attract to a particular area, developing individual commercial or industrial project plans, and identifying actions to implement those plans. Such planning activities may be eligible under the category of Planning and Capacity Building. *Reference: §570.205*
- ❖ Job training, unless part of a CDBG-eligible economic development activity that will create or retain permanent jobs. Such other training may be eligible under the categories of Public Services or Special Activities by CBDOs. *References: §570.201(e) and §570.204*

**Complying
with National
Objectives—
Special
Economic
Development
Activities**

Section 105(c)(1) of the authorizing statute specifies certain limitations on how activities under the category of Special Economic Development Activities may meet the national objective of benefit to L/M income persons. These limitations are reflected in the charts that follow which show how activities in this category may meet the CDBG national objectives.

Additional Considerations

Grantees should take special precautions in the use of the category of Special Economic Development Activities, particularly when providing assistance to a for-profit business. First, it should be evident that all business activity involves more than the average amount of risk and it is possible that the contemplated results will not materialize. It should also be noted that businesses may be expected to be focusing heavily on their own interests and it should not be surprising if they show little interest in the fulfillment of the community's goals and objectives or in the particular requirements of the CDBG program. Grantees must therefore maintain proper documentation in the activity files and offer technical assistance to avoid program non-compliance. Ultimately, grantees should take special care to protect the community's interests in their dealings with those entities that work in the economic development sphere.

If the grantee or a subrecipient makes a number of loans for economic development, it will be important that appropriate steps be taken to manage the loan portfolio. Some guidance and advice concerning this matter may be found in Appendix G.

NATIONAL OBJECTIVES— SPECIAL ECONOMIC DEVELOPMENT ACTIVITIES			
Objective	Qualifies If	Example	Additional Information
L/M Income Area Benefit	The assistance is to a business which provides goods or services to residents of a L/M income <i>residential</i> area.	Assistance to neighborhood businesses such as grocery stores and laundromats, serving a predominantly L/M income neighborhood.	For more information, see page 3-7.
L/M Income Limited Clientele	The only use of CDBG is to provide job training or other employment support services as part of a CDBG-eligible economic development project, and the percent of total project cost contributed by CDBG does not exceed the percent of all persons assisted who are L/M income.	Training for the 30 new employees, 10 of whom are L/M income, hired by a manufacturer adding new machinery to its plant where CDBG pays no more than one-third of the total cost of the project, including the training.	For more information, see page 3-14.
L/M Income Housing	Not applicable.	Not applicable.	Not applicable.
L/M Income Jobs	The assisted project involves the creation or retention of jobs at least 51% of which benefit L/M income persons.	Financial assistance to a manufacturer for the expansion of its facilities which is expected to create permanent jobs, at least 51% of which will be taken by L/M income persons.	For more information, see page 3-24.

NATIONAL OBJECTIVES— SPECIAL ECONOMIC DEVELOPMENT ACTIVITIES

Objective	Qualifies If	Example	Additional Information
Slum or Blighted Area	The assistance is to a business in a designated slum or blighted area and addresses one or more of the conditions which contributed to the deterioration of the area.	A low-interest loan to a business as an inducement to locate a branch store in a redeveloping blighted area.	For more information, see page 3-35.
Spot Blight	The assistance is to a business located outside of a designated slum or blighted area where: (1) The assistance is designed to eliminate specific conditions of blight or physical decay; and (2) The assistance is limited to the following activities: acquisition, clearance, relocation, historic preservation, and building rehabilitation. Rehabilitation must be limited to the extent necessary to eliminate specific conditions detrimental to public safety and health.	Financial assistance to a business to demolish a decayed structure it owns in order to assist the business in constructing a new building on the site.	For more information, see page 3-38.

NATIONAL OBJECTIVES— SPECIAL ECONOMIC DEVELOPMENT ACTIVITIES

Objective	Qualifies If	Example	Additional Information
Urban Renewal Completion	The assistance is to a commercial or industrial business located in an Urban Renewal project area or an NDP action area designated under Title I of the Housing Act of 1949, and is necessary to complete the Urban Renewal Plan.	Assistance to a developer for the construction of commercial structures located in an urban Renewal project area where the construction is needed to complete the approved plan for the Urban Renewal area.	For more information, see page 3-40.
Urgent Need	The assistance to a commercial or industrial business is designed to alleviate existing conditions and the grantee certifies that such conditions pose a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.	Assistance in reconstructing the only grocery store in a remote part of an urban county that was damaged by a hurricane, where no other funds are available for the reconstruction.	For more information, see page 3-41.

Microenterprise Assistance

Eligible Activities

Under this category, grantees and other public or private organizations may use CDBG funds to facilitate economic development through the establishment, stabilization and expansion of microenterprises. *Reference: §570.201(o)*

This category authorizes the use of CDBG funds to provide financial assistance of virtually any kind to an existing microenterprise or to assist in the establishment of a microenterprise. It also authorizes the provision of:

- ✓ Technical assistance to a new or existing microenterprise or to persons developing a microenterprise, and
- ✓ General support to owners of microenterprises or to persons developing a microenterprise.

Note that under the subcategory of “general support,” CDBG funds may be used to provide services of any kind that may be needed by the owner of or person developing a microenterprise to enable the establishment, stabilization, or expansion of the business. This could include, for example, child care, transportation, counseling, and peer support programs. *Any such services provided under this authority are not subject to the cap on public services* regardless of the entity providing the service.

It should also be noted that financially or technically assisting a microenterprise may also be carried out under the basic eligibility categories of Special Economic Development Activities and Special Activities by CBDOs. However, if carried out under either of those categories, such assistance would be subject to the requirements concerning Public Benefit. *References: §570.203, §570.204, and §570.209*

Definitions:

“Microenterprise” means a business having five or fewer employees, one or more of whom owns the business.

“Person developing a microenterprise” means any person who has expressed an interest and who is, after an initial screening, expected to be actively working towards developing a business that is expected to be a microenterprise at the time it is formed.

**Complying
with National
Objectives—
Microenterprise
Assistance**

Because microenterprises are for-profit businesses, most of the guidelines for meeting national objectives under the category of Special Economic Development Activities also apply here. There is one notable exception, however. A grantee may qualify under the L/M Income Limited Clientele subcategory any CDBG assistance under the basic eligibility category of Microenterprise Assistance that it provides to owners of and/or persons developing a microenterprise who are L/M income persons. If such assistance is provided to owners/persons developing a microenterprise who are not L/M income persons, it would not qualify under Limited Clientele, but would need to meet the requirements of other subcategories (e.g., Area Benefit or Jobs). See the following chart for further elaboration on meeting the L/M Income Benefit national objective. *Reference: §570.208(a)(2)(iii)*

**Additional
Considerations**

Many grantees have been assisting some microenterprises as part of their CDBG economic development programs. The creation of a separate eligibility category for this class of businesses does not mean that such grantees may no longer do so. First, it should be made clear that just because a business is small enough to meet the CDBG definition of a microenterprise would not preclude its being assisted under the category of Special Economic Development. However, when the grantee provides assistance to such businesses under that category, all applicable requirements, including public benefit, will apply. In order to take advantage of the special advantages available under the Microenterprise Assistance category, the grantee would need to establish an activity for providing such assistance separate from all other business assistance it may elect to provide. This is necessary to avoid the confusion that would result from mixing assistance under two categories having differing requirements. Therefore, grantees should consider revamping their CDBG economic development programs to clearly separate microenterprise assistance from all other forms.

NATIONAL OBJECTIVES — MICROENTERPRISE ASSISTANCE

Objective	Qualifies If	Example	Additional Information
L/M Income Area Benefit	The microenterprise assisted provides services to a residential area that has a sufficiently high percentage of L/M income persons.	A small carry-out store in a neighborhood having more than 51% L/M income residents.	For more information, see page 3-7.
L/M Income Limited Income	The microenterprise assistance is provided to a L/M income person who owns or is developing a microenterprise.	Assisting a resident of public housing to establish a business providing child care.	For more information, see page 3-14.
L/M Income Housing	Not applicable.	Not applicable.	Not applicable.
L/M Income Jobs	The microenterprise assisted will create or retain jobs, 51% or more of which will benefit L/M income persons.	Assisting in the expansion of a house cleaning service with two employees that agrees to hire an additional L/M income person for the business.	For more information, see page 3-24.
<i>For other national objective possibilities, see pages 2-60 and 2-61.</i>			

Special Activities by CBDOs

Preface

The purpose of this preface is to emphasize the distinction between subrecipients and Community-Based Development Organizations (CBDOs) as they relate to the CDBG program.

- ❖ The term “**subrecipient**” is defined at §570.500(c) to mean a public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under §570.201(o) to provide microenterprise assistance, receiving CDBG funds from the grantee to undertake activities eligible under the CDBG program.
- ❖ While the types of organizations that qualify as CBDOs generally would meet the above description, the subrecipient definition at §570.500(c) *excludes CBDOs unless the CBDO is specifically designated by the grantee to be a subrecipient for CDBG program purposes.*
- ❖ Designation of an entity as a subrecipient affects the following:
 - whether any income that may be generated by a CDBG-funded activity that is received by the entity is considered to be CDBG program income;
 - whether the grantee must enter into a written agreement with the entity containing requirements specified at §570.503 (although the grantee could elect to enter into such an agreement with a CBDO whether or not it is designated as a subrecipient); and
 - whether the entity is bound by the general administrative requirements imposed by the OMB Circulars in its administration of the CDBG funds provided to it by the grantee (although a grantee could require a CBDO to abide by these requirements as a condition of providing CDBG funds to the entity, without the need to designate it as a subrecipient).

- ❖ Fundamentally, in order to use the authority provided under this category of Special Activities by CBDOs, the grantee must ensure that four key tests are met:
 - that the *entity* selected qualifies as a CBDO under §570.204(c),
 - that the *project* that the CBDO will undertake qualifies under §570.204(a)(1), (2) or (3),
 - that the CBDO will be “*carrying out*” the activities as defined at §570.204(a)(4), and
 - that the CBDO is *not* carrying out an activity specifically prohibited in §570.207(a).

Eligible Activities

This category authorizes a grantee to designate certain types of entities to carry out a range of activities that may include activities the grantee may otherwise not carry out itself. While the “otherwise ineligible” activities covered by this authority may take many forms, the most frequent use of this provision in the CDBG program has been to carry out new construction of housing. However, there are also other advantages of using a CBDO in the CDBG program: specifically, for the purpose of providing public services that in certain circumstances are not subject to the expenditures cap otherwise applicable to Public Services. This exception is explained in more detail in the following subsections.

Eligible Projects

Under this category, a qualified CBDO can only carry out any or all of the following three types of projects:

- ❖ *Neighborhood revitalization:* Activities undertaken under this provision must be of sufficient size and scope to have an impact on the decline of a designated geographic location within the jurisdiction of the grantee (but not the entire jurisdiction of an entitlement community unless it has a population of 25,000 or less). The activities to be considered for this purpose are not limited to those funded (or to be funded) with CDBG assistance.
- ❖ *Community Economic Development:* This type of project must include activities that increase economic opportunity, principally for low- and moderate-income persons, or that are expected to create or retain businesses or permanent jobs within the community. Housing activities may be included within this project type if they can clearly link the need for affordable housing accessible to existing or planned jobs, or otherwise address the Consolidated Plan’s definition of “expanded economic opportunity” at 24 CFR Part 91.1(a)(1)(iii).

- ❖ *Energy Conservation:* Activities carried out under this provision are clearly designed to conserve energy for the benefit of residents within the grantee's jurisdiction. An example of this type of project may involve the construction of energy efficient housing where substantial savings in heating and/or cooling costs can be expected to be realized.

Application Tips: The typical CDBG eligibility categories (e.g., public facilities and improvements, public services, rehabilitation) may appear either singly or in virtually any combination under any one of these three types of projects. CDBG funds do not have to constitute the only source of funding in the project.

Note also that the definitions of these terms are not synonymous with the use of these terms in other parts of the CDBG regulations (see §570.201(p), 570.202(b)(4) and 570.203).

Eligible Entities

In order to qualify as a CBDO, an entity must meet the criteria specified at §570.204(c)(1), (2), or (3). Generally, this means that the entity must:

- ❖ Be organized under State or local law to carry out community development activities. For entitled communities, the entity must operate primarily within an identified neighborhood within the grantee's jurisdiction.
- ❖ Maintain at least 51% of its governing body's membership to be made up of any combination of the following:
 - low- and moderate-income residents of its area of operation,
 - owners or senior officers of private establishments and other institutions located in and serving its geographic area of operation, or
 - representatives of low- and moderate-income neighborhood organizations located in its geographic area of operation.
- ❖ Require that members of the governing body must be nominated and approved by the organization's general membership or by its permanent governing body (except as otherwise authorized in §570.204(c)(1)(v)).
- ❖ Have as its primary purpose the improvement of the physical, economic, or social environment of its geographic area of operation, with particular emphasis on the needs of low- and moderate-income persons.

- ❖ Be either nonprofit or for-profit, but, if a for-profit, only incidental monetary benefits to its members are allowed.
- ❖ Not be an agency or instrumentality of the grantee, and not permit more than one-third of its governing body to be appointed by or consist of elected or other public officials or employees of the grantee (or of any other entity that could not qualify as a CBDO), even if such persons would otherwise meet the requirements described above.
- ❖ Not be subject to the reversion of its assets to the grantee upon dissolution (although a grantee may specify as a condition of providing CDBG funds to the entity that any assets related to the specific CDBG assistance being provided must revert to the grantee, whether or not the grantee designates the CBDO as a subrecipient. (Application of the reversion of assets clause under §570.503(b)(8) would be required for any CBDO designated as a subrecipient and would function to permit the specific assets purchased with the CDBG funds to revert back to the grantee. This would not constitute a violation of the §570.204 requirement.)
- ❖ Be free to contract for goods and services from vendors of its own choosing (a sign that the entity is not an agent of the grantee).

Application Tips: Entities which do not meet the CBDO requirements are not prohibited from establishing a subsidiary organization to carry out an activity under this category, but the subsidiary organization in such case would need to be in control of itself and not be merely a “front” for the parent organization.

The regulations at §570.204(c)(2) also provide other ways that an entity may qualify as a CBDO (e.g., Small Business Administration Section 301(d) entity, Section 501, Section 502, or Section 503 Companies). Most notably, it qualifies as a CBDO any entity that has been designated by a HOME participating jurisdiction as a Community Housing Development Organization (CHDO), *and which has a geographic area of operation that is not greater than one neighborhood and which has received, or expects to receive, HOME funding.* This could include a CHDO that does not meet the standard 51% board membership requirements discussed above for CBDOs. It should also be noted that a CHDO that meets the standard requirements to qualify as a CBDO (and thus does not need to qualify under this exception) would not be subject to the single neighborhood limitation.

§570.204(c)(3) of the regulations further allows the grantee an opportunity to show, to HUD’s satisfaction, that an entity that does not meet the specific criteria at §570.204(c)(1) or (2) is nevertheless sufficiently similar in *purpose, function, and scope* to those eligible entities to qualify as a CBDO. In reviewing such an entity’s charter and by-laws for this purpose, HUD will be looking for evidence that the organization’s principal purpose is consistent

with the grantee's objectives for improving the area in question and that key stakeholders in that area have substantial input in how the organization operates.

Note: If a grantee is unsure whether a particular organization qualifies as a CBDO under this category, it should seek assistance from its local HUD field office.

“Carry out”

The authority conveyed under this category requires that the CBDO “carry out” the funded activities. This means that the CBDO will undertake the activity directly or through contracts with an entity other than the grantee. In any case where the CBDO provides CDBG funds to another entity, it must be clear that the CBDO has a direct and controlling interest in how and where the activities are undertaken. The purpose of this restriction is to ensure that the grantee itself is not playing a major and controlling interest in the funded activities. Perhaps the “litmus test” for this purpose is whether the entity has the authority, independent of the grantee, to stop the project if something is going wrong.

Application Tips: The CBDO is not prevented from entering into a contract with another entity to assist in project implementation so long as the contract provides the CBDO with sufficient control over the project to ensure compliance with all program requirements (e.g., a CBDO can contract with a developer to build housing and not have to use CBDO staff to construct the units).

Ineligible Activities

Special activities by CBDOs do not include:

- ❖ Any activity described in §570.207(a) as *ineligible*. That is, buildings for the general conduct of government, general government expenses, and political activities.
- ❖ Any activity which would violate the specific limitations described below:
 - provision of public services in violation of the prohibition against substituting CDBG for State or local funds as set forth in §570.201(e), or that would exceed the dollar limitations described under §570.201(e)(1) and (2) unless the regulations otherwise provide that the services are exempt from that cost limitation (see discussion under Additional Considerations subsection, below). *Reference: §570.204(b)(2)*

- provision of assistance for a special economic development activity eligible under §570.203 that does not comply with the Public Benefit requirements of §570.209. *References: §570.204(b)(3) and §570.209*
- planning and administrative activities that are eligible under §570.205 or §570.206 which would result in the grantee exceeding the 20% cost limitation on such activities, unless the regulations specifically provide that the activity is exempt from that cost limitation. *Reference: §570.204(b)(4)*

**Complying
with National
Objectives—
Special
Activities
by CBDOs**

Since the majority of activities carried out by a CBDO under this authority are also eligible under other categories covered in this Guidebook, refer to the applicable sections in this chapter concerning the considerations necessary to determine how to meet the CDBG national objectives. Where otherwise ineligible housing activities are being carried out, see the section on Construction of Housing for guidance.

**Additional
Considerations**

The use of CDBG funds by a grantee to fund CBDOs does not relieve the grantee of its responsibility for meeting program requirements on how those funds are used. Thus, even if the grantee does not designate the CBDO as a subrecipient, it should nevertheless give serious consideration to developing a written, contractual agreement with the CBDO that would be comparable to that required with subrecipients. Such an agreement would include the scope of work, the activity(ies) to be carried out, the national objective(s) to be met, time frames, termination criteria, reporting requirements, and applicability of other requirements (e.g., those specified in Subpart K of the CDBG regulations).

It is important to note that when an activity is being carried out by a CBDO under this category and the activity is of such nature that it would also qualify under the category of Special Economic Development Activities at §570.203, that activity will be subject to the Public Benefit requirements set forth in §570.209 and further described in Appendix B of this Guide (although if the CBDO is carrying out any such activities pursuant to a HUD-approved Neighborhood Revitalization Strategy [NRS], the grantee may elect to exempt the activities from the *aggregate* public benefit standards.) See Appendix E for information on NRS and Appendix B for information on the aggregate standards.

It should also be noted that, while as a general rule CBDOs cannot carry out public services that are not subject to the cost limitation on the amount that the grantee may obligate for public services (i.e., 15% cap), there are two exceptions to this rule. The exceptions include:

- ❖ Any services provided by a CBDO that are specifically designed to increase economic opportunities through job training and placement and other employment support services (e.g., peer support programs, counseling, child care, transportation, and other similar services); and
- ❖ Services of any type being provided by a CBDO pursuant to a Neighborhood Revitalization Strategy approved by HUD. (Reference: 24 CFR 91.215(e) and Appendix E of this Guide for further information on such strategies.)

Note that, if a grantee does not designate the CBDO as a subrecipient, any revenue generated by its CDBG-funded activities is not classified as CDBG program income, since by definition, program income is money that is *received by* the grantee or a subrecipient. While this may be a way to help a high-performing CBDO secure ongoing funding to continue its mission following completion of the CDBG-funded project, it must be noted that, since such revenue is not program income, it *cannot* be included in the bases for calculating the public services or planning/administration caps. However, when the grantee provides funds to a CBDO in the form of a loan, any payments made by the CBDO to the grantee on that loan would be CDBG program income, whether or not the CBDO has been designated as a subrecipient.

If a grantee intends to fund a CBDO that lacks capacity to carry out complex development activities without substantial “hand-holding,” careful consideration must be paid to the “carry out/control” aspect of §570.204 to ensure that program requirements are not violated. One solution may be to assist the CBDO in hiring professionals, such as a more experienced nonprofit, a general contractor, or an architectural and engineering firm, to provide needed expertise to complete the project. The grantee could also break a project into two parts and, in the first year, fund capacity building for the CBDO before the CBDO carries out the project.

Note also that complex development projects may stretch the ability of grantees (or HUD field offices) to adequately monitor (e.g., carrying out multi-funded, low-income housing tax credit deals). In such cases, grantees should seek the appropriate expertise to ensure that program requirements are met.

Homeownership Assistance

Under the provisions at §570.201(n), grantees and their subrecipients may provide financial assistance to low- and moderate-income households to assist them in the purchase of a home.

Eligible Activities

The specific purposes for which financial assistance using CDBG funds may be provided under this category are to:

- ✓ Subsidize interest rates and mortgage principal amounts, including making a grant to reduce the effective interest rate on the amount needed by the purchaser to an affordable level. (The funds granted would have to be applied towards the purchase price.) Alternatively, the grantee/subrecipient could make a subordinate loan for part of the purchase price, at little or no interest, for an amount of funds the payments on which, together with that required under the first mortgage, would be affordable to the purchaser.
- ✓ Finance the cost of acquiring property already occupied by the household at terms needed to make the purchase affordable.
- ✓ Pay all or part of the premium (on behalf of the purchaser) for mortgage insurance required up-front by a private mortgagee. (This would include the cost for private mortgage insurance.)
- ✓ Pay any or all of the reasonable closing costs associated with the home purchase on behalf of the purchaser.
- ✓ Pay up to 50% of the down payment required by the mortgagee for the purchase on behalf of the purchaser.

Note especially that the use of funds under this category is *specifically limited to assisting low- and moderate-income households*. Reference: §570.201(n)

Complying with National Objectives— Homeownership Assistance

Because the use of CDBG funds authorized under this category is limited to assisting low- and moderate-income households, any such use of funds would clearly qualify under the national objective of benefit to low- and moderate-income persons-housing activities, and no further consideration needs to be given here. Reference: §570.208(a)(3)

Additional Considerations

Homeownership assistance may also be eligible under the categories of Public Services or Special Activities by CBDOs. While these categories don't have the same restrictions on the type of assistance that may be provided, they do have to comply with the public services cap. However, under these provisions, assistance is not specifically limited by statute to L/M income persons. Therefore, a grantee should carefully consider its objectives against these factors and select the category that best fits those objectives in the context of its entire CDBG program.

In the case where HUD has approved a Neighborhood Revitalization Strategy (NRS) and the grantee plans to provide homeownership assistance pursuant to that strategy, two further considerations should be given. First, if the grantee elects to use a CBDO to deliver services in the strategy area, any services provided by the CBDO (including homeownership assistance) would be exempt from the expenditures cap on Public Services. This would remove the main advantage of qualifying the assistance under the Homeownership Assistance category. Moreover, if the strategy involves assisting non-L/M income households to purchase houses in the area, CDBG assistance could not be provided under the Homeownership Assistance category (which is limited to assistance provided to L/M income households). The use of a CBDO would be needed for this purpose. It should also be noted that where CDBG funds are provided to non L/M income households in a NRS area, meeting the L/M Income Benefit national objective is made feasible by a special feature offered by an NRS. All housing units assisted in such an area may be considered to be part of a single structure for the purpose of meeting the 51%+ occupancy requirement. See Appendix E to this Guide that describes the NRS feature of the CDBG program in further detail.

Planning and Capacity Building

Eligible Activities

CDBG funds may be used for:

- ✓ Studies,
- ✓ Analysis,
- ✓ Data gathering,
- ✓ Preparation of plans, and
- ✓ Identification of actions that will implement plans.

Example

The types of plans which may be paid for with CDBG funds include, but are not limited to:

- Comprehensive plans;
- Individual project plans;
- Community development plans;
- Capital improvement programs;
- Small area and neighborhood plans;
- Analysis of impediments to fair housing choice;
- Environmental and historic preservation studies; and
- Functional plans (such as plans for housing, land use, energy conservation or economic development).

A more detailed description of planning and capacity building activities is located at §570.205 of the regulations.

Such funds may also be used under this category for activities designed to improve the grantee's capacity (or that of its subrecipients) to plan and manage programs and activities for the grantee's CDBG program. However, the amount of CDBG funds which may be used for activities under this category (whether by the grantee or its subrecipients) is subject to the statutory limitation on planning and administrative cost. Note that the planning and administrative costs of subrecipients subject to the 20% cap are limited to those related to the CDBG program as a whole and not for activity-specific administrative costs related to carrying out other eligible Subpart C activities which are considered part of the cost of those activities. (See also the discussion describing the 20% cap which is contained in the Program Administration Costs category section and the description on how to calculate the cap following that section.) *References: §570.200(g) and §570.205*

Note, however, that capacity building is also eligible under the category of Technical Assistance, which is discussed in this Guide under the section of this chapter entitled Miscellaneous Other Activities. The use of funds under that category is not subject to the 20% cap, but must be shown to meet a national objective. *Reference: §570.201(p)*

Planning and capacity building activities do not include:

- ❖ Engineering, architectural and design costs related to a specific project (e.g., detailed engineering specifications and working drawings); or
- ❖ Other costs of implementing plans.

Example

While developing an economic development strategy for the city or county is an eligible planning activity, printing brochures promoting the city or county in order to attract businesses is not.

Complying with National Objectives— Planning and Capacity Building

Because CDBG funds spent for planning and capacity building costs are considered to address the national objectives of the CDBG program as a whole, no documentation of such compliance is required. *Reference: §570.208(d)(4)*

Additional Considerations

The cost of implementing plans, while not eligible as planning costs, may qualify for CDBG funding if the implementing actions are otherwise eligible activities (i.e., activities eligible under §570.201 through §570.204).

A market study performed on behalf of the grantee to determine the market for some type of facility or business would be eligible under the category of Planning, but a market study performed on behalf of a particular business would only be eligible for CDBG funding under the category of Special Economic Development Activities. Similarly, conducting a market study on the need for a new hotel downtown would be eligible under Planning, while conducting a feasibility study of a specific proposed project (e.g., a hotel) on a specific site would have to qualify under the Special Economic Development Activities category.

Program Administration Costs

Eligible Activities

CDBG funds may be used to pay reasonable program administration costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under the CDBG or the HOME or Urban Development Action Grants (UDAG) programs.

Program administration costs include staff and related costs required for overall program management, coordination, monitoring, reporting, and evaluation, as described at §570.206(a)(1).

Other activities eligible under this category include:

- ✓ Citizen participation costs *Reference: §570.206(b),*
- ✓ Fair housing activities *Reference: §570.206(c),*
- ✓ Indirect costs charged using an accepted cost allocation plan *Reference: §570.206(e),*
- ✓ Development of submissions or applications for Federal programs *Reference: §570.206(f), and*
- ✓ Certain costs of administering the HOME program or a Federally designated Empowerment Zone or Enterprise Community *Reference: §570.206(i).*

Office space: A grantee may charge to the CDBG program the costs of rent and maintenance of office space to house the staff involved in program administration, but may not purchase or construct offices for this purpose.

Proration: Where an individual staff person performs some duties that are eligible as administration costs as well as other duties that are eligible under other categories of basic eligibility, the grantee may elect to charge either *all* of such person's costs to administration if the person's primary duties are program administration, or *only the portion* of the staff's duties that are covered under this category (provided appropriate time distribution records are kept).

20% cap: Costs that are charged to administrative costs and to Planning and Capacity Building per §570.205 and 206 are subject to a statutory limitation that not more than 20% of grant funds plus program income may be used for planning and administration. (This limitation is not contained in the Housing and Community Development Act of 1974, which authorizes the CDBG program, but has been included in each Appropriations statute for the CDBG program since 1978.) See the description on how to calculate the amount of this limitation, shown later in this section.

Note: 24 CFR 570.206(g) authorizes the use of CDBG funds to pay administrative expenses to facilitate housing identified in a grantee’s housing assistance plan (HAP). However, the Comprehensive Housing Affordability Strategy (CHAS) (now a part of the Consolidated Plan) replaced the HAP. The CHAS had a broader reach and was not limited exclusively to housing for L/M income persons. Therefore, this provision of the regulation cannot be used without a waiver from HUD on the limitation concerning the identification of the housing in the grantee’s HAP and provided the grantee otherwise meets the CDBG waiver standards at §570.5. *Reference:* §570.206(g)

Example

Overall program management, coordination, monitoring, and evaluation include, but are not limited to, the following types of assistance:

- Preparing program budgets, schedules and amendments;
- Evaluating program results against stated objectives;
- Coordinating the resolution of audit and monitoring findings;
- Developing systems for assuring compliance with program requirements;
- Monitoring program activities for progress and compliance with program requirements;
- Preparing reports and other compliance documents related to the program for submission to HUD; and
- Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities.

Program administration does not authorize:

- ❖ Political activities. *Reference:* §570.207(a)(3)
- ❖ The acquisition, construction, or reconstruction of space in a government office building for staff administering the grantee’s CDBG, UDAG, Rental Rehabilitation, HoDAG, or HOME programs, since CDBG funds may not be used to assist “buildings for the general conduct of government.” See the section on Public Facilities and Improvements for more information on this limitation.

- ❖ Staff and overhead costs directly involved in carrying out activities eligible under §570.201 through §570.204, since those costs (often referred to as “activity delivery costs”) are eligible as part of such activities.

**Complying
with National
Objectives—
Program
Administration
Costs**

Costs that are appropriately charged to this category are presumed to meet a CDBG national objective, and the grantee does not have to maintain any other documentation for this purpose. *Reference: §570.208(d)(4)*

Planning and Administrative Cap

Description

As indicated in the preceding pages, no more than 20% of the sum of any grant plus program income that is received during the program year may be obligated by the grantee and its subrecipients for planning and administrative costs, as defined in §570.205 and §570.206, respectively.

Recipients of entitlement grants will be considered to be in conformance with this limitation if total obligations charged under those categories during the grantee's most recently completed program year, without regard to the source year of funds, are not greater than 20% of the sum of the entitlement grant received for that program year plus the program income received during that program year by the grantee and its subrecipients.

References: Appropriations Acts and §570.200(g)

Calculating the Cap

- (1) To determine the base against which the 20% cap will be applied, total the amount of CDBG funds received during the program year from the following sources:

Entitlement Grant (from line 8.b of the Funding Approval form, HUD-7082)	\$ _____
Surplus from Urban Renewal (from line 10.b of the Funding Approval form)	\$ _____
Program income received by the grantee and its subrecipients	\$ _____
TOTAL	\$ _____

- (2) To calculate the amount of the cap, multiply the total amount determined in Step (1) above by .20 and enter the number here \$ _____

This amount represents the maximum dollar level that may be obligated during the program year and charged to the basic eligibility categories of Planning and Capacity Building and Program Administration, i.e., the **cap**.

Determining Compliance with the Cap

Compliance with the cap is determined for entitlement grantees by performing the following calculation at the end of each program year:

Determine the total amount of CDBG funds expended during the program year for activities that are classified as eligible under §570.205 (Planning and Capacity Building) and §570.206 (Program Administration Costs):

\$ _____

Add to the above amount the total amount of unliquidated obligations for activities under these same two categories, as of the end of the program year:

\$ _____

Subtract from the balance the total amount of unliquidated obligations for these two categories, as of the end of the preceding program year:

\$(_____)

Enter here the result of the above calculations. This is the amount of net obligations for Planning Administration during the program year:

\$ _____

To be in compliance with the 20% cap, the amount determined above as the net amount obligated may not exceed the amount determined as the cap for the year in the first portion of this subsection (see (2) on the preceding page).

Miscellaneous Other Activities

Other miscellaneous activities eligible under the CDBG regulations are described in this section of the Guide.

Payment of the Non-Federal Share— §570.201(g)

This provision does not make any additional activities eligible for CDBG assistance because it limits the use of CDBG funds to paying the non-Federal share only for activities which are otherwise eligible for CDBG assistance. Therefore, any proposed use of CDBG funds to pay the non-Federal share of a Federal grant-in-aid should be evaluated against the requirements of the applicable eligibility category.

It should also be noted that the authority to use CDBG funds for the non-Federal share of another program does not override any specific restriction against that use that may be contained in the statute or regulations for that program. For example, the HOME program requires a non-Federal match, but specifically states that CDBG expenditures may not count towards meeting that requirement.

Urban Renewal Completion— §570.201(h)

This provision does not make any additional activities eligible for CDBG assistance because any cost of completing an urban renewal project funded under Title I of the Housing Act of 1949 must also be eligible under other activity categories described in this Guide.

For example: The costs of public improvements required to complete an urban renewal project would also be eligible under the category of Public Facilities and Improvements described on page 2-11.

Technical Assistance— §570.201(p)

This provision makes eligible the use of CDBG funds to increase the capacity of public or nonprofit entities to carry out eligible neighborhood revitalization or economic development activities. (This could include the grantee itself.) In order to use the funds under this authority, the grantee must determine, prior to providing the assistance, the eligibility of the activity for which capacity is to be built *and* that there is a reasonable expectation that a national objective can be met once the entity has received the technical assistance and undertakes the activity. It should be noted that, while building capacity of an entity under this authority provides an alternative to using the authority under the category of Planning and Capacity Building (and thus can help avoid a problem with exceeding the 20% cap), the program does not provide a presumption concerning national objective compliance. Thus, it is important that this be considered before charging costs under this category. Factors that should be considered in determining

if a national objective can be met include the nature of the organization receiving the assistance, the type and eligibility of the activity to be carried out, the location of the activity, and the entity's expected (or traditional) clientele. Based on a review of these factors, the grantee should have a reasonable expectation that the activity to be undertaken by the entity would comply with a national objective before funding capacity building.

**Assistance
to Institutions
of Higher
Education—
§470.201(q)**

This authority may be used by a grantee to provide assistance to an institution of higher education (i.e., secondary schools or higher) when the grantee determines that such an institution has demonstrated a capacity to carry out activities that fall under one or more of the basic eligibility categories under the CDBG program.

**Housing
Services—
§570.201(k)**

Section 105(a)(20) provides that CDBG funds may be used to pay costs in support of activities eligible for funding under the HOME program. This includes services such as housing counseling in connection with tenant-based rental assistance and affordable housing projects, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in the HOME program. Since such assistance must also meet HOME income targeting requirements, see the discussion under L/M Income Housing in Chapter 3 to determine how these services can meet the CDBG national objectives. (Note that this provision is not prohibited from qualifying under other CDBG national objectives but the requirement to comply with HOME criteria makes the L/M Income Housing Benefit the clear alternative for CDBG compliance.)

(§570.206 also provides that CDBG funds may be used to pay for program administration of the HOME program.)

Reconstruction

Reconstruction became explicitly eligible for CDBG assistance as a result of a legislative change under section 225 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-234, enacted April 26, 1996). This change [in section 105(a)(4) of the Housing and Community Development Act of 1974 as amended] broadens grantees' ability to use CDBG funds for "reconstruction" of properties. While this eligibility provision has not yet been codified in the CDBG regulations, it became effective upon enactment. Grantees have thus been able to make use of this provision since enacted.

While the statute does not define the term “reconstruction,” for CDBG purposes, it is generally defined as meaning the rebuilding of a structure on the same site in substantially the same manner. Deviations from the original design are permitted for reasons of safety or if otherwise impractical. The structure to be reconstructed may be residential or nonresidential, and either publicly- or privately-owned. For reconstruction involving housing, the number of housing units on a site may not be increased, but the number of rooms per unit may be increased or decreased. [Note that any *decrease* in the number of units on a site may require compliance with the one-for-one replacement of L/M income dwelling units at 24 CFR part 42, subpart C.] Reconstruction of residential structures would also permit replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing.

Note that reconstruction is also permitted elsewhere in the regulations under Public Facilities and Improvements [§570.201(c)], Privately Owned Utilities [§570.201(1)], and Special Economic Development Activities [§570.203].

In Rem

Section 105(a) (23) of the Act, as added by Section 807 (a) (4) of the Housing and Community Development Act of 1992 provided a separate category of eligibility under the CDBG program regarding the provision of assistance to housing units acquired through tax foreclosure proceedings. Specifically, it authorizes activities necessary to make essential repairs and payment of operating expenses needed to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low- and moderate-income neighborhoods. This provision has not been incorporated into the regulations at the time of this writing, but is available for use nevertheless. Some aspects that must be considered for meeting the national objectives when using this authority should be noted. The statute clarified that, since these expenses are limited to housing located in primarily low- and moderate-income neighborhoods, the L/M Income Benefit national objective is to be met through the Area Benefit subcategory. This means that, even though these are housing activities, the usual requirement that occupancy by L/M income households must be demonstrated does not apply to activities carried out under this authority. Of course, the grantee could also claim such activities as qualifying under the Slums/Blight objective in particular circumstances where meeting the criteria for this objective could be demonstrated.

Handicapped Accessibility

The statute makes specifically eligible the removal of material and architectural barriers that restrict the accessibility or mobility of elderly or handicapped persons.

Confusion has emerged concerning the distinction between removing barriers to accessibility and the need to provide for accessibility. Together, these issues led some grantees and beneficiaries to the impression that the involvement of the removal of barriers would qualify an entire activity for assistance under the CDBG program, or that the additional costs of making even newly constructed buildings accessible to the handicapped should be eligible for CDBG assistance under that authority, whether or not the rest of the building could so qualify.

The passage of the Americans with Disabilities Act (ADA) had much to do with this confusion. Pressure has mounted on grantees to provide accessibility in both public and private places. This has led to some attempts to use CDBG funds to provide accessibility in ways that go well beyond the simple removal of existing barriers. As a result, it became necessary to clarify the regulations.

For many years, the CDBG regulations contained the removal of architectural barriers as a separate category of eligibility. However, this free-standing category was removed in 1995 because of the confusion it seemed to be causing and has been woven into other eligibility categories as appropriate. The regulations also contained (and still contain) a provision indicating that such barrier removal can meet the national objective of benefit to L/M income under Limited Clientele.

Where the construction of a building or improvement is eligible for assistance with CDBG, the costs of making the building or improvement accessible to persons with handicaps is also eligible as an integral cost of the construction and there is no need to provide separate eligibility for such a purpose. The removal of architectural barriers is now clarified as rehabilitation or reconstruction under the categories of Public Facilities and Improvements, Rehabilitation, and Special Economic Development Activities.

The main issue that is presented in the CDBG program with respect to handicapped accessibility lies in being able to meet a national objective. If the new construction of a public facility or improvement cannot meet a national objective based on either area benefit or the clientele to be served, then the features that are required in such construction in order to provide for accessibility to handicapped persons also cannot meet a national objective. The situation is somewhat different with rehabilitation or reconstruction. Since the cost of removing existing barriers is specifically eligible under the statute, §570.208(a)(2)(ii) provides that removal of accessibility barriers may be presumed to meet the L/M Income Limited Clientele criteria if the costs of such removal is restricted, to the extent practicable, to the removal of such barriers in:

- ❖ The reconstruction of a public facility or improvement, or portion thereof, that does not meet the criteria for L/M Income Benefit under Area Benefit,
- ❖ The rehabilitation of a privately owned nonresidential building or improvement that does not meet the criteria for L/M Income Benefit under Area Benefit or Jobs, or
- ❖ The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not meet the criteria for L/M Income Benefit under Housing.

In a related matter, the use in the regulations concerning the presumption of L/M income status of handicapped persons became problematical as the use of the term “handicapped” broadened over the past several years to include categories of handicap that do not necessarily heavily impact on a person’s capacity to work in good paying jobs. Thus, when HUD changed the regulations concerning the removal of architectural barriers, it also amended them to revise the term used for this purpose. The regulations now use the term “severely disabled adult” in lieu of “handicapped.” See the discussion of this matter under the L/M Income Limited Clientele subsection in Chapter 3 of this Guide.

Activities Specified as Ineligible

Ineligible Activities

The CDBG program regulations identify certain activities as categorically ineligible. They also identify certain other activities that are ineligible unless they are carried out by a CBDO under the authority of §570.204.

The general rule in the CDBG program is that any activity that is not authorized under the provisions of §§ 570.201-570.206 (or, where applicable, the statute) is ineligible to be assisted with CDBG funds. However, the eligible activities are so broad that it is easy to forget that some things cannot be done under the program. The purpose of this section is to discuss specific activities that are ineligible and to provide guidance in determining the eligibility of other activities frequently associated with housing and community development.

Categorically ineligible

The following activities may not be assisted with CDBG funds under any circumstance:

- ❖ *Buildings or portions thereof, used for the general conduct of government* as defined at §570.3 may not be assisted with CDBG funds. This does not include, however, the removal of architectural barriers involving any such building, which may be assisted under the category of Public Facilities and Improvements. Also, where acquisition of real property includes a building or other improvement that would be used for the general conduct of government, the portion of the acquisition cost attributable to the land may be assisted under the category of Acquisition of Real Property. *Reference: §570.207(a)(1)*
- ❖ *General government expenses.* Except as otherwise specifically authorized in Subpart C of Part 570 or under OMB Circular A-87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part. *Reference: §570.207(a)(2)*
- ❖ *Political activities.* CDBG funds may not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any. *Reference: §570.207(a)(3)*

Generally ineligible

The following activities may not be assisted with CDBG funds unless authorized as Special Economic Development Activities under §570.203 or when carried out by a CBDO under the provisions of §570.204.

- ❖ *Purchase of equipment.* The purchase of equipment with CDBG funds is generally ineligible.
 - *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A-21, A-87, or A-122 as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under the category of Public Facilities and Improvements [see §570.201(c)].
 - *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility. Thus, purchase of such equipment would be eligible under the category of Public Facilities and Improvements. This includes fire engines and specialized tools such as “jaws of life” and life-saving equipment as well as protective clothing worn by fire fighters [see §570.201(c)].
 - *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars A-21, A-87, or A-122, as applicable) for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service pursuant to §570.201(e). Also, these items are eligible when carried out by a for-profit business as part of CDBG assistance under the authority of §570.203(b).
Reference: §570.207(b)(1)
- ❖ *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating, or maintaining public facilities, improvements, and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities [see §570.201(e)], interim assistance [see §570.201(f)], and office space for program staff employed in carrying out the CDBG program (see §570.206). For example, the use of CDBG funds to pay the allowable costs of

operating and maintaining a facility used in providing a public service (e.g., salaries, rent) would be eligible under §570.201(e), even if no other costs of providing the service there are assisted with such funds. Examples of operating and maintenance expenses that are generally ineligible include:

- Maintenance and repair of publicly-owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with disabilities, parking, and other public facilities and improvements. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of grass in city or county parks, and the replacement of street light bulbs.
- Payment of salaries for staff, utility costs, and similar expenses necessary for the operation of public works and facilities.
Reference: §570.207(b)(2)
- ❖ *New housing construction.* See the discussion of this activity type under the earlier sections of this chapter entitled Construction of Housing and Special Activities by CBDs. *Reference: §570.207(b)(3)*
- ❖ *Income payments.* The general rule is that CDBG funds may not be used for income payments. For purposes of the CDBG program, “income payments” is defined as a *series of subsistence-type grant* payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments made over a period of up to three consecutive months directly to the provider of such items or services on behalf of an individual or family. One time grants, emergency type grants, or loans for such purposes may be authorized under the category of Public Services [see §570.201(e)]. *Reference: §570.207(b)(4)*

Note: Certain activities, even if they would otherwise be eligible under the category of Special Economic Development Activities, cannot be assisted with CDBG funds if they are specifically ineligible under the provisions of the Public Benefit standards under §570.209. For example, assisting a business to create jobs that would cost more than \$50,000 in CDBG funds per job would be unallowable. Also, providing assistance to a professional sports team is not allowed. See Appendix B for further details.

Documenting Compliance

This section of the chapter provides special guidance on the requirement the grantee must document that each assisted activity falls within a specified category and that it meets the requirements that apply to that category.

The requirement

The nature of the program is that the Federal government provides funds that a grantee may use in a variety of ways, at its option. There are limitations within which the grantee must operate, however. In order to ensure that HUD can carry out its statutory responsibilities to review grantee performance to determine that program requirements have been met, the grantee must maintain certain records which are identified in §570.506 of the CDBG program regulations. §570.506(a) specifies that the grantee must keep records which provide a full description of each activity that is selected for assistance, including its location, the amount of CDBG funds budgeted, obligated and expended for the activity, and—with particular respect to the subject of this chapter of the Guide—the provision of the regulations (or in certain cases, the statute) under which the activity is eligible.

The earlier portions of this chapter have identified the many categories of basic eligibility that are (at the time of this writing) currently available for selection. As is evident by a review of those sections, there are aspects that must be considered in order to make sure that program rules are honored in the case of almost every category. The files must document all relevant eligibility considerations that apply. For example, Acquisition of Real Property is an eligible activity only if it is carried out by a public or private nonprofit entity. Therefore, the records kept by the grantee in fulfillment of §570.506(a) must clearly indicate the entity that carried out the acquisition and the nonprofit status of that entity.

Certain categories of eligibility require, as a condition of such eligibility, that the grantee must make, and document, a particular local determination. §570.200(e) identifies those determinations which must be made and documented as a condition of eligibility.

While a grantee is not required to keep in its own files the records concerning the eligibility of an activity carried out by a CBDO or a subrecipient, the grantee must make sure that the required records are kept by that entity.

The OMB Circulars require recipients of Federal assistance to keep source documentation to justify all expenditures. For example, for an expenditure for rehabilitation, the grantee (or its CBDO or subrecipient) should be able to show an invoice that identifies what the payment was made for, to and by whom, and the physical location of the property that was rehabilitated. Where applicable, the rehabilitation contractor, in turn, would be obligated to be able to produce detailed records showing specifically the costs that it incurred and for which the invoice was presented. Similarly, a for-profit entity that receives a working capital loan should have sufficient source documentation to show the actual use of the CDBG funds.

Making the Best Choice

This section of the chapter stresses the desirability of considering alternative categories of eligibility for certain types of activities. Several examples are provided for key program areas to illustrate possible alternatives that may be available and the considerations that should guide the grantee in making the wisest choice among them.

The most common among these activity types and the requirements that the grantee should consider are:

- ❖ Public services (public services cap),
- ❖ Commercial/industrial projects (public benefit requirements), and
- ❖ Planning and administration (planning/admin cap).

The following discussion of these key areas is intended to assist grantees in thinking through the alternatives that may be available, the factors that should be considered, and some ground rules that may be helpful in this process.

Public Services

While the CDBG program was, from the onset, intended to be a physical development program, it was recognized that certain services can be very helpful to stabilize a neighborhood and to make for a sustainable redevelopment of areas needing revitalization. Therefore, the program authorizes the use of funds to provide services generally, but with a dollar limitation (usually no more than 15% of program funds may be used for services). However, there are certain situations where the regulations provide that services are not subject to this dollar limitation.

The most notable types of services that are not subject to the cap are:

- ❖ Financial assistance for homeownership, under the authority of §570.201(n);
- ❖ Employment services (including job training) related to employment opportunities generated by CDBG-eligible economic development activities, under the authority of §570.203(c);
- ❖ Services provided by a CBDO under the authority of §570.204 and that are specifically designed to increase economic opportunities through job training and placement and other related support services, such as child care and transportation;

- ❖ Services of any kind that are provided by a CBDO under the authority of §570.204 and that are carried out pursuant to a Neighborhood Revitalization Strategy approved by HUD under §91.215(e)(2) (see also Appendix E of this Guide); and
- ❖ General support services provided to owners of and/or persons developing microenterprises, under the authority of §570.201(o).

If a grantee's CDBG program is operating at or near its cap on public services, it is probably wise to review activities planned for future years to determine if any public services could be reclassified. In doing so, it is important to remember that shifting employment services from the Public Services category to that of Special Economic Development Activities would mean subjecting the services to public benefit requirements. For some grantees, it may also not be feasible to provide the services they have in mind through a CBDO because of the lack of a qualified entity in the applicable area. With respect to homeownership assistance, it should also be recognized that the alternative category may also have certain limitations.

Commercial/Industrial Projects

Usually, when a commercial or industrial project is assisted in the CDBG program as a Special Economic Development Activity, or when it is carried out by a CBDO as a Special Activity by a CBDO, the assistance will be subject to the public benefit requirements described in §570.209 (and discussed further in Appendix B of this Guide). While those requirements may not prevent the project from going forward as planned, it may nevertheless be useful to consider whether any other category could be used that may be more desirable.

The alternatives that should be considered in this regard are:

- ❖ Employment services that are eligible under §570.203(c) are also eligible under the Public Services category;
- ❖ Depending on the size of the business, assistance that is eligible under §570.203(b) or (c) may also be eligible under the Microenterprise Assistance category of 570.201(o);
- ❖ Property acquisition that is undertaken by a nonprofit under the authority of §570.203(a) may also be eligible under the category of Acquisition of Real Property at 570.201(a);

- ❖ Reconstruction of a commercial or industrial property that is eligible under the authority of §570.203(a) would also be eligible under the category of Rehabilitation at 570.202;
- ❖ Rehabilitation of a commercial or industrial property under the authority of §570.203(b) may be eligible, at least in part, under the category of Rehabilitation at 570.202; and
- ❖ Provision of one or more public improvements or utilities needed by the business may qualify under the category of Public Improvements at §570.201(c) or Privately-Owned Utilities at §570.201(l).

Moreover, an economic development project often involves a number of different activities that could be assisted in lieu of the specific assistance requested by a business. Consider, for example, a business that wants to expand and has requested financial assistance to pay for the construction of a building. It may be that the business needs to purchase land for the expansion or might be planning to pay to have the street widened or otherwise improved to support truck traffic. Either of these needs could be met with CDBG funds, under other categories than Special Economic Development Activities, which might be more desirable for the grantee to provide in order to help the project go forward. This sort of assessment of alternative activities might also help determine whether Davis-Bacon would apply to the form of assistance being contemplated.

Planning/administration

There are a few activities eligible under the categories of Planning and Capacity Building and Program Administration Costs that are also eligible under other categories of basic eligibility. Since costs charged to §570.205 or 570.206 are subject to the 20% cap, it may be useful to consider any alternative classification if the grantee is at or near its cap.

Such activities include:

- ❖ Fair housing counseling,
- ❖ Environmental assessments required for compliance with 24 CFR part 58,
- ❖ Capacity building, and
- ❖ Staff cost for persons carrying out program administration activities but also performing functions in direct support of activities being carried out under other categories of basic eligibility.

A brief discussion of each of the preceding activities follows:

Fair Housing Counseling

Grantees in the CDBG program have a responsibility to affirmatively further fair housing. Activities carried out pursuant to this responsibility may be charged to Program Administration. When the grantee is planning to provide counseling to advise persons of their rights under the Fair Housing Act or otherwise assist them in this regard, such activities could also be eligible under the category of Public Services. While both of these alternatives involve an overall cost limitation (i.e., the 20% cap and the 15% cap), it is not likely that a grantee would reach both caps in the same program year, thus allowing the grantee to shift the costs of these services to the appropriate category.

Environmental Assessments

The costs of performing the assessment and related public notices as required under 24 CFR part 58 are considered to be “activity delivery costs” and are thus part of the costs of carrying out the activity under the same basic eligibility category applicable to that activity. As such, these costs are not subject to the 20% cap. Alternately, it should be noted, however, that the regulations allow charging these costs under §570.205. It would generally not be desirable for a grantee if it is at or near its 20% cap to elect this alternative. There are some reasons, however, to think about this where possible. Where environmental assessment costs incurred with respect to an activity would create a problem for that activity, it may be preferable to charge that cost to the category of Planning and Capacity Building. Although this would be rare, it might occur in the case where the supported activity falls under the categories of Public Services or Special Economic Development Activities, and the grantee is in danger of exceeding the 15% cap or failing the public benefit requirements. Furthermore, a grantee may prefer to charge all its environmental assessment costs to §570.205 for administrative convenience, so as to avoid the need to shred the costs of one or more staff persons performing the assessments.

Capacity Building

A discussion of the alternatives available for the costs of capacity building may be found under the sections of this chapter entitled Miscellaneous Other Activities (see Technical Assistance) and Planning and Capacity Building.

Split-function Staff

Many grantees, especially the smaller ones, and some subrecipients have staff that perform both program administration and activity delivery functions. The regulations provide such grantees (and subrecipients) the option of prorating the costs according to the extent of time involved in each, or, in the case of staff whose *primary* function is program administration, charging all the person's time to the category of Program Administration. The implications to be considered in evaluating this option are virtually the same as those for the environmental assessment function discussed above.

MEETING A NATIONAL OBJECTIVE

Purpose

The purpose of this chapter is to describe the criteria which must be met and the records which must be maintained in order for an activity to be considered to have met a **national objective** of the CDBG program. Additional information in the form of examples and tips is also provided.

Basic Requirements

Section 101(c) of the authorizing statute sets forth the primary objective of the program as the development of viable communities by the provision of decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. The statute further states that this is to be achieved in the CDBG program by ensuring that each funded activity meets one of three named national objectives. Those three objectives are identified as: benefiting low- and moderate-income persons; preventing or eliminating slums or blight; and meeting urgent needs. The statute also states that each grantee must ensure that at least 70% of its expenditures over a particular time period must be used for activities qualifying under the first of those national objectives (that of benefiting low- and moderate-income persons.) This chapter concentrates on what is required for CDBG-funded activities to meet each one of these national objectives.

As indicated above, the program rules state that, in order to be eligible for funding, every CDBG-funded activity must qualify as meeting one of the *three national objectives* of the program. This requires that each activity, except those carried out under the basic eligibility categories of Program Administration and Planning and Capacity Building, meet specific tests for either:

- ❖ Benefiting low- and moderate-income persons,
- ❖ Preventing or eliminating slums or blight, or
- ❖ Meeting other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs.

An activity that fails to meet one or more of the applicable tests for meeting a national objective is in noncompliance with CDBG rules.

Note: The requirement that each activity must meet a national objective should not be confused with the requirement that at least 70% of a grantee's funds over a particular time period must be used for activities that benefit L/M income persons.

This requirement, which is sometimes called the "overall benefit" requirement, together with the rules to be used in calculating the total percentage of funds actually expended for purposes of complying with this requirement, are both covered in Chapter 4.

Each of the three CDBG national objectives, and the subcategories of criteria for how that objective may be met, are described below. Because of statutory, and sometimes regulatory, limitations, certain of the subcategories may not be used for a particular type of activity. These limitations are also reflected in the guidelines shown in this chapter.

The remainder of this chapter provides guidance on the national objectives and subcategories, guidance on documenting compliance and some thoughts about making the wisest choice among available alternatives, in the following order:

National Objective Categories and Subcategories

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Activities Benefiting L/M Income Persons

This is usually spoken of as the most important national objective of the CDBG program because of the related requirement that the vast majority of CDBG expenditures must be for activities that meet this objective.

Definitions

A low- and moderate- (L/M) income person is defined as a member of a family having an income equal to or less than the Section 8 Housing Assistance Payments Program low-income limits established by HUD applicable to the size of the person's family. A family is defined as all persons living in the same household who are related by blood, marriage, or adoption. An individual living in a housing unit that contains no other person(s) related to him/her is considered to be a one person family for this purpose. Adult children who continue to live at home with their parent(s) are considered to be part of the family for this purpose and their income must be counted in determining the total family income. A dependent child who is living outside of the home (e.g., students living in a dormitory or other student housing) is considered for these purposes to be part of the family upon which he/she is dependent, even though he/she is living in another housing unit.

A low- and moderate-(L/M) income household is defined as a household in which the total income of all of the household members is equal to or less than the Section 8 Housing Assistance Payments Program low-income limit established by HUD for an equivalent sized family. A household is defined as all persons occupying the same housing unit, regardless of their relationship to each other. The occupants could consist of a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

For purposes of determining whether a person or household is L/M income, the CDBG regulations require grantees to elect one or more of three definitions of what must be considered to be income. The options are the Section 8, IRS, or Census definitions. The detailed definitions can be found at §570.3.

Persons vs Households

It is important to note that, for all but one of the subcategories under this national objective, the test of meeting the objective of Benefit to L/M is to be met based on L/M **persons**. Only with the subcategory of L/M Housing must the test be met based on L/M **households**.

There are reasons for this distinction. First, the statute requires that the focus be on the occupants of a CDBG-assisted housing unit when determining whether the national objective of benefit to L/M Income persons can be met. Secondly, there are two underlying assumptions in the CDBG regulations concerning this issue: 1) that all persons who reside in a housing unit that has been provided or improved with CDBG assistance will benefit from that housing unit; and 2) that the resources of all occupants could be brought to bear with respect to paying for the rental, improvement or purchase of the unit.

For housing units receiving CDBG assistance which are occupied by persons of the same family, totaling the income of all occupants of a unit easily determines whether or not the family is a L/M Income family. However, CDBG-assisted housing units can be occupied by persons who are not related to each other in the traditional family sense. Thus, there needs to be a way to determine whether the beneficiaries of such an assisted housing unit should be considered to be L/M Income for purposes of meeting the CDBG national objective. In addressing this problem, the regulations provide first, that the income of all persons occupying a CDBG-assisted housing unit must be counted without regard to their familial relationships, and secondly, by treating them (for this purpose only) as though they were all of the same family. If the "household/family" income qualifies it as L/M Income, then the assisted housing unit would be considered to be occupied by a L/M Income household.

To illustrate this point, assume that there are two assisted housing units, one of which is occupied by three, unrelated adults and the second of which is occupied by an unmarried couple. Also assume that in each of these two units, one of the occupants is currently jobless and has no income. For non-housing CDBG-assisted activities (such as a public service fair housing program), each of the two persons in these units who are without income would qualify separately as a L/M Income person, eligible to receive the public service. (This is because the regulations treat them as though they are one-person families and, with no income, each is considered to be a L/M Income family.)

For CDBG-assisted housing activities, however, the benefits of the assistance are shared with all of the occupants, and the regulations require that the income of all household members must be considered to determine the L/M Income status of the beneficiaries. For the dwelling unit occupied by the three unrelated adults to qualify for CDBG housing assistance, the combined income of the two working adults could not exceed the limits for a three-person L/M income family. For the unit occupied by the unmarried couple to qualify for CDBG housing assistance, the income of the one working adult would have to be less than the limit for a two-person family.

It is therefore important to note that, even though an individual may qualify as L/M income for certain CDBG-assisted activities, the household of which they are a part may or may not qualify as L/M Income for assisted housing purposes, depending on the total combined income of all the household members.

Criteria Subcategories

The criteria for how an activity may be considered to benefit L/M income persons are divided into four subcategories:

- (1) Those based on *area benefit*,
- (2) Those serving a *limited clientele*,
- (3) Those involving *housing*, and
- (4) Those involving employment (*jobs*).

These subcategories are described in detail on the following pages.

Challenge to presumption

The program rules state that an activity that meets the specified criteria for a national objective will be presumed to have met that objective. However, it should be noted that, because almost all CDBG-assisted activities involve *some* benefit to L/M income persons or households, an “override” to a presumption that an activity meets the L/M Income Benefit national objective may come into play. The regulations provide that in any case where there is substantial evidence that an activity might not *principally* benefit L/M income persons, even though the activity conforms with a literal reading of L/M Income Benefit criteria, the presumption that the activity meets the national objective may be rebutted.

In such cases, HUD will consider *the full range of direct effects of the assisted activity*. This means that HUD will examine the extent to which the activity, in addition to benefiting the L/M income persons, either negatively affects such persons or provides direct benefits to a substantial number of other non-L/M income persons as well. When such a rebuttal is raised by HUD, the grantee will have to show why the activity should nevertheless be considered to meet the L/M Income Benefit national objective. *Reference: §570.208(a)*

It should be noted, however, that certain presumptions of a person's L/M income status for job creation/retention activities are specifically authorized by Section 105(c)(4) of the CDBG statute. Insofar as this is a statutory provision, it overrides any presumption that may seem "unwarranted" in a specific case. Thus, the "evidence to the contrary" language in the regulations is not applicable to these L/M income job presumptions.

Restriction on Benefit to Moderate Income Persons

The regulations require that each grantee ensure that moderate-income persons are not benefited to the exclusion of low-income persons [see §570.208(a)]. This does not mean that each CDBG-assisted activity must involve both low- and moderate-income beneficiaries. However, it does mean that the grantee's CDBG program, as a whole, must primarily benefit low-income persons, and that moderate-income persons do not benefit to the exclusion of low-income persons.

L/M Income Area Benefit

Criteria

For these purposes, an area benefit activity is an activity *which is available to benefit all the residents of an area* which is primarily residential. In order to qualify as addressing the national objective of benefit to L/M income persons on an area basis, an activity must meet the identified needs of L/M income persons residing in an area where at least 51% of the residents (or less if the “upper quartile” applies to the grantee, as described below) are L/M income persons. The benefits of this type of activity are available to all residents in the area regardless of income.

The requirement that an area benefit activity must qualify on the basis of the income levels of the persons who reside in the area served by the activity is statutory. (See section 105(c)(2) of the Housing and Community Development Act of 1974 as amended.) This means that the activity may not qualify as meeting the L/M income area benefit national objective on any other basis. For example, if the assisted activity is a park that *serves* an area having a L/M income concentration that falls below the required percentage, the activity may not qualify even if there is reason to believe that the park will actually be *used* primarily by L/M income persons.

Determining the Service Area

As is probably evident, the determination of the area served by an activity is critical to this subcategory. The inclusion or exclusion of a particular portion of the grantee’s jurisdiction can make the difference between whether the percentage of L/M income residents in the service area is high enough to qualify under the L/M Income Benefit national objective. The principal responsibility for determining the area served by an activity rests with the grantee. HUD will generally accept a grantee’s determination unless the nature of the activity or its location raises serious doubts about the area claimed by the grantee. Appendix D of this Guide provides guidance on how service areas should be determined for this purpose as well as other related information.

The area that the grantee determines will be served by an activity need not be coterminous with census tracts or other officially recognized boundaries, but it is useful if it reasonably coincides with such boundaries because of the need to consider census data in the area, as discussed later in this section. It is critical, however, that *the service area determined by the grantee be the entire area served by the activity*. This means that, even though a predominantly L/M income neighborhood may be one of several neighborhoods served by an activity (e.g., a grocery store) the percentage of L/M income persons in the *total area served by the activity* is considered for this purpose.

The rules also provide that activities of the same type that serve different areas must be considered separately on the basis of their individual service area. This means that, if the grantee has a program that provides for sidewalks to be installed throughout the entire community during a CDBG program year, it would need to break this activity down into separate activities based on the different areas that the sidewalks would serve.

Reference: §570.208(a)(1)(v)

For the most part, activities qualifying under the basic eligibility category of Public Facilities and Improvements provide a benefit to all the residents of an area and thus would be subject to meeting the criteria described here in order to meet the L/M Income Benefit national objective. A few activities that qualify as Public Services also provide an area benefit, most notably police or fire services. CDBG assistance to a for-profit entity that is a commercial/retail establishment generally also provides an area benefit (see Rehabilitation category concerning eligibility of commercial rehabilitation and Special Economic Development Activities category for eligibility of other assistance to a for-profit).

Certain activities that serve an area are designed to meet the needs of only some persons in that area. An example of this would be a facility that is used exclusively as a senior center for a particular neighborhood. Such area benefit activities serving special needs usually must qualify under the Limited Clientele subcategory of the L/M Income Benefit national objective.

Although public schools may not be used by all the residents of the area they serve, in the CDBG program they nevertheless are considered to benefit all the residents not only because any household with children can avail themselves of the services of the school but also because of the contribution schools make to determining the value of the residential property in that area.

Examples

Typical area benefit activities include:

- ◆ Street improvements,
- ◆ Water and sewer lines,
- ◆ Neighborhood facilities, and
- ◆ Facade improvements in neighborhood commercial districts.

Special Situations

The statute provides that certain kinds of area benefit activities may meet the L/M Income Benefit national objective when the general requirements cannot be met. These special situations are discussed below.

911 Systems

An activity to develop, establish, and operate for up to two years after the establishment of a uniform emergency telephone number system serving an area having less than the percentage of low- and moderate-income residents otherwise required under this subcategory may qualify as benefiting L/M income persons, provided the grantee obtains prior HUD approval. The details concerning what the grantee must show and what HUD must determine for this purpose can be found at §570.208(a)(1)(iii).

Special Assessments

When the **only** use of CDBG funds to assist in the financing of a public improvement is to pay special assessments (as defined in Appendix C of this Guide) levied against residential properties that are owned and occupied by L/M income persons, such use of the funds will qualify under this national objective subcategory even if the public improvement provides a benefit to all the residents of an area. This is a statutorily authorized means of meeting the L/M income area benefit requirement. *Reference: §570.208(a)(1)(iv)*

Grantee Options for Job Creation/Retention:

There are two special situations which provide the grantee with the option to qualify activities that meet the job creation or retention national objective criteria under the area benefit criteria when program rules would otherwise require the activity to meet the criteria under the job creation or retention subcategory. These situations are:

- ❖ In the case where the grantee has a HUD-approved Neighborhood Revitalization Strategy (NRS) pursuant to the authority of § 91.215(e)(2) of the regulations, activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the *area benefit* subcategory criteria in lieu of the *jobs* subcategory criteria (the area considered for this purpose is the NRS); and *Reference: §208 (d) (5)(i)*
- ❖ Where CDBG-assisted activities are carried out by a Community Development Financial Institution (CDFI) whose charter limits its investment area to a primarily residential area consisting of at least 51% L/M income persons, activities that the CDFI carries out for the purpose of creating or retaining jobs may, at the grantee's option, be considered to meet the *area benefit* subcategory criteria in lieu of the *job creation or retention* subcategory criteria. The area considered

for this purpose is the CDFI's investment area. *Reference:*
§570.208(d)(6)(i)

Remember, however, that even though the reporting requirements will focus on area benefit, it is still necessary to be able to show the basis upon which the above activities are creating or retaining jobs in order to be able to use the area benefit subcategory alternative.

Use of the Upper Quartile “Exception Criteria”

The statute and the regulations recognize that some entitlement communities have few, if any, areas within their jurisdiction that have 51% or more L/M income residents. Since so many activities that fall under the basic eligibility categories of the CDBG program are of a nature that they would have to qualify under the area benefit criteria for meeting the L/M income national objective, provision has been made for these communities to use a percentage other than 51% for this purpose. More specifically, the law provides that such communities may qualify an area benefit activity based on serving an area that contains a percent of L/M income persons that is not lower than that contained in the grantee's upper one-fourth of all areas within its jurisdiction in terms of the degree of concentration of L/M income population. This is sometimes referred to as the “exception criteria” or the “upper quartile.” HUD has implemented this exception through the use of an analysis of each grantee's census block groups. This analysis has been developed to determine whether a grantee qualifies to use this exception and identifies the alternative percentage the grantee must use instead of 51% for these purposes. A grantee qualifies for this exception when fewer than one-quarter of the populated block groups in its jurisdiction contain 51% or more L/M income persons. The grantee may then carry out area benefit activities serving any area having a percentage concentration of L/M income persons that is not less than that in the last census block group in its highest (or upper) quartile.

It is important to note that the upper quartile percentage provides an exception to the general rule of 51% *only* with respect to area benefit activities. Therefore, activities qualifying under the limited clientele, housing, and job creation/retention subcategory *cannot* qualify under the upper quartile “Exception Criteria.” For example, a limited clientele activity might provide services to persons in a certain area such as a center for handicapped persons in a particular neighborhood. The activity must meet the 51% L/M income benefit requirement for limited clientele and not the upper quartile percentage applicable to area benefit activities within an “exception” community.

Appendix D contains the specific steps HUD follows in computing a grantee's upper quartile.

Use of Census Data

The regulations at §570.208(a)(1)(vi) provide that, for purposes of determining whether a particular area contains a sufficient percentage of L/M income persons to qualify an activity under the area benefit criteria, available information from the latest Decennial Census shall be used to the fullest extent feasible. The field office will provide each entitlement grantee with a special, HUD-produced computer compact disk giving a listing of all census tracts and block groups in the community's jurisdiction. The data on the disk also shows the number of persons that resided in each such tract/block group at the time of the last census and the percentage of such persons who were L/M income (based on the CDBG definition) at that time. The data also show the grantee's "upper quartile" percent, as discussed in the subsection above. Using the information on the disk, the grantee and HUD can compute the percentage of L/M income persons residing in any combination of tracts/block groups within the grantee's jurisdiction, since the disk contains both the total number of persons in each tract/block group that is to be combined, as well as the number of such persons who are L/M income in each such tract/block group. Thus, it aids the grantee in determining whether a particular area benefit activity may be assisted with CDBG funds under the national objective of benefit to L/M income persons.

Similarly, for grantees that seek HUD approval of Neighborhood Revitalization Strategies (see Appendix E), this disk can provide information to determine whether a particular area can meet the threshold L/M income percentage needed to qualify an area for designation.

Use of Surveys

If a grantee has reason to believe that the available census data do not reflect current relative income levels in an area, or where the area does not coincide sufficiently well with census boundaries, HUD will accept information obtained by the grantee from use of a special survey of the residents of the area. The grantee must obtain HUD's approval of the survey instrument and other methodological aspects of the survey for this purpose. HUD will approve the survey where it determines that it meets standards of statistical reliability that are comparable to that of the Decennial Census data for areas of similar size.

It is important to note that, for communities that qualify for the upper quartile exception, there are restrictions for using surveys. Generally, a survey is used to recompute the percentage of L/M income persons residing in a service area that consists of an entire census block group. The survey results may be used to show that the entire area served by the activity *exceeds 51%* and thus qualify the activity under the L/M income area benefit criteria. But once the percent of L/M income persons for an entire block group has been redetermined, the new data may not be used to qualify an activity under the

upper quartile exception percentage. This is because the upper quartile was computed based on data taken from the same source and based on the same point in time. When data from another source and based on another point in time is to be used, it cannot make use of that prior upper quartile calculation. This is because if the surveyed block group shows a different percent of L/M income than that found by the Census Bureau, other block groups in the community would also likely have changed as well, which would produce a new upper quartile percentage. A new upper quartile computation would need to be made using surveys for all block groups reflecting income information based on the same point in time. Note, however, that this does not prevent a community from using surveys to determine the L/M income percentage in a *portion* of a block group and still use that new information under the upper quartile exception.

It should also be noted that a grantee cannot use a survey of the income of the *users* of a particular facility or improvement to qualify it under the L/M Income Benefit national objective if the facility or improvement provides a benefit *that is available to all the residents of an area*. Thus, for example improvements to a park that serves a non-L/M income area may not qualify for CDBG assistance even if a survey of users over a period of time indicates that the majority of users are L/M income persons. (This limitation derives from the statutory provision at section 105(c) concerning activities that serve an area generally.) Notwithstanding this prohibition, a grantee may want to survey the users of an existing facility or improvement to determine *where the users live*, for purposes of helping the grantee determine the area served by the facility/improvement.

Tips

An activity with a service area that is *not* primarily residential in makeup may not qualify under this category. For example, street construction in a central business district that contains financial institutions and investment firms that serve a national and international clientele may not qualify as an area benefit activity, even if there are some persons residing in the district and the majority of such residents are L/M income persons. However, street improvements in a central business district composed of department stores and businesses that serve local customers such that the service area boundaries are drawn around a primarily residential area with the requisite number of L/M income residents *would* qualify under this category.

Records to be Maintained

The records that the grantee must keep to demonstrate compliance under this subcategory include:

- ❖ Boundaries of the service area and the basis for determining those boundaries, and
- ❖ The percentage of L/M income persons in the service area and the data used for determining that percentage.

If the activity is one of the special situations described above, the records must identify the unique aspects of the activity that make it qualify under this respective subcategory. *Reference: §570.506(b)(2)*

L/M Income Limited Clientele

Criteria

A *L/M income limited clientele activity* is an activity which provides benefits to a specific group of persons rather than everyone in an area generally. It may benefit particular persons without regard to the area in which they reside, or it may be an activity which provides benefit on an area basis but only to a specific group of persons who reside in the area. In either case, at least 51% of the beneficiaries of the activity must be L/M income persons. It should be noted, however, that because of certain statutory limitations, the regulations preclude the following kinds of activities from qualifying under this subcategory:

- ❖ Activities involving the acquisition, construction, or rehabilitation of property for housing, including homeownership assistance (these must qualify under the Housing subcategory, because of section 105(c)(3) of the authorizing statute); or
- ❖ Activities where the benefit to L/M income persons is the creation or retention of jobs (these must qualify under the Jobs subcategory with certain exceptions as noted under the previous area benefit section, because of the different presumptions provided under sections 105(c)(1)(C) and (4) of the authorizing statute).

To qualify under this subcategory, a limited clientele activity must meet one of the following tests:

- ❖ Exclusively benefit a clientele who are generally *presumed by HUD to be principally L/M income persons*. The following groups are currently presumed by HUD to be made up principally of L/M income persons:
 - ♦ abused children,
 - ♦ elderly persons,
 - ♦ battered spouses,
 - ♦ homeless persons,
 - ♦ adults meeting Bureau of Census' definition of severely disabled persons*,
 - ♦ illiterate adults,
 - ♦ persons living with AIDS, and
 - ♦ migrant farm workers.

Reference: §570.208(a)(2)(i)(A)

- See discussion about the change from the term "handicapped" under the *Miscellaneous Activities* section in Chapter 2, page 2-84.

(Note: this presumption may be challenged in a particular situation, however, if there is substantial evidence that the persons in the actual group that the

activity is to serve are *most likely not* principally L/M income persons.)

OR

- ❖ Require *information on family size and income* so that it is evident that *at least 51%* of the clientele are persons whose family income does not exceed the L/M income limit. (This includes the case where the activity is restricted *exclusively to L/M income persons*). *Reference: §570.208(a)(2)(i)(B) and (C)*

OR

- ❖ Be *of such nature and in such location* that it may reasonably be concluded that the activity's clientele will primarily be L/M income persons (e.g., a day care center that is designed to serve residents of a public housing complex). *Reference: §570.208(a)(2)(i)(D)*

OR

- ❖ Be an activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," **provided** it is restricted, to the extent practicable, to the removal of such barriers by assisting:
 - ♦ the reconstruction of a public facility or improvement, or portion thereof, that does not qualify under the L/M income area benefit criteria;
 - ♦ the rehabilitation of a privately-owned nonresidential building or improvement that does not qualify under the L/M income area benefit criteria or the L/M income jobs criteria; or
 - ♦ the rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under the L/M income housing criteria.

Reference: §570.208(a)(2)(ii)

OR

- ❖ Be a microenterprise assistance activity carried out in accordance with the provisions of §570.201(o) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during each program year who are low- and moderate-income persons. (Note that, for these purposes, once a person is determined to be L/M income, he/she may be presumed to continue to qualify as such for up to a three-year period. This would enable the provision of general support services to such a person during that three-year period, without having to check to determine whether the person's income has risen.) *Reference: §570.208(a)(2)(iii)*

OR

- ❖ Be an activity designed to provide job training and placement and/or other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, in which the percentage of low- and moderate-income persons assisted is less than 51 percent which qualifies under the limited clientele national objective in the following **limited circumstance**:
 - ♦ in such cases where such training or provision of supportive services assists business(es), *and the only use of CDBG assistance* received by the business is to provide the job training and/or supportive services; **and** *the proportion of the total cost of the services borne by CDBG funds is no greater than the proportion of the total number of persons benefiting from the services who are L/M income.*

Reference: §570.208(a)(2)(iv)

It should be noted that the so-called “presumed” categories were modified in the regulations in 1995. A new group has been added: “persons living with AIDS.” The former category of “handicapped persons” has been replaced with “severely disabled adults.” This latter change was made for two reasons. First, the word “persons” was replaced with “adults” to make it clear that an activity designed to treat handicapped children would not qualify for the presumption, because HUD has been unable to find evidence that the majority of handicapped (or even severely disabled) children are members of a L/M income family. Moreover, the term “handicapped” has been replaced with “severely disabled” (which now will use the census definition of that term). This change was made because the term “handicapped” has been used in so many different ways for different Federal programs and has taken on a much broader meaning than had been envisioned when it was originally introduced as a “presumed” L/M income group for CDBG purposes. A review of census data supports the

presumption that adults (but not children, as mentioned above) having severe disability are predominantly L/M income persons.

The census definition of “severely disabled” follows:

- ❖ Persons are classified as having a severe disability if they: (a) used a wheel-chair or had used another special aid for six months or longer; (b) are unable to perform one or more “functional activities” or need assistance with an “ADL or IADL”; (c) are prevented from working at a job or doing housework; or (d) have a selected condition including autism, cerebral palsy, Alzheimer’s disease, senility or dementia, or mental retardation. Also, persons who are under 65 years of age and who are covered by Medicare or who receive SSI are considered to have a severe disability.

Note: For purposes of this definition, the term “functional activities” includes seeing, hearing, having one’s speech understood, lifting and carrying, walking up a flight of stairs, and walking. An ADL is an “activity of daily living” which includes getting around inside the home, getting in or out of bed or a chair, bathing, dressing, eating, and toileting. An IADL is an “instrumental activity of daily living” and includes going outside the home, keeping track of money or bills, preparing meals, doing light housework, and using the telephone.

Example

Activities that would be expected to qualify under the L/M income Limited Clientele subcategory include:

- Construction of a senior center,
- Public services for the homeless,
- Assistance to L/M income persons developing a microenterprise,
- Meals on wheels for the elderly, and
- Construction of job training facilities for severely disabled adults.

Records to be Maintained

For each activity, *one* of the following five types of documentation must be kept:

- (1) Documentation showing that the activity is designed to be used exclusively by a segment of the population presumed by HUD to be L/M income persons (e.g., abused children); **or**
- (2) Documentation describing how the nature and the location of the activity establishes that it will be used predominantly by L/M income persons; **or**
- (3) Data showing the size and annual income of the family of each person receiving the benefit; **or**
- (4) Data showing that barriers to mobility or accessibility have been removed and how the barrier removal was restricted to the extent feasible to one of the particular cases authorized under this subcategory; **or**
- (5) Documentation showing that the activity qualifies under the special conditions regarding job services where less than 51% of the persons benefiting are L/M income persons. *Reference: §570.506(b)(3)*

Tips

Activities which serve an area generally cannot qualify under the limited clientele criterion. For example, while a clinic serving only persons with AIDS living in a particular area would clearly qualify as a limited clientele activity, a clinic providing CDBG-subsidized health services which are available to *all* persons in a neighborhood would not. It must instead meet the criteria for an area benefit activity. However, if the use of a clinic providing general health care were to be administered in a way such that the services are not available to everyone in the neighborhood, but only to L/M income persons, the activity would qualify under limited clientele. (This is, of course, because the benefits would not be available to all the residents of the area.)

L/M Income Housing

Criteria

Section 105(c)(3) of the authorizing statute requires that an activity which assists in the acquisition, construction, or improvement of permanent, residential structures may qualify as benefiting L/M income persons only to the extent that the housing is occupied by L/M income persons. (This includes activities directed towards homeownership assistance.) Thus, this subcategory provides that for such activities to qualify under the L/M Income Benefit national objective, it must result in housing that will be **occupied by** L/M income 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 L/M income household, it must be occupied by the household at **affordable rents**. The grantee is responsible for establishing the criteria it will use to determine rent affordability for this purpose and must make these criteria public. *Reference: §570.208(a)(3)*

Note that L/M Income Benefit status for this purpose is based on *households* and not *persons*. This distinction is very important because there can be situations where the persons residing in an assisted housing unit are not all members of the same family. For example, consider the case where two working persons are sharing a housing unit but are not related by blood, marriage, or adoption, and their individual incomes qualify them both as L/M income persons. It is possible, however, that their combined income might exceed the applicable Section 8 income limit for a two-person family and thus their household income would not qualify them to be a L/M income household.

Occupancy Rule

Occupancy of the assisted housing by L/M income households under this subcategory is determined using the following general rules:

- ❖ *All assisted single unit structures must be occupied by L/M income households,*
- ❖ *An assisted two-unit structure (duplex) must have at least one unit occupied by a L/M income household, and*
- ❖ *An assisted structure containing more than two units must have at least 51% of the units occupied by L/M income households.*

Exception

The new construction of *non-elderly, multi-family rental* structures need only have at least **20% of the units** occupied by L/M income **households**. However, where L/M income occupancy of such housing falls between 20 and 50%, the CDBG portion of total development costs may not be greater than the portion of units occupied by L/M income households. (For this purpose, total development costs include the cost of all work from design and engineering through completion of the physical improvements and, if integral to the project, the cost of acquisition.) For example, if such a structure were to cost \$1 million and the occupancy by L/M income households were to be only 35% of the units, the grantee could not provide more than \$350,000 of CDBG funds to assist the structure. *Reference: §570.208(a)(3)(i)*

“Presumed” single structures

In a few cases, CDBG assistance to two or more structures may be considered to meet the occupancy-by-structure test as though all of the assisted structures were in a single structure. These cases are:

- ❖ Buildings used for rental housing which are under common ownership and management and are located on the same or contiguous properties
Reference: §570.208(a)(3); or
- ❖ All housing units for which CDBG assistance is obligated during a program year pursuant to a Neighborhood Revitalization Strategy approved by HUD under the authority of §91.215(e)(2) may be considered to be within a single structure *Reference: §570.208 (d)(5)(ii); or*
- ❖ where CDBG-assisted activities are carried out by a Community Development Financial Institution (CDFI) whose charter limits its investments to a primarily residential area that has at least 51% L/M income residents, all housing units for which CDBG assistance is obligated by the CDFI during the program year may be considered to be within a single structure *Reference: §570.208 (d)(6)(ii).*

Condominiums

Where rehabilitation of one or more units in a multi-unit building that are owned on a condominium basis is limited to the particular unit(s) and does not involve rehabilitation of portions of the property that are held in common ownership, the unit(s) are considered to be separate structure(s).

Architectural barriers

When removal of existing barriers to accessibility or mobility is undertaken in one or more units within a multi-unit structure, it is considered to be rehabilitation of the unit(s) and must qualify under the L/M Income Benefit national objective based on the housing criteria and not limited clientele. Removal of such barriers to the common areas of such structures would also qualify under housing criteria, provided that the percent of units occupied by L/M households is sufficiently high. Where the occupancy test cannot be met under the housing subcategory, removal of barriers from common areas could qualify under the limited clientele subcategory.

Project administration for HOME

As noted in the discussion under the subsection entitled Housing Services in the section on Miscellaneous Other Activities, in the preceding chapter, CDBG funds may be used to pay (in whole or in part) for staff costs involved in providing services for the construction or rehabilitation of housing or for tenant-based rental subsidies that are assisted under the HOME program. When CDBG funds are so used, the activity qualifies under the L/M Income Housing subcategory provided that the requirements of 24 CFR 92.252 or 92.254 are met.

Example

CDBG-assisted activities that, in order to be considered as benefiting L/M income households, must qualify under the L/M Income Housing subcategory include:

- Acquisition of property to be used for permanent housing,
- Rehabilitation of permanent housing,
- Conversion of nonresidential structures into permanent housing,
- Newly constructed housing (when eligible), and
- Assistance to a household to enable it to acquire ownership of a home (homeownership assistance).

Records to be Maintained

In order to demonstrate compliance, the grantee must maintain the following records:

- ❖ A copy of the written agreement with each landlord or developer receiving CDBG assistance indicating the total number of dwelling units in each multi-unit structure assisted and the number of those units which will be occupied by L/M income households after assistance.
- ❖ Total cost of the activity, including both CDBG and non-CDBG funds.
- ❖ For each unit claimed to be occupied by a L/M income household, the size and combined income of the household.
- ❖ For rental housing only:
 - ♦ the rent charged (or to be charged) after assistance for each dwelling unit in each structure assisted; and
 - ♦ information as necessary to show the affordability of units occupied (or to be occupied) by L/M income households pursuant to criteria established and made public by the grantee.
- ❖ For each property acquired on which there are no structures, evidence of commitments ensuring that the above criteria will be met when the structures are built.
- ❖ Where applicable, records documenting that the activity qualifies under the special conditions regarding the new construction of non-elderly, multi-family housing that will have L/M income occupancy of less than 51%.
- ❖ Where applicable, information showing that the housing units assisted, although located in different structures, are authorized to be considered to be located in a single structure under one of the special situations described previously.
- ❖ For housing services undertaken under the authority of §570.201(k) (activity delivery costs for HOME-assisted projects), evidence that the project(s) or assistance meet the HOME program income targeting requirements at 24 CFR 92.252 or 92.254. *Reference: §570.506(b)(4)*

Tips

For any type of housing activity, compliance with the L/M Income Benefit national objective is based on the *initial occupancy* of the housing *following completion* of the CDBG-assisted work. Notwithstanding this, grantees are urged to establish their own requirements for replacing such households with other L/M income households whenever the assisted unit becomes vacant within a period of time following completion that is commensurate with the amount of CDBG financial assistance that was provided to the housing unit.

For last resort housing provided pursuant to *24 CFR Part 42, Subpart I*, compliance with a national objective is based on the activity that caused the displacement, rather than the income of the occupants.

Note that the eligibility category of homeownership assistance at §570.201(n) contains within it the requirement that *only* L/M income households may be assisted. The effect of this *eligibility* constraint serves to prohibit the use of any other L/M *national objective* option that is less restrictive than might have otherwise been applied.

L/M Income Jobs

Criteria

Most (but not all) job creation or retention activities emanate from special economic development activities (§570.203). Section 105(c)(1) of the authorizing statute provides that these “special economic development” activities may meet the L/M Income Benefit national objective *only* in the following three ways:

- (1) Be located in a predominantly L/M income neighborhood and serve the L/M income residents (e.g., a grocery store serving a L/M income neighborhood qualifies as area benefit); **or**
- (2) Involve facilities designed for use predominantly by L/M income persons (e.g., a for-profit hospital that is designed to serve patients on Medicaid or welfare qualifies as limited clientele); **or**
- (3) Involve the employment of persons, the majority of whom are L/M income persons (e.g., a retail clothing store creates or retains jobs principally for L/M income persons).

This section of the Guide provides the criteria for the so-called “L/M Income Jobs” standard, which implements the third way authorized in the above-referenced statutory provision. *Reference: §570.208(a)(4)*

A L/M income jobs activity is one which creates or retains permanent jobs, at least 51% of which, on a full time equivalent (FTE) basis, are either held by L/M income persons or considered to be available to L/M income persons.

General rules

Jobs that are not held (filled) by L/M income persons may be claimed to be “available to” L/M income persons *only* when *both* of the following are met:

- ❖ Neither special skills that can only be acquired with substantial (i.e., one year or more) training or work experience nor education beyond high school is a prerequisite to fill such jobs (or the business nevertheless agrees to hire unqualified persons and train them); and
- ❖ The grantee and/or the assisted business takes actions to ensure that L/M income persons receive “first consideration” for filling such jobs.

Principles involved in providing “*first consideration*”:

- ❖ The business must use a hiring practice that under usual circumstances would result in over 51% of L/M income persons interviewed for applicable jobs being hired,
- ❖ The business must seriously consider a sufficient number of L/M income job applicants to give reasonable opportunity to fill the position with such a person, and
- ❖ The distance from residence and availability of transportation to the job site must be reasonable before a particular L/M income person may be considered a serious applicant for the job.

Special rules for retained jobs

In order to consider jobs *retained* as a result of CDBG assistance, there must be clear and objective evidence that permanent jobs will be lost without CDBG assistance. For these purposes, “clear and objective” evidence that jobs will be lost would include:

- ❖ Evidence that the business has issued a notice to affected employees or made a public announcement to that effect, or
- ❖ Analysis of relevant financial records which clearly and convincingly shows that the business is likely to have to cut back employment in the near future without the planned intervention.

To meet the L/M income jobs standard, 51% or more of the retained jobs must be either:

- ❖ Known to be held by L/M income persons at the time CDBG assistance is provided, and/or
- ❖ For jobs not known to be held by L/M income persons, reasonably expected to “turn over” to L/M income persons within two years. (This would involve the grantee or business taking actions to ensure that such a job, upon turnover, will be either taken by or made available to a L/M income person in a manner similar to that pertaining to a newly created job, as discussed above.) *Reference: §570.208(a)(4)*

Presumed L/M income status

Section 105(c)(4) of the CDBG authorizing legislation provides that, for purposes of determining whether a job is held by or made available to a L/M income person, the person may be presumed to be L/M income if either:

- ❖ The person resides within a census tract (or Block Numbering Area

[BNA]) that either:

- ♦ has at least 70% of its residents who are L/M income persons, **or**
- ♦ meets the criteria related to “enterprise zones,” **or**
- ❖ Both the assisted business and the created or retained job are located in a census tract or BNA that meets the criteria related to “enterprise zones.”

In order to qualify for one of the presumptions referred to above concerning “enterprise zone” criteria, the census tract or BNA must either:

- ❖ Be part of a Federally-designated Empowerment Zone or Enterprise Community; **or**
- ❖ Meet *all* of the following criteria:
 - ♦ have a poverty rate of at least 20% as determined by the most recently available decennial census information;
 - ♦ not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract/BNA has a poverty rate of at least 30% as determined by the most recently available decennial census information; and
 - ♦ evidence pervasive poverty and general distress by meeting at least *one* of the following standards:
 - all block groups in the census tract have poverty rates of at least 20%;
 - the specific activity being undertaken is located in a block group that has a poverty rate of at least 20%; or
 - upon the written request of the recipient, HUD determines that the census tract/BNA exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

Reference: §208(a)(4)(iv) and (v)

Policies

In counting the jobs to be used in the calculation for determining the percentage that benefit L/M income persons, the following policies apply:

- ❖ Part-time jobs must be converted to full-time equivalents (FTE) (e.g., a job that will require only working half time would count as only one-half a job);
- ❖ Only permanent jobs count; temporary jobs may not be included;
- ❖ Seasonal jobs are considered to be permanent for this purpose only if the season is long enough for the job to be considered as the employee's principal occupation;
- ❖ All permanent jobs created or retained by the activity must be counted even if the activity has multiple sources of funds; and
- ❖ Jobs indirectly created or retained by an assisted activity (i.e., "spin off" jobs) may not be counted.

Provisions for aggregating jobs

As a general rule, jobs from each business receiving CDBG assistance must be considered separately for purposes of demonstrating compliance with the requirement that at least 51% of the resultant created or retained jobs benefit L/M income persons. However, there are certain circumstances under which the grantee may aggregate the jobs created or retained by two or more assisted businesses for this purpose. The following describes those circumstances:

- ❖ Where CDBG funds are used to acquire, develop, or improve real property (e.g., a business incubator, an industrial park, or shopping mall), jobs may be aggregated for all of the businesses which locate on the property, *provided such businesses are not otherwise assisted with CDBG funds. Reference: §570.208(a)(4)(vi)(A)*
- ❖ Where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses and where *no CDBG funds are used to make or guarantee the loans*, jobs created by all of the businesses receiving loans during any one program year may be aggregated. *Reference: §570.208(a)(4)(vi)(B)*
- ❖ Where CDBG funds are used *solely to provide technical assistance* to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving such technical assistance during each program year. *Reference: §570.208(a)(4)(vi)(C)*

- ❖ Where CDBG funds are used for activities meeting important national interests as delineated in the criteria under the public benefit standard at §570.209(b)(2)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except that the activities cannot be aggregated under more than one category. *Reference: §570.208(a)(4)(vi)(D) (Also see Appendix B for further information on the public benefit standards and the activities mentioned here in particular.)*
- ❖ Where CDBG funds are used by a Community Development Financial Institution (CDFI) to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year. *Reference: §570.208(a)(4)(vi)(E)*
- ❖ Where CDBG funds are used for public facilities or improvements (infrastructure) which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement, using the following ground rules:
 - ♦ where such an improvement is undertaken principally for the benefit of one or more particular businesses, **and** the cost (in CDBG funds) for the facility/improvement amounts to *less than \$10,000 per permanent full-time equivalent (FTE) job* to be created or retained by those businesses, the requirement may be met by aggregating the jobs created or retained by **only** those businesses for which the facility/improvement is principally undertaken, regardless of whether other businesses might also benefit from the improvement.
 - ♦ where the CDBG cost per FTE job expected to be created or retained (as determined under the paragraph above) is *\$10,000 or more*, the requirement may still be met by aggregating the resultant jobs created or retained but *jobs from **all** businesses in the service area of the infrastructure must be included.*

More specifically, in such a case, the aggregation must also include all businesses which, as a result of the public improvement, locate or expand in the service area of the improvement *between the date the grantee identifies the activity in its Action Plan under 24 CFR Part 91 and the date one year after the physical completion of the facility/improvement. In addition, the assisted activity must comply with the public benefit standards at § 570.209(b)(2). Reference: §570.208(a)(4)(vi)(F)*

Example

Activities that could be expected to create or retain jobs include:

- ❖ Construction by the grantee of a business incubator which is designed to offer both space and assistance to new, small businesses to help them survive and perhaps even expand;
- ❖ Loans to help finance the expansion of a plant or factory;
- ❖ Financial assistance to a business which has publicly announced its intention to close; and to help it update its machinery and equipment instead; and
- ❖ Improvement of public infrastructure as needed by a company to comply with environmental laws to avoid closure.

Records to be Maintained

Maintaining records to demonstrate compliance with this subcategory can be quite challenging. Not only do businesses often dislike having to provide special reports or keep special records, but individuals who hold a job to be retained or who are taking or being considered for a newly created or a “turnover” retained job may resist providing information concerning their family income. The addition of the presumptions described earlier in this section were made in an effort to respond to this problem. Certain other requirements have also been modified over the past few years in an attempt to make this task less onerous.

The following outlines the records that must be kept with respect to the various aspects of this subcategory.

General

When assistance is provided to a business for the purpose of creating or retaining jobs, the grantee must have on file a written agreement with the business in which that business agrees to keep or create a specific number of jobs and identifies each such job by type and whether the job will be full- or part-time. The agreement must also specify the actions the business and the

grantee will take to ensure that at least 51% of the jobs created or retained will benefit L/M income persons pursuant to the program rules.

The program records also must document which jobs were actually created and retained, whether each such job was held by, taken by, or made available to a L/M income person, and the full-time equivalency status of each job.

Job Creation

Held by:

With respect to jobs which will be held by L/M income persons, the records must show:

- ❖ A listing by job title of the specific jobs to be created,
- ❖ A listing by job title of the jobs filled,
- ❖ The name and income status of the person who filled each position, and
- ❖ The full-time equivalency status of the jobs.

Available to:

Where the job was not taken by a L/M income person, but the grantee nevertheless wants credit based on the job being made available to L/M income persons, the records must show:

- ❖ The title and description of the jobs made available, and the full-time equivalency status of the job at that time;
- ❖ The prerequisites for the job; special skills or education required for the job, if any; and the business commitment to provide needed training for such jobs (and the training that the business provided to the L/M income person hired, if applicable); and
- ❖ How first consideration was given to L/M income persons for the job, such as:
 - ♦ the name(s) of the person(s) interviewed for the job and the date of the interview(s), and
 - ♦ the income status of the person(s) interviewed.

Reference: §570.506(b)(5)

Job Retention

Where L/M income benefit is based on *job retention*, the files must include the following documentation.

Otherwise lost:

- ❖ The specific evidence that the grantee relied on in concluding that, in the absence of CDBG assistance, the jobs would be lost.

Held by:

- ❖ A listing by job title of permanent jobs retained, those jobs known to be held by L/M income persons at the time CDBG assistance was provided, and the full-time equivalency status of each such job; and
- ❖ Information on the family size and annual income of each such L/M income person.

Turnover jobs:

- ❖ Identification of any of the retained jobs (other than those known to be held by L/M income persons) projected to become available to L/M income persons through turnover within two years of the time CDBG assistance was provided;
- ❖ The basis upon which the job was determined to be likely to turn over within two years following the CDBG assistance;
- ❖ The date the job actually turned over;
- ❖ The name and income status of the person who filled the vacancy;
- ❖ If the person who took the job was not L/M income but the claim is that the job was nevertheless made available to L/M income persons, records equivalent to those described above to substantiate the “available to” claim; and
- ❖ Information on the family size and annual income of each such L/M income person hired.

Reference: §570.506(b)(6)

Documenting income status

Documentation that a particular applicant/employee family income was L/M income may include any of the following:

- ❖ Evidence that the employee/applicant was a referral from a state, county, or local employment agency or other entity that has agreed to refer individuals whom they have determined to be L/M income based on HUD's criteria. These entities must maintain records showing the basis upon which they determined that the person was L/M income, which they agree to make available for grantee or Federal inspection; **or**
- ❖ A written certification signed and dated by the employee/applicant indicating his/her family size and total income as necessary to determine whether the person is a member of a L/M income family at the time the certification is made. The certification may either show the actual size and income of the family or contain a statement that the annualized family income is below the Section 8 low-income limit for the applicable family size. The form must include a statement that the person making the certification is aware that the information being provided is subject to verification by the local or Federal government; **or**
- ❖ Evidence that the employee/applicant has qualified for assistance under another program with income qualification criteria at least as restrictive as those used by this program (e.g., referrals from Public Housing or the Welfare Agency). The Joint Training Partnership Act (JTPA) Program has income standards that are acceptable for this purpose, except for referrals under the JTPA Title III program for dislocated workers; **or**
- ❖ Evidence that the person is homeless; **or**
- ❖ Evidence that the person may be *presumed to be L/M income* as discussed earlier in this section.

It is important to note that, in order to demonstrate that for any given assisted activity a sufficient percent of the jobs created or retained actually benefit L/M income persons, the recipient may use any of the above approaches either singly or in combination. For example, if the recipient knows that some of the persons benefiting from the jobs qualify for the presumption based on their residence, it may use that presumption for those persons while using one or more of the other approaches (e.g., certifications or referrals) for other persons who benefit from jobs created or retained by the same assisted activity.

Tips

The test for determining whether an employee or applicant is L/M income for the purposes of this subcategory must be made based on the person's income status *at the time the CDBG assistance is provided*. One of the most important aspects of this is that the income the person would make from the assisted job under consideration is *not included in the calculation*. Additional guidance can be found in section 570.3 of the regulations under the definition of "income."

Note that, since the determination of L/M income status is to be made based on income at the time the CDBG assistance is provided, a person who occupies a high-paying but low-skilled job may not qualify as a L/M income person in a retained job, but the same job might be filled by a L/M income person if it were to be created (instead of retained) or if it were to become available to be filled through turnover by a L/M income person.

Note that certain job creation or retention activities may also be undertaken by a CDFI or as part of a Neighborhood Revitalization Strategy and thereby could meet the L/M Income Benefit national objective based on area benefit in lieu of jobs. In such a case, the grantee will need to decide which subcategory it wants to qualify the activity under and record that decision in the program files. This is important so that both HUD and the grantee will know which criteria are being applied.

For created jobs, the benefit is intended for persons who are L/M income prior to being hired. For retained jobs, the family must be L/M income at the time the job is retained. Thus, a high-paying unskilled job might count as a created job but might not be counted for retention except for turnover purposes.

Prevention/Elimination of Slums or Blight

The second of the CDBG national objectives has its roots in the Urban Renewal program, one of the major Federal programs that were terminated and replaced with the CDBG program upon its formation in 1974. Although the vast majority of persons who resided in the areas that qualified for assistance under the Urban Renewal program were L/M income, the principal focus of that program lay in eliminating major slums and other areas of blight within the community and preventing the return of blight to the treated areas. Because of some concerns that the CDBG program might not allow the continuance of the type of projects that were funded under the Urban Renewal program, provision was made for this through the inclusion of the national objective concerning slums and blight.

In developing the criteria for qualifying under this national objective, HUD has taken considerable care to ensure that activities that qualify under the objective are either clearly *eliminating* objectively determinable signs of slums or blight in a designated *slum or blighted area* or are *strictly limited to eliminating* specific instances of blight outside such an area (“spot blight”). Criteria are also included under this national objective to allow for the completion of projects that had been approved under the Urban Renewal program prior to the program’s termination.

Accordingly, the subcategories under this national objective are:

- ✓ Addressing slums/blight on an area basis,
- ✓ Addressing slums/blight on a spot basis, and
- ✓ Addressing slums/blight in an urban renewal area.

Addressing Slums or Blight on an Area Basis

Criteria

To qualify under the national objective of slums/blight on an **area** basis, an activity must meet **all** of the following criteria:

- ❖ The area must be officially designated by the grantee and must meet a definition of a slum, blighted, deteriorated or deteriorating area under State or local law. (For these purposes, it is not necessary to follow the formal procedures under State law for designating a slum or blighted area.)
- ❖ The area must exhibit the following physical signs of blight or decay:
 - ◆ there must be a substantial number of deteriorated or deteriorating buildings throughout the area. As a “safe harbor,” HUD will consider this test to have been met if *either*
 - the proportion of buildings in the area that are in such condition is at least equal to that specified in the applicable State law for this purpose; **or**
 - in the case where the applicable State law does not specify the percentage of deteriorated or deteriorating buildings required to qualify the area, then at least one quarter of all the buildings in the area must be deteriorated or deteriorating; **or**
 - the public improvements throughout the area must be in a general state of deterioration. (For this purpose, it would be insufficient for only one type of public improvement, such as a sewer system, to be in a state of deterioration; rather, the public improvements taken as a whole must clearly exhibit signs of deterioration.)
- ❖ Documentation must be maintained by the grantee on the boundaries of the area and the conditions which qualified the area at the time of its designation.
- ❖ Activities to be assisted with CDBG funds must be limited to those that address one or more of the conditions which contributed to the deterioration of the area. (Note that this does not limit the activities to those that address the blight or decay itself, but it allows an activity to qualify if it can be shown to address a condition that is deemed to have contributed to the decline of the area.)

It should be noted here that, once an area has been properly designated as a slum or blighted area under these provisions, the grantee may continue to assist activities that are designed to address a condition that caused the decline of the area even if the area has been brought to a point where it could no longer meet the tests for physical evidence of blight needed for its initial designation. However, if the regulatory requirements have been revised to become more stringent since the area was designated, the area would need to be newly designated (e.g., requalify) under the new criteria before new activities could be assisted with CDBG funds.

Where the assisted activity is *rehabilitation of residential structures*, two additional criteria must be met:

- ❖ Each such building must be considered substandard under local definition. (At a minimum, the local definition must be at least as stringent as the housing quality standards used in the Section 8 Housing Assistance Payment Program - Existing Housing.); and
- ❖ All deficiencies making the building substandard must be corrected before less critical work on the building may be undertaken.

Note: These two criteria do not apply to nonresidential rehabilitation (rehabilitation of commercial or industrial buildings).

Reference: §570.208(b)(1)

Example

Typical activities designed to address blight on an area basis include:

- Acquisition and clearance of blighted properties,
- Installation of a park or playground,
- Commercial revitalization through facade improvements, and
- Treatment of toxic materials on property to enable it to be redeveloped for a specific use

when the assistance is designed to address one or more of the specific conditions which originally qualified the area.

Records to be Maintained

The records must include:

- ❖ The date of designation of the area and its boundaries;
- ❖ A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the criteria for designation;
- ❖ A description of the activity showing how it addressed a condition which led to the decline of the area. Each residential rehabilitation activity must also be supported by documentation that shows:
 - ◆ how the building qualifies under the grantee’s definition of “substandard”;
 - ◆ a pre-rehabilitation inspection report describing the deficiencies in each structure to be rehabilitated; and
 - ◆ details and scope of the CDBG-assisted rehabilitation, by structure (including the information needed to show that any deficiencies making the building substandard were eliminated prior to less critical work being done).

Reference: §570.506(b)(8) and (9)

Tips

Just because an activity is located in a designated slum/blight area does not mean that it must qualify only under this subcategory. If the activity would meet the criteria under the national objective of benefiting L/M income persons, the location of the activity in the blighted area would not preclude its qualifying under the L/M Income Benefit national objective. For example, rehabilitation of housing that is located in a designated slum/blight area but will be occupied by a L/M Income Benefit household upon completion of the rehabilitation work could possibly meet both the criteria under this subcategory and the criteria under the L/M Income Housing subcategory. The grantee should consider choosing the L/M Income Benefit national objective in this case, since it would help meet the grantee’s certification that at least 70% of CDBG expenditures will be for activities that meet the L/M Income Benefit national objective.

Addressing Slums or Blight on a Spot Basis

Criteria

The elimination of specific conditions of blight or deterioration on a spot basis is designed to comply with the statutory objective for CDBG funds to be used for the prevention of blight, on the premise that such action(s) serves to prevent the spread to adjacent properties or areas.

To comply with the national objective of elimination or prevention of slums or blight on a spot basis, i.e., outside a slum or blighted area, an activity must meet the following criteria:

- ❖ The activity must be designed to eliminate specific conditions of blight or physical decay not located in a designated slum or blighted area; and
- ❖ The activity must be limited to one of the following:
 - ♦ Acquisition (but see the discussion about this category under the section entitled Documenting Compliance later in this chapter);
 - ♦ Clearance;
 - ♦ Relocation;
 - ♦ Historic Preservation; or
 - ♦ Rehabilitation of buildings, but only to the extent necessary to eliminate specific conditions detrimental to public health and safety.

Reference: §570.208(b)(2)

Example

- ❖ Elimination of faulty wiring, falling plaster, or other similar conditions from a residential building which are detrimental to all potential occupants;
- ❖ Historic preservation of a blighted public facility; and
- ❖ Demolition of a vacant, deteriorated, abandoned building.

Records to be Maintained

The grantee's records must include:

- ❖ A description of the specific condition of blight or physical decay treated; and
- ❖ A description of the assisted activity showing that it falls under one of the activity types that are eligible to be carried out under this subcategory. For rehabilitation of a building carried out under this category, a description for each assisted structure showing the specific conditions that posed a threat to public health and safety, and details of the scope of CDBG-assisted rehabilitation, indicating that it was limited to addressing a specific condition that posed such a threat.

Reference: §570.506(b)(10)

Tips

To be considered to be detrimental to public health and safety, a condition must pose a threat to the *public in general*. A specific condition of a housing unit may be treated under this subcategory only if it poses a threat to any occupant. Thus if a housing unit is occupied by a disabled person and a specific condition of the housing unit poses a threat to the health and safety only for the disabled occupant, it would not qualify (i.e., it would have to pose a threat to nondisabled occupants as well).

Housing that will be occupied by a L/M income household following rehabilitation should qualify under the L/M Income Housing criteria and should not be treated under this subcategory even though it might otherwise meet the tests to do so. This is because the grantee has an obligation to use a minimum of 70% of its funds for activities qualifying under the L/M Income Benefit national objective. (See Chapter 4 for further information on this requirement.)

Public improvements cannot qualify under this standard except for rehabilitation of public buildings (other than buildings for the general conduct of government) and historic preservation of public property that is blighted.

As a general rule, national objective compliance for the acquisition of real property must be based on the use of the property after the acquisition takes place. The initial determination is based on the *planned* use of the property, but the final determination is to be based on the *actual* use. However, when property is acquired for the purpose of clearance to remove specific conditions of blight or physical decay, the clearance is considered to be the actual use of the property, but any subsequent use made of the property following clearance must be considered to be a "change of use" under §570.505. (See §570.208(d)(1)).

Addressing Slums or Blight in an Urban Renewal Area

Criteria

To qualify under the national objective of addressing slums/blight on the basis of urban renewal completion, an activity must:

- ✓ Be located within an Urban Renewal project area or Neighborhood Development Plan (NDP) action area; i.e., an area in which funded activities were authorized under an Urban Renewal Loan and Grant Agreement or an annual NDP Funding Agreement, pursuant to Title I of the Housing Act of 1949; and
- ✓ Be necessary to complete the Urban Renewal plan, as then in effect. (This includes the *initial* land redevelopment called for by the plan.)

Reference: §570.208(b)(3)

Background

This category is intended to permit completion of the redevelopment of areas in which activities were begun with funds received under the Federal Urban Renewal and NDP programs which were replaced by the CDBG program and for which areas the Urban Renewal plan remains in effect. CDBG funds may be used for any activity that falls within one or more of the categories of basic eligibility and is undertaken for the purpose of completing the approved plan for the Urban Renewal area.

Note: Note that the plan for redevelopment of such an area may have been amended since it was first approved. For purpose of this application, the Urban Renewal Plan is the latest plan that has been approved through officially authorized procedures. Once a property has been developed or redeveloped in accordance with the plan, any future redevelopment of the same property is not considered as necessary to complete the plan and, therefore, would not meet the criteria described above.

Records to be Maintained

The grantee records must contain the following:

- ❖ A copy of the Urban Renewal Plan, including maps and supporting documentation, as in effect at the time of close-out of Federal financial assistance under the Housing Act of 1949, or financial settlement under Section 112 of the HCD Act; and
- ❖ A description of the assisted activity showing how it was needed to complete the plan for the area.

Reference: §570.506(b)(11)

Urgent Needs

Criteria

To comply with the national objective of meeting community development needs having a particular urgency, an activity must be designed to alleviate existing conditions which the grantee certifies:

- ✓ Pose a serious and immediate threat to the health or welfare of the community,
- ✓ Are of recent origin or recently became urgent,
- ✓ The grantee is unable to finance the activity on its own, and
- ✓ Other resources of funding are not available to carry out the activity.

A condition will generally be considered to be of recent origin if it is developed or became critical within 18 months preceding the grantee's certification. *Reference: §570.208(c)*

Example

A major catastrophe such as a flood or earthquake that threatens the community's residents with the spread of serious disease. The community's other resources may well be depleted and other Federal programs may not be sufficient to cover all the costs.

Records to be Maintained

The records should include:

- ❖ A description of the condition that was addressed, showing the nature and degree of seriousness of the threat it posed;
- ❖ Evidence that the grantee certified that the CDBG activity was designed to address the urgent need;
- ❖ Information on the timing of the development of the serious condition; and
- ❖ Evidence confirming that other financial resources to alleviate the need were not available.

Reference: §570.506(b)(12)

Tips

If a participating unit of general local government within an urban county uses CDBG funds for an urgent need, the *county* must be able to document that it was unable to finance the activity out of its own resources, in addition to having evidence that the participating local government was unable to finance the activity.

Documenting Compliance

It is useful to consider the record keeping requirements that go with a particular national objective category or subcategory before deciding which one to use for the activity. Some discussion of what is involved in documenting compliance with those criteria for the various categories and subcategories is included in those respective sections of this chapter. Further guidance on this matter is provided in this section.

Choosing Among the Three National Objectives

A given activity may be able to meet the criteria for more than one national objective. In most such cases, it would be wise to use the L/M Income Benefit national objective because of the requirement that at least 70% of the funds must be used under that objective. Even where it seems clear that the 70% requirement will be met, based on the activities currently planned to be assisted by the grantee, it may still be useful to choose the L/M Income Benefit national objective over the other two national objectives. This is because the grantee cannot always accurately plan its expenditures by activity, nor can it anticipate the fact that an opportunity may arise to assist an activity that cannot qualify under the L/M Income Benefit national objective but that may be of great importance. (This situation is most likely to occur when the grantee wants to consider making use of its “float” or a Section 108 Loan guarantee. See Appendix F.)

There are also cases where it would be useful to keep records for a given activity so that it can be shown to meet more than one national objective if there is a high degree of uncertainty as to whether an activity might not meet one of the national objectives. Consider the case of an activity that is to qualify on the basis of creating jobs. If the nature of the project leaves some doubt that it may be able to create one or more of the planned jobs that may be critical to meeting the test that at least 51% of the jobs benefit L/M income persons, the grantee may be reluctant to proceed. If the activity could also qualify under the Slums/Blight Area criteria, the grantee may want to consider keeping records to show that the activity meets both objectives. In this way, if the project does not proceed as planned and the L/M Income Jobs criteria cannot be met, the grantee could then switch the activity to the Slums/Blight national objective rather than have the activity in noncompliance with CDBG rules.

Some activities (especially providing assistance to commercial properties) can be carried out under either the L/M Income Jobs or L/M Income Area Benefit criteria (e.g., expansion of a grocery store serving a poor neighborhood). Where this is the case, the record-keeping for national objectives purposes usually would be easier for the grantee if it were to qualify the activity under area benefit. If the service area can be easily determined, the percent of L/M income residents can be quickly calculated for the area. If the resultant percent is high enough to qualify, there would be no further records needed to be kept for the activity to qualify under the L/M Income Benefit national objective. (Note, however, that for property under the control of a grantee or a subrecipient, records showing how the property is being used may have to be kept for an extended period of time, pursuant to the requirements of §570.503(b)(8) and 570.505). The activity might also be able to qualify based on jobs being created or retained that would principally benefit L/M income persons. But qualifying on this basis entails careful monitoring of the business to keep track of the jobs and securing income information from the employees or applicants. Before making this choice, however, one needs to consider the related requirement concerning public benefit, where that applies. It is likely that the national objective and public benefit requirements can be met using the same basis (i.e., area benefit vs. jobs), but this is not always the case. If the nature of the planned activity is such that the business could not meet the public benefit test based on the area served, but the activity could meet the public benefits job standards, it might then be the best choice to qualify both tests (public benefit and national objectives) on the basis of jobs. This is because the grantee would have to keep track of the jobs created or retained for public benefit purposes, and would only have to add the information on income status of employees or applicants to qualify under L/M Income Benefit national objective based on Jobs.

When the grantee elects to meet the Slums/Blight national objective, it is necessary to be able to show that blight exists (either for an area or with respect to the property being assisted). In either case, one way that this may be documented easily is through the use of pictures. As the saying goes, “a picture is worth a thousand words.” Since the test for qualifying under this objective involves showing that “objectively determinable signs of blight” exist, it should be evident to the eye and a picture may be able to show this most clearly. The records should still, however, also include narrative information to supplement the pictures and complete the documentation requirements.

Many grantees have expressed a concern about designating an area as a slum or blighted area for CDBG purposes. The concern is that persons residing in that area might object to such a characterization of their neighborhood. It should be noted that, while the grantee does have to make a formal designation of the area for this purpose, it need not use the term “slum or blight” in so doing. In making public statements about the area, it may simply call it a “redevelopment area.” However, in its record-keeping for

activities in the area, a reference can be made to the applicable regulation citation in lieu of repeating the words used in the regulations in order to provide sufficient clarity for program monitors regarding the CDBG-qualifying classification.

As mentioned in the section of this chapter on L/M Income Jobs, there are cases where a person may be considered to be L/M income based on the census tract or BNA in which he/she resides, without having to check further for family size and income. If the grantee typically uses a certification form for determining L/M income status, it might be wise to add the location of the person's residence if it is not already on the form. Since the presumptions are based on the census tract (or BNA), it is necessary that the grantee maintain information showing addresses that fall within the Census divisions in its jurisdiction. It should also be possible to use a computer program to determine whether a particular address falls within a tract/BNA that qualifies the person for the L/M income presumption.

Also, as mentioned earlier under the section on L/M Income Area Benefit, the proper identification of the area served by the activity is critical for purposes of complying under this subcategory. Records showing the factors considered by the grantee in making this determination are important to showing compliance for this purpose. Additional discussion concerning identifying service areas may be found in Appendix D of this Guide.

Acquisition of Real Property

Section §570.208(d)(1) provides that, where the assisted activity falls under the basic eligibility category of Acquisition of Real Property (at 570.201(a)), a preliminary determination of whether the activity meets a national objective may be based on the planned use of the property after acquisition. But a final determination must be based on the actual use. This means that the grantee's files must be able to show the actual use of the property after acquisition .

This same provision also states that, where the acquisition is for the purpose of clearance to eliminate blight, the clearance activity will be considered to be the actual use of the property for this purpose. However, any subsequent use or disposition of the cleared property is to be treated as a "change of use" under the provisions of §570.503 or §570.505, as applicable.

Making the Best Choice

Making the wisest choice among available alternatives for meeting a national objective is highly dependent on the individual grantee. While the relative burden of record-keeping requirements is an important factor to consider, it may also be important for the grantee to be able to show how it is making progress against its own community development goals and objectives. Where, for example, economic empowerment of L/M income persons is one of the grantee's highest goals, it would presumably want to be able to show progress in terms of number of jobs created and how many of those jobs are taken by L/M income persons. Thus, the grantee may want to collect such information even for an activity that could qualify on an area benefit basis (assisting a grocery store that serves a L/M income neighborhood but that also creates jobs that are taken by residents of that area).

OVERALL EXPENDITURES LEVEL— BENEFIT TO L/M INCOME PERSONS

Purpose

The purpose of this chapter is to describe the requirement that must be met with respect to the level of expenditures made for activities that meet the L/M Income Benefit national objective. Consistent with the primary objective of the Act, section 104(b)(3)(A) of the Housing and Community Development Act of 1974 as amended requires each CDBG grantee to certify that, in the aggregate, at least **70%** of CDBG funds to be expended, during a one, two, or three program year period specified by the grantee for this purpose, will be for activities meeting the L/M Income Benefit national objective. (This should not be confused with the requirement that each individual activity must meet a national objective, most of which require that at least **51%** of the beneficiaries be LM income persons.)

Since this requirement involves showing the percentage of total expenditures that are for certain kinds of activities, it is necessary to keep records to enable a computation that will yield that percentage. (Instructions on how to make this computation are provided later in this chapter.)

CDBG Funds

Note that this requirement applies to the expenditures of **CDBG funds** during the specified period. For this purpose, CDBG funds include all those funds received in the form of:

- ✓ CDBG grants received from HUD;
- ✓ CDBG program income received by the grantee and its subrecipients, if any;
- ✓ EDI (Section 108(q) of HCD Act of 1974);
- ✓ Proceeds of loans guaranteed by HUD under Section 108; and
- ✓ Urban renewal surplus grant funds authorized by HUD.

Reference: §570.3

For Entitlement grantees, this requirement applies to the expenditure of CDBG funds during the applicable program year(s) *without regard to the source year* of the funds.

Calculating Overall Expenditures Benefit

Time Period

Since the grantee is given the option of choosing a one, two, or three program year period for this purpose, the period contained in the Consolidated Plan certification(s) made by the grantee to receive the grant for the program year(s) shall govern. That is, if the grantee made a certification based on a single program year, the calculation to be made to test whether that certification was met is to cover only that program year. If the certification calls for two program years, the same certification must be made for both program years and the calculation to be made to make sure those certifications are met is to include the aggregation of expenditures during both such program years.

Note that, in cases where the certification period exceeds one year, it is useful for both HUD and the grantee to check at the end of each year prior to the end of the total period to see how things are progressing, in order to ensure that the test may be met by the end of the entire period covered by the certification.

Exclusions

In determining the percentage of CDBG funds spent for L/M Income Benefit activities, the following amounts *are to be excluded* from the calculation (*both from the numerator and the denominator*):

- ✓ Expenditures made for costs charged to the basic eligibility categories of Planning and Capacity Building (§570.205) and Program Administration (§570.206).

Rationale: Since these expenditures are made in support of the grantee's CDBG program generally, L/M income persons are assumed to benefit from the expenditures in the same proportion that they benefit from the expenditure of all other CDBG funds.

- ✓ Funds deducted from the grant by HUD or used by the grantee from its program income for the repayment of a loan guaranteed under Section 108.

Rationale: The expenditure of the *proceeds* of such loans are counted for this purpose, and to also subject funds used for the repayment of the loans to the calculation would result in double counting the expenditures made for activities supported by the loans.

The Denominator

The expenditure of CDBG funds *for all other purposes* during the applicable period is to be included in the denominator for this calculation.

The Numerator

The numerator to be used for calculating the percentage for this purpose is to consist of the following:

Housing Activities

Funds expended for activities that qualify under the L/M Income Housing subcategory are to be included in the numerator, *but may be limited*, depending on whether the assisted housing was a multi-unit structure and the proportion of the total cost of the activity that was paid for using CDBG funds.

More specifically, because section 105(c)(3) of the authorizing statute limits the extent to which an activity that involves the acquisition, new construction, or rehabilitation of property to provide housing may be considered to benefit L/M income persons, in any case where the units in an assisted multi-unit structure are not occupied in their entirety by L/M income households, there is a limit on the amount of CDBG funds that may be counted towards meeting the grantee's 70% certification. The limit is determined as follows:

- ❖ Find the percent of all the units in each assisted structure that are occupied by L/M income households (or where all the units have not yet been occupied, the percent that is expected to be so occupied);
- ❖ Multiply the total costs of the assisted activity (including those paid for with CDBG and with non-CDBG funds) by the percentage determined in the preceding step; and
- ❖ In the event that the amount of CDBG funds expended for the assisted structure exceeds the amount determined in the above step, **the excess amount must be excluded from the numerator.**

Reference: §570.200 (a)(3)

All Other Activities

Funds expended for an activity that qualifies under any other subcategory of the L/M Income Benefit national objective (i.e., Area Benefit, Limited Clientele and Jobs) during the applicable period are to be included in the numerator in their entirety.

**No Credit for
“Slum/Blight” or
“Urgent Needs”
Activities**

Note that *no* expenditures for activities that the grantee qualifies under the national objectives of Slum/Blight or Urgent Needs may be included in the numerator for this calculation even though it is recognized that such activities may provide some level of benefit to L/M income persons.

Note If an activity could meet the Slum/Blight or Urgent Needs criteria, but the grantee has elected to qualify it under the L/M Income Benefit national objective and it meets the criteria for that objective, expenditures for that activity are to be included in the numerator as described above.

**Reporting
Expenditures**

The Integrated Disbursement and Information System (IDIS) will assist in providing the information to be used for determining compliance with the national objectives and with this requirement.

Example

The grantee has made a one-year certification and during that program year has spent a total of \$1,000,000. \$150,000 of that amount was spent for activities that were subject to the 20% cap on planning and administration. No funds were used for the repayment of Section 108 loans.

Of the remaining \$850,000, \$700,000 was spent for activities that qualify under the L/M Income Benefit national objective. Included in those L/M income activities was one involving the rehabilitation of a ten-unit building, eight of which are to be occupied by L/M income households. The rehabilitation of that building cost \$200,000 all of which was financed with CDBG funds.

The calculation would run like this:

Total expenditures	\$1,000,000
Less planning/admin	(150,000)
Leaves for the denominator.....	850,000
Amount spent for non-housing L/M activities	500,000
Amount allowed for the multi unit building.....	160,000
<i>(determined by dividing 8 by 10 [or .8] and multiplying \$200,000 by .8 which results in a limit of \$160,000 that may be included)</i>	
Leaves for the numerator	660,000

The calculation then involves dividing \$660,000 by \$850,000, which results in the percentage of 77.6, a number that is sufficient to demonstrate compliance with the 70% certification.

Tips

The review of data in IDIS or on-site monitoring may result in activities being reclassified from one national objective to another, in one or more activities failing to meet any national objective, or in changes in the expenditures classified as planning and administration. All such determinations must be taken into account and, where applicable, the expenditures used in the calculation adjusted accordingly, before determining compliance with the Overall Expenditures Benefit requirement. (Of course, if the reclassified expenditures were incurred in a program year for which records are no longer available, a recalculation of the overall expenditures would not be possible for that period.)

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

ENTITLEMENT PROGRAM

FACT SHEET

Introduction

The program provides annual grants on a formula basis to entitled cities and counties to develop viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons.

In This Fact Sheet

- ✓ Grantee Eligibility
- ✓ Requirements
- ✓ Citizen Participation
- ✓ Legal Authority/Information Sources

Nature of Program

HUD awards grants to entitlement communities to carry out a wide range of community development activities directed toward revitalizing neighborhoods, economic development, and providing improved community facilities and services.

Entitlement communities develop their own programs and funding priorities. However, grantees must give maximum feasible priority to activities which benefit low- and moderate-income persons. A grantee may also carry out activities which aid in the prevention or elimination of slums or blight, or to which it certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. CDBG funds may not be used for activities which do not meet these broad national objectives.

CDBG funds may be used for activities which include, but are not limited to:

- ❖ Acquisition of real property;
- ❖ Relocation and demolition;
- ❖ Rehabilitation of residential and non-residential structures;
- ❖ Construction of public facilities and improvements, such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes;
- ❖ Public services, within certain limits;

- ❖ Activities relating to energy conservation and renewable energy resources; and

- ❖ Providing assistance to profit-motivated businesses to carry out economic development and job creation/retention activities.

Generally, the following types of activities are *ineligible*: acquisition, construction, or reconstruction of buildings for the general conduct of government; political activities; certain income payments and construction of new housing by units of general local government.

Grantee Eligibility

Central cities of Metropolitan Statistical Areas (MSAs), other metropolitan cities with populations of at least 50,000, and qualified urban counties with populations of at least 200,000 (excluding the population of entitled cities) are entitled to receive annual grants. HUD determines the amount of each entitlement grant by a statutory dual formula which uses several objective measures of community needs, including the extent of poverty, population, housing overcrowding, age of housing, and population growth lag in relationship to other metropolitan areas.

Requirements

To receive its annual CDBG entitlement grant, a grantee must develop and submit to HUD its Consolidated Plan, (which is a jurisdiction's comprehensive planning document and application for funding under the following Community Planning and Development formula grant programs: CDBG, HOME Investment Partnerships, Housing Opportunities for Persons with AIDS (HOPWA), and Emergency Shelter Grants (ESG)). In its Consolidated Plan, the jurisdiction must identify its goals for these programs, as well as for housing programs. The goals will serve as the criteria against which HUD will evaluate a jurisdiction's Plan and its performance under the Plan. Also, the Consolidated Plan must include several required certifications, including the certification that not less than 70% of the CDBG funds received, over a one, two, or three year period specified by the grantee, will be used for activities that benefit low- and moderate-income persons, and that the grantee will affirmatively further fair housing. HUD will approve a Consolidated Plan submission unless the Plan (or a portion of it) is inconsistent with the purposes of the National Affordable Housing Act or is substantially incomplete.

Following approval, the Department will make a full grant award unless the Secretary has made a determination that the grantee: (1) has failed to carry out its CDBG-assisted activities in a timely manner; (2) has failed to carry out those activities and its certifications in accordance with the requirements and the primary objectives of Title I of the Housing and Community Development Act of 1974, as amended, and with other applicable laws; or (3) lacks a continuing capacity to carry out its CDBG-assisted activities in a timely manner.

Citizen

A grantee must develop and follow a detailed plan which provides for and encourages citizen participation and which emphasizes participation by

Participation

persons of low- or moderate-income, particularly residents of predominantly low- and moderate-income neighborhoods, slum or blighted areas, and areas in which the grantee proposes to use CDBG funds. The plan must: provide citizens with reasonable and timely access to local meetings, information, and records related to the grantee's proposed and actual use of funds; provide for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and the review of program performance; provide for timely written answers to written complaints and grievances; and identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

Legal Authority

Title I of the Housing and Community Development Act of 1974, Public Law 93-383, as amended; 42 U.S.C.-5301 *et seq.*

Information Sources

If you are an interested citizen, contact your local municipal or county officials for more information. If your local government officials cannot answer your questions, or if you are a local official, contact the HUD field office* that serves your area. Note that the local government administers the program and determines which local projects receive funding.

Information about HUD field offices may be found on the World Wide Web at <http://www.hud.gov/local.html>.

* Hearing impaired users may call the Federal Information Relay Service at 1-800-877-8339.



PUBLIC BENEFIT STANDARDS

Introduction

The CDBG authorizing statute requires that activities qualifying under particular categories of eligibility must meet standards of public benefit established by HUD in regulations. Specifically, it requires that an activity carried out under the category of Special Economic Development (§570.203), or one which could be carried out under that category but is instead carried out under the category of Special Activities by CBDOs (§570.204), must meet the standards of public benefit set forth in §570.209(b). By regulation, HUD has also included under this requirement, under certain circumstances, a public improvement activity that qualifies under the L/M Income Jobs subcategory of the L/M Income Benefit national objective. (The situation in which such a Jobs activity must meet public benefit standards is described in Chapter 3 under the discussion of the L/M Income Jobs criteria.)

Background

It should be noted from the outset that the public benefit requirement has, in effect, taken the place of the previously required “appropriate” determination for CDBG financial assistance to a for-profit business. While public benefit had long been required to be considered, the “appropriate” determination previously focused on financial underwriting of the assistance. Statutory changes were made that had the effect of removing this focus and replacing it with one of ensuring that the amount of public benefit to be derived from this type of activity (and some others as well) will be appropriate given the amount of CDBG assistance being provided to the activity. This statutory change required HUD to publish guidelines for performing a financial analysis of these economic development activities, but it also specifies that HUD may not find an activity ineligible for failure to meet them. HUD has published these underwriting guidelines as an appendix to the regulations in an attempt to make it clear that they are not required to be used.

Despite the fact that the HUD-published underwriting guidelines are not mandatory, a grantee is still expected to perform a due diligence assessment of any assistance it provides to a for-profit business as a means of ensuring that public funds are not wasted and that the expected economic benefit will flow from the project and help to meet a CDBG national objective.

As required by the statute, HUD has also established standards for public benefit and they are contained in the regulations at §570.209(b). Unlike the underwriting guidelines, the public benefit guidelines (or standards) are *required* to be used for the activities mentioned in the introductory paragraph to this Appendix.

It should be noted that the requirement for meeting the public benefit standards is a basic eligibility issue and should not be confused with the requirements concerning meeting a national objective. This caveat is provided in recognition of the fact that the same factors (jobs and area served) are involved in the criteria for both requirements. While the same factors come into play, they are used differently. For example, for public benefit purposes, compliance involves the *total number* of jobs created or retained without regard to how many (if any) benefit L/M income persons. In contrast, the use of jobs for meeting a national objective is determined by the *percentage* of the created or retained jobs that benefit L/M income persons, and only incidentally involves the total number of such jobs. The determination of compliance with the L/M Income Jobs national objective is based on the jobs that are *actually* created or retained and who actually benefits from those jobs. The focus for determining compliance for public benefit purposes lies in the number of jobs *expected to be* created or retained.

Similarly, for the area benefit factor, compliance with national objectives is based on the *percent* of L/M income residents served, while public benefit is determined based on the *number* of L/M income persons served.

It should also be noted that an activity that is subject to the public benefit standards does not have to use the same factor for meeting that standard as it does for meeting national objective requirements. For example, assistance to a grocery store serving a L/M income neighborhood that also retains some jobs may qualify as meeting the national objective based on the area served while the grantee may choose to qualify it under the public benefit standards based on the retained jobs.

The fact that an activity qualifies for national objective purposes under one of the Slum/Blight subcategories or even under the Urgent Need category does not affect its need to separately meet the public benefit standards.

The Standards

In developing the public benefit standards, HUD attempted to make them unambiguous, reasonable, and fitting within the context of the rest of the program. Accordingly, while there are many aspects that could be considered to constitute a public benefit resulting from these activities, only two have been adopted for the standards: jobs and the provision of goods or services.

As formulated, the public benefit standards are to be applied to the activities funded under the relevant categories both on an *individual activity* basis and on all such *activities in the aggregate*. Thus, the standards fall into those two basic categories, each of which is described below:

Individual Activity Standards

The following individual activity standards apply to any activity subject to these standards:

- ❖ For an activity that creates or retains jobs, the use of CDBG funds cannot exceed *\$50,000 per full-time equivalent job*; or
- ❖ For an activity that provides goods or services to residents of an area, the amount of CDBG funds provided for the activity cannot exceed *\$1,000 per L/M person served*.

The effect of these dollar limits is that, if an activity could both create or retain jobs AND provide goods or services to persons, it must fail *both* dollar standards to be precluded on the basis of these individual activity standards (and thus ineligible to be carried out using CDBG funds).

HUD also determined that there are certain kinds of economic development activities that by their nature *fail* to provide sufficient public benefit. They are:

- ❖ An activity in which the grantee promotes the community as a whole (as opposed to promotion of specific areas and programs);
- ❖ Assistance to a professional sports team;
- ❖ Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to be derived by users or members clearly outweighs the employment or other benefits to L/M income persons;
- ❖ Acquisition of land for which the specific proposed use has not yet been identified; and
- ❖ Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided to the business.

Therefore, any activity subject to the public benefit standards that falls into any of the above descriptions *may not be assisted with CDBG funds* regardless of any other aspect of the activity.

Aggregate Standards

Activities that are subject to the public benefit standards and pass the individual activity tests outlined above also must generally, in the aggregate, either:

- ❖ Create or retain at least *one full-time equivalent, permanent job per \$35,000* of CDBG funds used for all such activities; or
- ❖ Provide goods or services to residents of an area, such that the number of L/M income persons residing in the area served by the assisted businesses amounts to at least *one L/M income person per \$350* of CDBG funds used for all such activities.

As with the individual standards, if the activity can both create or retain jobs AND provide goods or services to residents of an area, the grantee may elect to apply either of the above aggregate standards to the activity. However, only *one* standard shall be used for each such activity. That is, if the grantee elects to use the area standard, any jobs created or retained by the activity are not to be counted for purposes of applying that aggregate standard.

Applying the Aggregate Standard

In applying the aggregate standard, grantees are to aggregate the dollars and resultant jobs or L/M income persons served (as applicable) based on the following:

- ❖ Entitlement grantees shall apply the standards to all applicable activities for which CDBG funds are *first obligated* within each single CDBG program year, without regard to the source year of the funds used for the activity; and
- ❖ Grantees under the HUD-administered Small Cities or Insular Areas CDBG programs shall apply the aggregate standards to all funds obligated for applicable activities from a given grant. Obligations made using program income, if any, are to be aggregated with the most recent open grant. For any time period in which a community has no open grant under the HUD-administered Small Cities or Insular Areas programs, the aggregate standards shall be applied to all applicable activities for which program income is obligated during the period starting with the closeout of the most recent such grant and ending with the date the next such grant is received by the grantee.

Excludable Activities

Certain activities that would otherwise be subject to the aggregate public benefit standards may be excluded from the aggregate calculations under the authority of §570.209(b)(2)(v). Such activities are those which have been determined by HUD to serve important national interests. The activities must still pass the individual activity tests. Activities that qualify for this optional exclusion from the aggregate calculations are those that:

- ❖ Provide jobs exclusively for unemployed persons or participants in one or more of the following programs:
 - ◆ JTPA,
 - ◆ JOBS, or
 - ◆ AFDC.
- ❖ Provide jobs predominantly for residents of Public and Indian Housing units;
- ❖ Provide jobs predominantly for homeless persons;
- ❖ Provide jobs predominantly for low-skilled, L/M income persons, where the business agrees to provide clear opportunities for promotion and economic advancement to such persons who are hired, such as through provision of training;
- ❖ Provide jobs predominantly for persons residing within a census tract (or BNA) that has at least 20% of its residents who are in poverty;
- ❖ Provide assistance to business(es) that operate(s) within a census tract (or BNA) that has at least 20% of its residents who are in poverty;
- ❖ Stabilize or revitalize a neighborhood that has at least 70% of its residents who are L/M income persons;
- ❖ Provide assistance to a CDFI that serves an area that is predominantly L/M income persons;
- ❖ Provide assistance to a CBDO serving a neighborhood that has at least 70% of its residents who are L/M income persons;
- ❖ Provide employment opportunities that are an integral component of a project designed to promote spatial deconcentration of L/M income and minority persons;

- ❖ With prior HUD approval, provide substantial benefit to L/M income persons through other innovative approaches;
- ❖ Provide services to the residents of an area pursuant to a Neighborhood Revitalization Strategy approved by HUD (see Appendix E); *or*
- ❖ Create or retain jobs through businesses assisted in an area pursuant to a Neighborhood Revitalization Strategy approved by HUD (see Appendix E).

Note that the above-listed activity types may be excluded *at the grantee's option*. This means, of course, that they do not have to be excluded. While a grantee might choose to exclude such activities in order to minimize the record-keeping requirements of complying with the aggregate public benefit standards, there is at least one good reason why the grantee would want to have one or more of them included. That reason is that the public benefit (jobs or goods/services per dollar) might be such that the grantee would want to include the activity in order to make the overall aggregate calculation more favorable. For example, if the grantee runs its economic development program in a way that stays very close to the aggregate standard (e.g., \$35,000 per job), it may want to include an activity that provides jobs at a much lower CDBG cost per job, even if that activity falls into one of the above-described categories and the grantee had the option of excluding it.

General Ground Rules

Both the individual and aggregate standards are to be applied based on the number of jobs to be created or retained or to the number of persons residing in the area served (as applicable), as determined at the time the funds are obligated to the activities. This is because there is always the possibility that an economic development activity might not proceed as planned, and for the purpose of this particular requirement, a grantee should generally only be held to the conditions that prevailed at the time it provided the assistance. Nevertheless, grantees are required to keep records that show how it performed against the public benefit standards based on actual jobs and L/M income persons served. Where the actual results attained by a grantee consistently fall substantially below what it expected, the grantee is expected to make adjustments in how it conducts its front end assessments for complying with the public benefit standards for future activities, and HUD may require that the grantee meet more stringent standards in the future, as appropriate.

Where the CDBG assistance for an activity is limited to job training and placement and/or other employment support services under §570.203 the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying both the individual and aggregate standards.

Tips

Although the aggregate standards may sound very difficult to keep track of, one way to minimize additional record-keeping burdens is for a grantee to operate its CDBG economic development program in a way which ensures that no assistance will be provided for an *individual* activity that exceeds the *aggregate* standard. For example, while the individual standard based on jobs created/retained is \$50,000 per job, if the grantee makes sure that no individual activity is funded that would exceed \$35,000 per job (which is the aggregate standard), the result becomes an amount of assistance that does not exceed \$35,000 per job in the aggregate. Since studies on the use of CDBG for economic development in the past have indicated that the average assistance per job created or retained is, on average, less than \$10,000 per job, it seems likely that few grantees would have difficulty operating their activities based on an individual activity limitation of \$35,000, which would ensure their compliance with the aggregate standard without any additional record-keeping.

SPECIAL ASSESSMENTS UNDER THE CDBG PROGRAM

Many communities follow the practice of levying an assessment on property owners where the property is determined to benefit from a particular public facility or improvement. Examples of such facilities/improvements include the paving of streets, the installation of sidewalks, and the construction of water and sewer lines. Because of concerns about the implications for levying such assessments to recover capital costs incurred in providing a public facility or improvement with CDBG assistance, the statute contains certain restrictions. These restrictions and other related requirements are discussed in this Appendix.

Definition

For purposes of the CDBG program, the term “*Special assessment*” means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs and gutters, through:

- ✓ A fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or
- ✓ A one-time charge made as a condition of access to the public improvement.

This term does **not** relate to:

- ✓ Taxes;
- ✓ Establishment of the value of real estate for the purpose of levying:
 - Real estate taxes,
 - Property taxes, or
 - Ad valorem taxes.
- ✓ Periodic charges based on the use of public improvements, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

Special Assessment to Recover Capital Costs

Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may only be used to recover capital costs as follows:

Restriction on levying a special assessment to recover CDBG funds

Special assessments to recover the CDBG funds may be made *only* against properties **not** owned and occupied by L/M income persons. When assessments are levied against non-L/M income property owners, the proceeds are CDBG program income.

Special assessments to recover non-CDBG funds

Special assessments to recover the non-CDBG funded cost of the public improvement may be made, provided that CDBG funds are used to *pay the special assessments on behalf of all properties owned and occupied by L/M income persons*; except that CDBG funds need not be used to pay the special assessments on behalf of properties owned and occupied by *moderate-income* persons if the grantee certifies that it does not have sufficient CDBG funds to pay the assessments on behalf of all of the L/M income owner-occupants. Funds recovered through such special assessments are not CDBG program income. *Reference: §104(b)(5) of the HCD Act*

Public improvements not initially assisted with CDBG funds

The payment of special assessments with CDBG funds constitutes a form of financing the public facility/improvement, even though it was constructed without CDBG assistance at that time. Therefore, CDBG funds may be used to pay special assessments only if:

- ❖ Installation of the public improvement was carried out in compliance with requirements applicable to activities assisted with CDBG funds including environmental, citizen participation and Davis-Bacon requirements;
- ❖ Installation of the public improvement meets a criterion for national objectives (i.e., L/M Income Area Benefit, Slum or Blighted Area, or Urgent Needs); and
- ❖ Requirements described above for recovering non-CDBG funds are met (i.e., the assessment is paid on behalf of all L/M income property owner/occupants, or, where applicable, all low-income property owner/occupants).

Note: As discussed in Chapter 3 under L/M Income Area Benefit, restricting CDBG assistance to paying the special assessments levied against residential properties owned and occupied by L/M income persons is a permissible way of meeting L/M Income Area Benefit. *Reference:* §570.208(a)(1)(iv)

Comparison of special assessments with impact fees

Some communities make a practice of charging what is commonly called an “impact fee” for certain developments. For example, if a developer wants to construct housing in a new subdivision, the community would charge a fee per housing unit in recognition that the new development will place a burden on the existing infrastructure and will likely lead, together with other similar developments, to a need to reconstruct or build new facilities or improvements. These impact fees differ from “special assessments” in that they do not purport to be recovering the cost of a particular public improvement that benefits the assessed property, which is a defining feature of assessments. Nor do the impact fees usually represent a one-time charge for attaining access to a particular public improvement, another defining feature of special assessments in the CDBG program.

Impact fees generally are not eligible to be paid with CDBG funds, partly because they are providing funds for future, undefined public improvements and there is no way of telling whether the use of those CDBG funds would be for an improvement that would meet a national objective of the program. Contact your local field office if you have questions regarding specific impact fees in your community.

**Special
Assessment
Q's and A's**

1. Is the payment of special assessments a category of basic eligibility in the CDBG program?

A. No. However, such payments are eligible because they are one way of financing a public improvement. Therefore, the public improvement itself must be eligible under §570.201(c) or §570.203(a). Special assessments are not included in the listing of eligible activities in §105(a) of the statute or in §570.201 through §570.206 of the regulations.

2. Does the certification requirement pertaining to special assessments, as described in section 104(b)(5) of the statute, apply to special assessments levied against commercial or industrial properties?

A. The certification applies to special assessments against properties owned and *occupied* by L/M income persons. HUD's position is that this refers only to residential properties.

3. Does CDBG assistance in paying special assessments convert a non-assisted public improvement activity into one assisted with CDBG funds, thereby triggering all applicable Federal requirements, such as Davis-Bacon?

A. Yes. When CDBG funds are used to recover some or all of the local funds used in financing a public improvement, they in effect are being used to pay at least part of the cost of the public improvement. This payment is frequently indirect, with the CDBG funds used to repay bonds which initially paid for the construction of the public improvement. However, use of indirect financing techniques cannot be used as a means of avoiding Federal requirements.

4. Are there any exceptions to the requirement that CDBG funds must be used to pay assessments for L/M income persons?

A. Yes. A grantee is not required to pay assessments for L/M income persons who own, but do not occupy, the assessed properties. Furthermore, a grantee is not required to pay assessments for *moderate* income owner/occupants if the grantee certifies to HUD that it lacks sufficient CDBG funds to pay assessments in behalf of all L/M income persons.

5. Must outright grants be used to pay 100% of the special assessments levied on properties owned and occupied by L/M income persons or could the grantee choose to only lend the funds to some or all of such persons to meet this requirement?

A. The payment must be in the form of a grant to the owner/occupants. This position is based on the fact that the statute does not speak in terms of partial payment or deferred payment but simply says that recovery of capital costs is impermissible unless CDBG funds are used “to pay” the assessments for the L/M income persons.

Note: This answer assumes the grantee has not made a special certification to HUD that it lacks sufficient CDBG funds to pay the assessments for moderate-income persons. If such a certification were made, the requirement for 100% grants would only be applicable to low- income persons; the grantee could lend funds to moderate-income owner/occupants.

DETERMINING SERVICE AREAS

As discussed in Chapter 3 under the L/M Income Area Benefit subcategory of the L/M income national objective, once it has been determined that an activity provides a benefit to all the residents of an area, the activity may meet the L/M Income Benefit national objective only if the area served by the activity contains a sufficiently high percentage of L/M income residents. As also noted in that section, accurately determining the area served by the activity is critical for these purposes. This Appendix provides guidance on how to determine the area served by an activity.

Some activity types do not require any judgment in determining the area served for purposes of the CDBG program. This is because the area served by such an activity has already been determined for other purposes. Perhaps most notable among these activities are police precincts, fire stations, and schools. In each such case, specific boundaries have already been determined so that the persons involved know which facility serves persons or properties located at a particular address within the community. When boundaries such as these have been determined, no further work should be needed for purposes of identifying the area served by assisting the facility or providing the service.

Moreover, in many communities the planning department or the department or agency administering a particular facility or service, for their own purposes, establishes service areas for things such as libraries, parks, playgrounds, etc. Again, the decision to assist these services or facilities with CDBG funds should not require any additional work to identify the area to be served.

Generally speaking, it is reasonable to assume that certain kinds of facilities serve only very small areas. For example, sidewalks, gutters, trees, and street lights on a residential street would usually benefit only the residents of the immediately adjacent area. The same would be true for tot-lots and small playgrounds. Therefore, the area served by such activities is usually limited to a few census block groups surrounding the area in which they are located.

When the grantee does not already have an identification of the area served for a given facility or service, it will be necessary for the grantee to determine the service area before CDBG assistance may be provided if the activity is to qualify under the L/M Income Area Benefit criteria. As previously indicated, the grantee's determination of the area served will usually be accepted by HUD, unless there are indications that the grantee-defined area is clearly too small or too large. The factors to be considered in making the determination of the area served (both by the grantee and HUD) for these purposes are:

- ✓ The nature of the activity;

- ✓ The location of the activity;
- ✓ Accessibility issues, and
- ✓ The availability of comparable activities.

Each of these factors is discussed briefly below.

Nature of Activity

In determining the boundaries of the area served by a facility, its size and how it is equipped need to be considered. For example, a park that is expected to serve an entire neighborhood cannot be so small or have so little equipment (number of swings, slides, etc.) that it would only be able to serve a handful of persons at any one time. Conversely, a park which contains three ball fields, or a ballfield with grandstands that can accommodate hundreds of spectators, could not reasonably be said to be designed to serve a single neighborhood. The same comparison would apply to the case of assisting a small, two-lane street in a residential neighborhood versus that of assisting an arterial four-lane street that may pass through the neighborhood but is clearly used primarily by persons passing through from other areas.

Location of Activity

Where an activity is located will also affect its capacity to serve particular areas, especially when the location of a comparable activity is considered. A library, for example, cannot reasonably be claimed to benefit an area that does not include the area in which it is located. When a facility is located near the boundary of a particular neighborhood, its service area would be expected to include portions of the adjacent neighborhood as well as the one in which it is located. (Note that the grantee may carry out activities that are even outside its jurisdiction if it is done in accordance with §570.309.)

Accessibility

The accessibility of the activity also needs to be considered in defining the area served. For example, if a river or an interstate highway forms a geographic barrier that separates persons residing in an area in a way that precludes them from taking advantage of a facility that is otherwise nearby, that area should not be included in determining the area served. Other limits to accessibility may apply to particular activities. For example, the amount of fees to be charged, the time or duration that an activity would be available, access to transportation and parking, and the distance to be traveled can all constitute barriers to the ability of persons to benefit. Language barriers might also constitute an accessibility issue in a particular circumstance.

Comparable Activities

The nature, location, and accessibility of comparable facilities and services must also be considered in defining a service area. In most cases, the service area for one activity should not overlap with that of a comparable activity (e.g., two community centers, two clinics, or two neighborhood housing counseling services).

“Fit” of Service Area

Because the regulations require that census data be used to the maximum extent feasible for determining the income of persons residing in service areas, the boundaries of the service area determined by the grantee for the activity need to be compared with the boundaries of census divisions (tracts, block groups, etc.). The census divisions that best fall within the service area should be used for defining the service area for purposes of reporting on the activity and for calculating the percentage of L/M income persons residing in that area. While this means that the census divisions chosen for this purpose may exclude some limited number of persons that are in the actual service area or include some who are not, the practicality of using the census data will override unless the proportion of persons so excluded or included is too great. The alternative would be to survey excluded/included persons and to adjust the data obtained from the census computer runs accordingly. Surveys can be quite costly and their use should be limited whenever possible.

Commercial Service Areas

A store will usually be considered to serve an area generally. Where the business itself has had a recent market survey to define the area it serves, it should be used for CDBG purposes. Where it does not have such a survey, an analysis of the location and accessibility of comparable stores should be undertaken to define the area served. When the CDBG assistance provided is not to a particular business but to the shopping center or commercial strip in which it is located (e.g., facade improvements), the area served would be that of the entire center or strip. Again, an analysis of comparable centers/strips should be undertaken in defining the service area. Note that it may not always be possible to determine the area served by a commercial business, such as in the case where the businesses depend on tourists. Moreover, some commercial facilities serve a very broad area (e.g., a regional shopping mall) and the area may be so large an area that it is unlikely to meet the 51% L/M income residents test.

Calculating the Upper Quartile

As discussed in Chapter 3 concerning the L/M income Area Benefit subcategory under the L/M Income Benefit national objective, the criteria for meeting the national objective for activities that serve an area generally involve the percentage of L/M income residents in the area served by the activity. Certain communities are authorized to use their “upper quartile” percentage in lieu of 51% as generally required. Moreover, other provisions of the regulations make reference to a grantee’s upper quartile percentage for other purposes. The specific steps HUD uses in computing the upper quartile for a given community follow:

1. Determine the total number of block groups in the community’s jurisdiction. Subtract all block groups with zero persons to determine the net number of block groups.
2. Arrange the remaining block groups in descending order, based on the percent of L/M income residents in the block group. Compute the last block group in the upper quartile by multiplying the net number of block groups by 25%. The percentage of L/M income persons residing in this block group is the community’s “upper quartile” percentage.
3. If the percent of L/M income persons in the last block group of the upper quartile determined in step 2, above, is 51% or higher, the area benefit exception does not apply to this grantee.
4. If the percentage of L/M income persons in the last census block group in the top quartile is less than 51%, the jurisdiction qualifies to use the area benefit exception. The percentage of

L/M income persons in this block group becomes the threshold for L/M area benefit activities in place of the 51% to be used by grantees which do not qualify for this exception.

When the units of general local government participating with an urban county change, a new computation of the upper quartile will need to be made that applies to the new configuration. If the CD ROM provided by HUD does not reflect the new configuration, contact your local HUD field office to request a recomputation, since the configuration change in the urban county will likely change the relative ranking of specific block groups by quartile, and thus change the community’s upper quartile percentage. Where urban counties and metropolitan cities have signed joint agreements, the rank ordering must include the census block groups for both units of government.

Grantees which qualify for the exception criteria may use CDBG funds for area benefit activities in any service area, whether or not located in a block group in the highest quartile, if the percentage of L/M income persons in the entire area served is equal to or exceeds the upper quartile percentage.

If block group data are not available for the entire jurisdiction, other data acceptable to the Secretary will be used in the above calculations. The field office determines what data HUD will accept for this purpose.

NEIGHBORHOOD REVITALIZATION STRATEGY AREAS

Purpose

This Appendix outlines HUD's criteria for approving a jurisdiction's neighborhood revitalization strategy as described in the Consolidated Plan regulations at §91.215(e)(2). It describes the process for submission of the strategy, amending the strategy, and measuring, reviewing, and reporting on performance against the strategy.

Background

In 1996, HUD established criteria for approving locally determined strategies for revitalizing an area that is among the community's most distressed. In order to provide some incentive for grantees to undertake such revitalization, the CDBG regulations provide certain benefits for the use of CDBG funds in such an area.

The requirements for developing such a strategy, the limitations on the areas that can qualify, and the benefits that accrue to the grantee upon HUD's approval of the strategy are key among the subjects covered in this Appendix.

Citizen Involvement

HUD recognizes the fundamental necessity of partnering in problem-solving in order to achieve much greater success in our urban revitalization efforts. Many citizens, unhappy with their residential environments, have generally had three options available to them: pack up and move to a more satisfactory environment, change the unsatisfactory aspects of their communities, or stoically accept their living conditions. The continuing decline and widespread disinvestment in so many of our cities and counties and the spill-over effects in the surrounding communities point to a need for a different approach to rebuilding communities. No revitalization efforts in severely deteriorated areas can succeed in the long run without the support of all of the community actors. Successful neighborhood revitalization strategies are those that bring together the neighborhood's and the larger community's stakeholders to forge partnerships that:

- ❖ Obtain commitments to *neighborhood* building;
- ❖ Make neighborhoods attractive for investments, thereby creating a market for profits;

- ❖ Generate neighborhood participation to ensure that the benefits of economic activity are *reinvested* in the neighborhood for long-term community development;
- ❖ Support the use of neighborhood intermediary institutions (e.g., Community Development Corporations [CDCs], Community Development Financial Institutions [CDFIs], community housing development organizations [CHDOs under the HOME program], and religious institutions) to bridge gaps between local government agencies, the business community, community groups, and residents; and
- ❖ Foster the growth of resident-based initiatives to identify and address their housing, economic, and human services needs.

The participation of all of the stakeholders, particularly the neighborhood's residents, in the development of a comprehensive neighborhood revitalization strategy enhances the chances of its successful implementation by bringing all of the affected parties into the process from the beginning, thus gaining participants' trust and garnering needed financial support. This approach also recognizes that the complexity of the causes of neighborhood decline requires a multi-pronged coordinated approach. The value of this approach has been borne out in the strategic planning process that many communities participated in during the development of their Federal Empowerment Zone applications.

For these reasons, HUD will approve a revitalization strategy under the authority of 24 CFR 91.215(e)(2) only where it is clear that the strategy has been developed with the involvement and support of a wide segment of the area's stakeholders.

Regulatory Framework and Incentives

The submission of a neighborhood revitalization strategy is provided for as part of the regulations at 24 CFR Part 91 which cover a Consolidated Plan submission for CPD programs. It is important to note that separate approval is required for the revitalization strategy although it is to be included in the Consolidated Plan submission which has its own approval process.

The incentives for entitled metropolitan cities and urban counties to submit and secure approval for a revitalization strategy are described below, together with the location in the regulations where the incentive is found.

- ❖ **Job Creation/Retention as Low/Moderate Income Area Benefit:** Job creation/retention activities undertaken pursuant to the strategy may be qualified as meeting area benefit requirements, thus *eliminating* the need for a business to track the income of persons that take, or are considered for, such jobs (24 CFR 570.208(a)(1)(vii) and (d)(5)(i));
- ❖ **Aggregation of Housing Units:** Housing units assisted pursuant to the strategy may be considered to be part of a single structure for purposes

of applying the low- and moderate-income national objective criteria, thus providing greater flexibility to carry out housing programs that revitalize a neighborhood (24 CFR 570.208(a)(3) and (d)(5)(ii));

- ❖ **Aggregate Public Benefit Standard Exemption:** Economic development activities carried out under the strategy may, at the grantee's option, be exempt from the aggregate public benefit standards, thus increasing a grantee's flexibility for program design as well as reducing its record-keeping requirements (24 CFR 570.209 (b)(2)(v)(L) and (M)); and
- ❖ **Public Service Cap Exemption:** Public services carried out pursuant to the strategy by a Community-Based Development Organization (CBDO) will be exempt from the public service cap (24 CFR 570.204(b)(2)(ii)).

The strategy must be implemented in accordance with the civil rights-related program requirements stated in the Consolidated Plan rule at 24 CFR Part 91.

Contents of the Neighborhood Revitalization Strategy

A grantee's strategy must be designed to provide for the *economic empowerment* of the low- and moderate-income residents of a particular area that is among the grantee's most distressed. It must also provide for other long-term improvements within a reasonable period of time. Therefore, the strategy must clearly describe how it meets the following criteria:

- ❖ **Boundaries:** The grantee must identify the neighborhood's boundaries for which the strategy applies. All areas within those boundaries must be contiguous.
- ❖ **Demographic Criteria:** The designated area must be *primarily residential* and contain a percentage of low- and moderate-income residents that is equal to the "*upper quartile percentage*" (as computed by HUD pursuant to 24 CFR 570.208(a)(1)(ii)) or *70%, whichever is less* but, in any event, *not less than 51 percent*;

- ❖ **Consultation:** As mentioned above, the grantee must describe how the strategy was developed in consultation with the area’s stakeholders, including residents, owners/operators of businesses and financial institutions, non-profit organizations, and community groups that are in or serve the neighborhood;
- ❖ **Assessment:** The strategy must include an assessment of the economic conditions of the area and an examination of the opportunities for economic development improvement and the problems likely to be encountered;
- ❖ **Economic Empowerment:** There must be a realistic development strategy and implementation plan to promote the area’s economic progress focusing on activities to create meaningful jobs for the unemployed and low- and moderate-income residents of the area (including jobs created by HUD-assisted efforts) as well as activities to promote the substantial revitalization of the area; and
- ❖ **Performance Measurements:** The strategy must identify the results (e.g., physical improvements, social initiatives, and economic empowerment) expected to be achieved, expressing them in terms that are readily measurable. This must be in the form of “benchmarks.”

Level of Detail

In order to avoid an unnecessary burden for the grantee in describing its strategy in the Consolidated Plan, the grantee may refer to specific portions of other documents that HUD has access to for this purpose. The grantee will only need to provide additional information to the extent that sufficient detail is not already contained in such existing documents in order that HUD may determine that each of the criteria in the “Contents” section of this Appendix has been met.

Since the grantee’s HUD CPD Field Office representative will review the neighborhood strategy submission, the grantee should consult with its HUD representative to discuss what existing documents and information the grantee will be relying on for its submission and what additional information HUD will need to make this approval.

While the grantee need not formally commit itself to the use of CDBG funds (or other resources it expects to receive from HUD) for future years, it will need to show in each year’s Action Plan the specific activities it plans to assist with any of the HUD formula program funds covered in the Consolidated Plan for that year, clearly identifying those that it will apply in pursuit of its strategy to revitalize the area.

**HUD
Partnership
Approval
Process**

HUD expects to approve neighborhood revitalization strategies that are submitted by a CDBG grantee as part of its Consolidated Plan, or an amendment, if the proposed strategy describes how it will meet the criteria outlined in the “Contents” section above.

Any **Federally-designated Empowerment Zone (EZ) or Enterprise Community (EC)** located within an entitlement community will be *presumed* by the HUD CPD Field Office to meet the above criteria and will be approved by HUD, at the request of the grantee, without further review. Those entitlement grantees that submitted applications for designation as an EZ or EC but did not receive a designation should be able to meet these criteria, but may not yet have developed the necessary benchmarks.

Grantees and their HUD CPD field office representatives should work together in developing revitalization strategies that meet these guidelines. HUD’s review of strategies shall place particular importance on the grantee’s capacity, the likelihood that the planned actions will result in economic revitalization, and the extent to which the strategy reflects coordination with other public and private resources. HUD encourages innovative and creative strategies that promote the active and meaningful participation of the stakeholders throughout the development and implementation of the plan because HUD is interested in strategies that not only will successfully revitalize the neighborhood but will also economically empower its residents.

In the event HUD believes that a grantee’s submission is unlikely to achieve measurable progress in addressing the needs of the neighborhood, HUD will provide necessary technical assistance to the grantee to try to arrive at a consensus of what would constitute a “reasonable” strategy given the needs of the neighborhood and level of resources available. If after such technical assistance, HUD and the grantee remain apart in their assessment of what is a realistic strategy, HUD has the option of not approving the strategy.

The strategy may be submitted as part of the grantee’s Consolidated Plan or may be submitted as an amendment to it. When applicable, HUD’s approval of the jurisdiction’s Consolidated Plan will also state its approval of the revitalization strategy. *HUD will not hold up approval of the Consolidated Plan if the revitalization strategy cannot be concurrently approved without delaying the funding of the grant programs covered by the plan. In any event, HUD’s approval of a strategy for this purpose must be expressly stated.*

**Performance
Measurements:
Baselines and
Benchmarks**

HUD expects to approve strategies that will achieve substantial improvements in the delineated neighborhood/area and will create meaningful levels of economic opportunities for residents during the time frame of that grantee's approved Consolidated Plan, generally a five-year period. However, HUD does not require that the area be fully revitalized within that five-year period, but that the level of improvements will be substantial. Once HUD approves a revitalization strategy, the grantee may assume that this approval is in effect for the full time period of the strategy, provided that both the grantee and HUD agree that reasonable progress is being made in its implementation. In order for HUD to be able to gauge the effectiveness of the strategy, the strategy will need to provide baseline needs information for the area and set benchmark projections initially indicating the results that it hopes to achieve in addressing those needs over the period it expects will be needed to revitalize the area. Actual performance information will need to be submitted on an ongoing basis.

The benchmarks for this purpose should be readily measurable and specific enough to show expected outputs by the grantee and should clearly represent positive steps toward the desired ultimate outcome: economic revitalization of the designated area. Each year following HUD's approval of the strategy, HUD will expect the grantee to identify in its Action Plan for that year the benchmark outputs the grantee expects to achieve by the end of that year.

The benchmarks should include measures of outputs expected to be achieved through the use of the HUD program funds together with other resources it plans to use in a coordinated fashion as part of the strategy. An example of outputs would be the number of new businesses formed or the reduction, by a certain number or percentage, of persons on welfare. Since the benchmarks are to reflect the expected level of accomplishments at the end of each program year, they must be measurable at such times.

**Performance
Reporting**

The grantee will report progress against its benchmarks at the end of each program year. The Integrated Disbursement and Information System (IDIS) will be used to the maximum extent for the reporting of accomplishments, including performance against the grantee's own established benchmarks. For grantees with Federally-designated EZs or ECs that received HUD approval for a neighborhood revitalization strategy, reports that are required as part of the EZ/EC process shall suffice for purposes of reporting on approved revitalization strategies.

Performance Review

HUD will review a grantee's progress at the end of each program year based upon information reported by the grantee and, when appropriate, information from on-site monitoring.

If based on its reviews, HUD determines that progress towards achieving the expected improvements in the area is lagging substantially behind the grantee's projections, HUD may suspend/withdraw its approval of the strategy. During any period of suspension/withdrawal, *the grantee would not be able to use the incentives provided under the CDBG regulations discussed earlier in this Appendix* for expenditures that are contingent upon an approved strategy. If the grantee submits and HUD approves an amended strategy for the area that satisfactorily addresses the lack of performance, the grantee would again be able to avail itself of the authorized benefits.

Amendments

Because the neighborhood revitalization strategy is an element of the Consolidated Plan (albeit an optional one), it must be included with a jurisdiction's Consolidated Plan submission. When a jurisdiction makes a new Consolidated Plan submission in accordance with 24 CFR 91.15(b)(2), usually every five years, the grantee will have to either: submit the prior HUD-approved strategy with a statement that there has been no change in the strategy (in which case, HUD approval for the existing strategy is not needed a second time) or submit a new or amended neighborhood revitalization strategy (for which separate HUD approval would be required). The criteria for purposes of any amendment(s) to neighborhood revitalization strategies are the same criteria as for Consolidated Plan amendments described at §91.505.

It is presumed that these criteria would be applied whenever the conditions that existed at the time the strategy was developed have changed substantially (e.g., a decline in a dominant area industry, a natural disaster) or when a grantee determined that the strategy reflected in the HUD-approved plan was not working as well as it expected and it therefore wants to change its approach, or whenever HUD suspends/withdraws approval (or advises the grantee that it is so considering) as a result of performance lagging substantially behind the benchmarks.

Grantees should follow the guidance provided in the "Level of Detail" section of this Appendix. Amended strategies are to be reviewed by HUD using the same criteria as apply to initial strategy submittals.

MAKING THE MOST OF YOUR CDBG RESOURCES

Almost any community that receives CDBG funds has a great number more community or economic development or affordable housing needs than it can possibly address with the CDBG funds it receives through its annual grant. It is therefore useful to consider ways in which these resources can be stretched to maximize the impact that can be attained in addressing those needs.

There are, of course, many things a grantee can do in the normal course of carrying out its CDBG program that can help in this regard. It can take steps to become aware of what other actors in the community are doing (most notably the nonprofit organizations in the area) that will affect the needs to be addressed. This will help not only in avoiding duplication of efforts but also to strive for symbiosis through the use of joint efforts to achieve common goals. Moreover, the grantee can take care to spend CDBG funds wisely through its procurement process and by holding its subrecipients to reasonable measures of progress. It can, under appropriate circumstances, stretch existing CDBG dollars through the use of Lump Sum Drawdowns and Escrows. (It should be noted that these latter two financing techniques are limited to rehabilitation and are discussed in more detail in Chapter Two of this Guide under the section entitled Rehabilitation.) It can carefully underwrite the assistance it provides to landlords and businesses to ensure that it is providing no more than the amount needed to achieve the expected results. And the grantee can set its own community development goals and objectives with measurable benchmarks so that it may evaluate whether reasonable progress is being made and whether any changes in direction are called for. Finally, it can make financial assistance available in the form of loans or loan guarantees instead of grants, whenever feasible.

All of the above approaches can and should be used to get the most impact from the CDBG program resources that the grantee receives. However, there are three other avenues that a grantee can consider taking advantage of in order to make more CDBG dollars available, or to make them available sooner. Considering one or more of these options can make it possible to fund special opportunities that may arise out of the normal planning cycle or when a high cost activity cannot be reached with funds currently available even though it might be very desirable to fund it.

This Appendix will cover the following three avenues that can be considered to expand available funds:

- ✓ CDBG Floats,
- ✓ Section 108 Loans, and

- ✓ Selling or Securitizing CDBG Loan Portfolios.

CDBG Floats

Almost all CDBG grantees, especially those that receive entitlement grants, have some CDBG funds available to them in their CDBG Line of Credit that are not being used and will not be needed for some time to come. Such funds are referred to as the “float” since they seem to be just floating there, waiting to be used. Of course, all such funds should be budgeted for a particular use, but there are many reasons why some amount of funds, though already budgeted, will not be needed for months, and sometimes for over a year. The CDBG regulations provide that a grantee may make use of the funds in its float for the period during which they will not be otherwise needed for the activities for which they are budgeted, provided certain safeguards are taken. §570.301(b) provides the details for this purpose, but the following summary is provided.

All the general rules apply

Each activity carried out using the float must meet all of the same requirements that apply to CDBG-assisted activities generally, and it must be expected to produce program income in an amount at least equal to the amount of the float so used. A float-funded activity must be included in the action plan (often by amendment) for the current program year.

Time period

The action plan must identify the expected time period between obligation of assistance for a float-funded activity and receipt of program income in an amount at least equal to the full amount drawn from the float to fund the activity. *This time period may not exceed 2.5 years.*

Safeguards

A grantee that elects to fund an activity with its float must clearly declare, in the Consolidated Plan Annual Action Plan that includes the float-funded activity, the grantee’s *commitment* to undertake one of the following options in the event that the program income the activity is expected to produce is delayed or does not materialize:

- ❖ Amend or delete activities in an amount equal to any default or failure to produce sufficient income in a timely manner. If the grantee makes this choice, it must include a description of the process it will use to select the activities to be amended or deleted and how it will involve citizens in that process; and it must amend the applicable statement(s) or Action Plan(s) showing those amendments or deletions promptly upon determining that the float-funded activity will not generate sufficient or timely program income;
- ❖ Obtain an irrevocable line of credit from a commercial lender for the full amount of the float-funded activity and describe the lender and terms of such line of credit in the Action Plan that includes the float-

funded activity. To qualify for this purpose, such line of credit must be unconditionally available to the grantee in the amount of any shortfall within 30 days of the date that the float-funded activity fails to generate the projected amount of program income on schedule;

- ❖ Transfer general local government funds in the full amount of any default or shortfall to the CDBG line of credit within 30 days of the float-funded activity's failure to generate the projected amount of the program income on schedule; or
- ❖ Any other method approved in writing by HUD for securing timely return of the amount of the float funding. Such method must ensure that funds are available to meet any default or shortfall within 30 days of the float-funded activity's failure to generate the projected amount of the program income on schedule.

Section 108 **Loan Guarantees**

Section 108 provides HUD the authority to pledge the full faith and credit of the U.S. Government as a means of guaranteeing loans under the CDBG program. Under this provision, a grantee may request loan guarantee assistance under the following conditions:

- ❖ The proceeds from loans guaranteed under this provision may be used only for activities specifically eligible under Section 108, which include many of the same activities that other CDBG funds may assist. (Some notable exceptions are: CBDOs may only carry out a community economic development project; and the proceeds may not be used for activities under the Planning and Capacity Building (§570.205), Program Administration (§570.206), and Public Services (§570.201(e)) categories of basic eligibility. See 24 CFR 570 subpart M for further details.);
- ❖ The grantee must pledge its future grants under the CDBG program as security for the loans; and
- ❖ Additional security will also be required for repayment of the loans, with the specifics determined on a case-by-case basis.

Features

- ❖ A grantee may borrow up to five times its annual grant under this authority. (This means that, at any one time, a grantee may have outstanding guaranteed loans that total as much as five times the grantee's most recent annual grant amount.)
- ❖ The loan repayment period can be for as long as 20 years.
- ❖ While Section 108 is taxable borrowing, the interest rate on the loans typically do not exceed the usual Treasury borrowing rates by more than 15 to 20 basis points. (Note: There are restrictions on mixing Section 108 loan guarantee assistance and tax exempt borrowing.)
- ❖ While most guaranteed loans are repaid using an income stream from the activity assisted by the loan proceeds, CDBG grant funds (and program income) can be used to make interest and principal payments on the loans.

Attachment A to Appendix G contains a Fact Sheet giving more details on the 108 Loan Program. Contact the local HUD field office for further information about such loans and for assistance in requesting Section 108 loan guarantee assistance.

Selling/ Securitizing Loan Portfolios

Most grantees have, by now, a substantial number of outstanding loans made in the past using CDBG funds and for which a stream of program income can be expected. For a large number of grantees, the amount of program income received in a given year represents a very large percentage of the total CDBG funds they will have available to them. Some grantees have taken steps to accelerate the availability of this income by either selling all or part of their CDBG loan portfolios or by securitizing them.

In this way, additional funds can be accessed much earlier than they could otherwise be expected to be available. This can be very useful to a grantee in responding to opportunities to fund projects that would make an important contribution to its objectives, but which call for substantially more funds than that which can be made available using the existing grant and program income.

Selling a loan portfolio on the secondary market is not always possible. A grantee that is interested in doing so should contact the local HUD field office for guidance on how to proceed. But a grantee may be better able to securitize its portfolio. This is sometimes more appealing to an investor since they are purchasing a share of the entire portfolio, reducing the risk over that of purchasing one or more particular loans that might become delinquent or default. One way for a grantee to securitize its portfolio is through the Section 108 Loan Guarantee Program. The grantee can receive

a Section 108 loan for which the repayment is expected to come from the payback of the CDBG loans in the grantee's portfolio. See the discussion about 108 loans, above, for more details about this option. Also see Appendix G to this Guide that provides further information on this matter.

Conclusion

Among these three alternatives for expanding available CDBG resources, the one that is most within the grantee's control is the use of the float. Depending on the amount of funds needed, assistance using the float can be arranged quite rapidly. Section 108 loans can provide a larger amount of funds, when needed, but it typically takes much longer to arrange to get a loan guarantee approved than to meet the requirements for float usage. Selling or securitizing CDBG loan portfolios would usually take a long time to arrange, but once set in motion, it can be managed in a way to provide as large an amount of funds as may be needed by the grantee through selective sales or securitizing.

**SELLING OR SECURITIZING
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)-
FUNDED LOANS USING THE SECTION 108 PROGRAM
AND OTHER SECONDARY MARKETS**

Purpose

This Appendix discusses securitizing CDBG-funded rehabilitation and economic development loans using the Section 108 program or selling the loans to secondary markets. It also describes solutions for common problems and issues communities encounter when implementing securitization and sales programs.

Background

Many communities have substantial sums invested in CDBG rehabilitation and economic development loan portfolios. A study funded by HUD a few years ago, *Secondary Markets for City-owned CDBG Loans* (available from the Communities Connections Information Center at (800) 998-9999), estimated that the “combined portfolio [of CDBG rehabilitation loans] surely exceeds \$2 billion” nationally. The volume of economic development loans is also substantial, because most economic development assistance to businesses is provided in the form of loans. While many communities retain and service the loans they originate, using the program income generated by loan payments to fund additional CDBG-eligible activities, other communities choose to speed up the return of the loan funds: they sell portions of their loan portfolios to a secondary market or securitize their portfolios using Section 108 loan guarantees.

The above-cited study of secondary market sales of CDBG rehabilitation loans describes and analyzes the mechanics of several types of loan sale efforts by several CDBG entitlement grantees during 1985–1992. The study inventoried the then-current use of CDBG revolving funds, summarized experience with the sale of CDBG rehabilitation loans, and illustrated the experiences of selected cities in their efforts to sell loan portfolios.

This Appendix focuses on why a community may choose to securitize or sell loans as part of its community development program and addresses specific regulatory requirements that must be met when a community uses this financing technique. Guidance on portfolio management and secondary markets, based on the HUD-funded study and other HUD experience, is also provided.

Definitions

This section contains simple definitions of some of the technical terms used in this Appendix.

- ❖ *Discount rate*—Usually, “discount rate” means the market interest rate the investor would expect to receive over the same period of time in a different investment. The discount rate is applied in determining the present value to the investor of the future income stream of a loan or security. The discount rate usually varies from investor to investor based on varying investor perceptions of risk inherent in the loan, and investor motivation.

Since most CDBG loans are made at below-market (i.e., below discount) rates, this usually results in purchase offers that are substantially below the face value of the loans.

- ❖ *Income stream*—“Income stream” means the stream of loan payments (principal and interest) that the purchaser of the loan will receive over time as the loan is paid.
- ❖ *Loan*—“Loan” means to provide funds to a borrower in return for a promise to repay the principal, usually with interest. Investors are not often interested in forgivable and deferred loans because such instruments do not generate a predictable income stream.
- ❖ *Portfolio*—“Portfolio” means all the existing loans held by the grantee or subrecipient in a particular program or group of programs.
- ❖ *Present value*—“Present value” means the current value of the future income stream of an investment. The present value of an investment is calculated using a process called “discounting.” In discounting, the investor takes the income stream from the loan and divides it into two portions: investment and return. The discount rate selected by the investor represents the return percentage he or she wants to achieve, so this rate is applied to calculate the maximum value he or she would be willing to invest now to purchase the income stream, and to assure the acceptable return later. Communities selling loans have generally found that the amount an investor is willing to invest in a community development loan is lower than the face value of the loan.

The amount the investor is willing to pay **now** to secure the future income stream is called the present value of the loan.

If the interest rate that borrowers are paying on the loan or group of loans being sold is below the market rate, the present value of the loan to an investor will often be below the face value of the loan. Thus, if purchased by a private investor, the loan will likely sell “at a discount” to allow the investor to receive an acceptable return from the payments.

- ❖ *Recourse*—“Recourse” means the provisions of a sale or securitization agreement that govern the seller’s and buyer’s responsibilities if a loan

defaults. A sale made purely “without recourse” does not obligate the seller to take any action to protect the buyer’s financial investment in the event of default. Neither is the buyer obligated to take any action to protect the seller’s community development purposes. (However, under the CDBG program, grantees may not make sales without assuring that national objectives will be met.) Typical recourse options obligate the seller to repurchase a bad loan, to replace a bad loan with a good one, or to make payments on behalf of the borrower. The recourse agreement would obligate the buyer to pursue the selected alternate form(s) of recourse before, or instead of, pursuing foreclosure.

- ❖ *Seasoned loan*—A “seasoned loan” has a record of one or more on-time payments. Investors’ requirements on the length of seasoning necessary prior to consideration for purchase may vary substantially.
- ❖ *Secondary market*—“Secondary market” means any investor (institutional or individual) that purchases loans.
- ❖ *Securitization*—“Securitization” is the opposite of whole loan sales and happens when several investors each buy a share, or portion, of a pool of loans. The shares are called securities. The principal and interest payments made by borrowers on the loans are passed through to the owners of the securities. Pooling loans allows the risk that any one loan will default to be shared among several security holders and usually results in a higher resale value for the overall pool of loans. Pooling loans of various interest rates and terms can be complicated to manage. (See the section below discussing Section 108 securitization).
- ❖ *Whole loan sales*—“Whole loan sales” are the opposite of securitization. Instead of selling securities on a pool of loans, each loan is sold as a separate investment (although buyers often purchase more than one loan at a sale). Whole loan sales are often used when the volume of loans to be sold is relatively small, sales of loans infrequent, or money to be generated by the sales insufficient to justify the costs of managing a loan pool.

Why Sell?

In virtually all communities, the funds available at any given time for community development are not sufficient to meet all current community development needs. Also, sufficient funds may not be available at a particular time to permit a community to address a particular need. Selling or securitizing CDBG loans can: 1) bring an income stream that would otherwise be scattered over future years into the present, creating a pool of funds for current investment, and 2) increase the volume of community development dollars available for investment by increasing the number of times the funds are re-spent each program year or planning cycle.

One caveat to consider is that when community development loans sell at substantial discounts, the initial investment of CDBG dollars may not be fully recaptured. The price paid for the loan, because it is discounted, may be less than the present value of what the grantee would have received in principal and interest, if the loan were not sold. In either case, the grantee gets its initial investment back: sooner, if the loan is sold to an investor; or later, if the loan is paid back directly to the grantee over the term of the loan. When the loan is substantially discounted for sale to an investor, a part of that repayment may be “leaked” out of the long-term community development economy. Sales can increase the volume of money available for community development over time only if the reuse of funds is quick enough to offset the discount or if the funds are leveraged in some manner.

Thus, in deciding whether to develop an ongoing loan sale effort, a community should consider whether a continuing volume of marketable loans will be generated quickly enough by the relevant loan program to support a program of repeated loan sales. Further, a loan sale vehicle involving the minimum possible discount might be considered as the best vehicle for reducing possible leakage (see discussion of Section 108 securitization later in this Appendix.)

Valuing Loans

In determining whether to purchase CDBG loans, individual and portfolio loan value to the investor is not simply based on the dollar amounts and financial ratios involved. The value assigned in the discounting process is affected by the quality of the loan documentation, the payment record on the loan, how any defaults will be handled, the terms of the loan (for example, is it forgivable?), and on government policies that may affect the risk to the investor or cost of administering the loan portfolio. Usually, the private investor is trying to find a loan or security to purchase that offers maximum return for minimum risk. Some public and private purchasers have a second motive driving loan selection: they wish to invest in community development. These investors may therefore be able to accept a lower return if the loan program contributes to community development.

To most potential loan purchasers, quality loan documentation equals standardized loan documentation. This means the same underwriting tests, applications, and other documents are completed and present in EVERY loan file. A simple rule in dealing with secondary markets is to remember that the familiar, standard loan (whose return is more predictable) will nearly always sell better than a unique one that must be explained (sometimes called a “story loan”). Good files document each loan’s payment record for purchasers to use in determining the risk to their investments. Many purchasers prefer to purchase seasoned community development loans with quality loan documentation.

How will defaults be handled? What recourse is available for the purchaser, the grantee, and the family or business paying the loan in the event the loan defaults? These are critical questions in determining the marketability of the loan. They are also important policy issues whose solutions should support community development purposes. This topic is discussed in the section below entitled *In case of default...* and is examined in detail in the HUD-funded study. CDBG rules affecting the handling of defaults are generally related to the rules about handling program income. More information on program income is available in Subpart J of the CDBG regulations; other guidance on program income as well as defaults is available in the *Program Income Training Bulletin* (HUD/CPD-90-1, April 1990), available from HUD.

Government policies that may affect risk to the investor range from how the underwriting standards of the loan program are set to whether other community development support (in the form of assistance for affordable housing, infrastructure, businesses, and public service) is provided in the geographic areas served by the loan program. In general, the more risk perceived by the investor, the higher the return that investor will demand. So loans that are perceived to be more risky will generally sell for a greater discount off their face value. It appears from the HUD-funded study that large national or regional financial investors that have less of a stake in the local economy tend to look more at the financial risk factors associated with the loan, while local financial institutions are better positioned to evaluate the non-financial factors affecting investment risk. These local institutions may therefore accept a smaller discount on the loans and be more open to providing some additional benefits to the loan program.

Securitizing With Section 108 Loan Guarantees

Section 108 provides all the tools needed to securitize new or existing loans. More information on the basics of the Section 108 program is included in the attachment to this Appendix entitled Section 108 Fact Sheet, and HUD field office staff are available to work with any community that would like to pursue using the Section 108 program.

To securitize *new* loans, Section 108 provides an interim financing facility for originating the loans. The Section 108 permanent financing program provides both the actual financing for the securities and a credit enhancement (the Federal guarantee backed by the pledge of CDBG grants). Payments on the loans are passed through to the Section 108 note holders.

Section 108 provides a securitization opportunity for *existing* CDBG loans as well. The securitization would be structured in a fashion similar to the securitization of new loans, except that the community would sell (and HUD would guarantee) securities backed by a pool composed of existing CDBG loans. By pledging future payments on existing CDBG loans to the repayment of Section 108 obligations, a community can “unlock” those loans from its balance sheet. The proceeds from the issuance of the Section 108 obligations can then be used by the community to make additional loans. And the process can be repeated as the new loans begin to generate income.

Using Section 108 would almost always generate higher net proceeds from the securitization than could be realized from an unsubsidized sale of whole loans or from conventional securitization. This is true because the use of Section 108 involves a lower discount rate (the interest rate of Section 108 obligations is only slightly higher than rates on comparable Treasury obligations). A lower discount rate generates a higher present value (or sales proceeds amount). Further, the issuance costs for Section 108 obligations would be significantly lower than the costs (e.g., accounting, legal, credit enhancement) associated with conventional securitization.

Other Secondary Markets

After the above discussion of Section 108 securitization, it may be asked: “Why pursue any other form of secondary market?” The answers to this question vary depending on the community development objectives of the grantee. One answer is that when the secondary market is a local bank, or group of banks, significant other benefits may accrue by developing local partnership arrangements. Several of the examples in the HUD-funded study involve local governments leveraging additional funds by implementing programs with local banks. Also, some other investors, such as the Neighborhood Reinvestment Corporation (NRC) acquire loans at quite attractive terms, essentially providing a subsidy to the community development programs they support.

Another benefit to pursuing loan sales or securitization through a private secondary market is that the purchaser will generally conduct a thorough review of the portfolio focused on the seller’s underwriting and portfolio management practices. This review can provide valuable information, such as providing a realistic assessment based on private-market practices that supports allocating a dependable level of resources for managing these activities. Philosophically, some local governments may be most comfortable not involving another public resource or Federal approval for selling what is, in most cases, a local asset.

A HUD-funded technical assistance demonstration project resulted in one sale of a well-managed portfolio to a private investor. Securitization was essential in that case because the State was unwilling to allocate additional grants or guarantees to continue an ongoing loan program for small businesses. Analysis in two other jurisdictions found that similar transactions (through a private foundation, bank, or other institution) might be feasible. However, in all three cases the securitization approach involved significant costs of assembling data and negotiating the basic assumptions of each transaction.

Issues

The issues discussed below arose during HUD staff discussions with communities developing and implementing loan sale programs.

Creaming

“Creaming” means taking care of the richest of the poor, taking the fewest risks possible with community development dollars. Creaming may violate CDBG rules: activities that meet low- and moderate-income national objective criteria must be designed so that they “do not benefit moderate income persons to the exclusion of low-income persons.” [24 CFR 570.208(a)] Creaming is an issue when (re)designing a community development loan program to facilitate later sale of the loans because loans to moderate-income persons in stable neighborhoods are going to be more attractive investments on their face than loans to low-income persons living in or adjacent to slum or blighted areas. The design of a community development loan program must be primarily focused on solving a community development problem, and secondarily supportive of possible loan sale efforts.

In case of default...

Grantees should pay close attention to the recourse terms in any loan sale. Although some may choose to sell their loans and be finished with them, this may not be the best course for assuring that community development objectives are met, and it may result in a deeper discount on the loans (without recourse, the buyer will have to take on all costs of any defaults). If loans are sold with recourse, the seller takes on any default risk, but generally will receive a higher price, because most buyers will pay more for a less risky investment.

Usually recourse terms require the seller to take responsibility for a defaulted loan, either through purchase, exchange, or by making good any payment shortfalls. Such repurchase using CDBG funds is eligible if the recourse terms are clearly specified in the original sale agreement. In the first two options, once the seller (usually the grantee or a subrecipient) has the loan, it can evaluate whether its community development objectives will be better met by negotiating a work-out agreement with the borrower, or by entering into foreclosure proceedings. Most purchasers, if not allowed this recourse, would move straight to foreclosure. By insisting on some alternate form of recourse, grantees will incur the additional administrative costs of handling any defaulted loans, but they can also ensure that their clients and goals are best served.

Meeting a national objective

Even after loans are sold, HUD holds the grantee responsible for ensuring that each loan meets all program requirements, including meeting a national objective. Note that most housing rehabilitation loans qualify under the low- and moderate-income housing national objective. This objective is met on occupancy of the rehabilitated unit by an income-qualified household upon completion of the rehabilitation. Thus, by the time of sale, most of these loans will have met a national objective. The Department expects that loans with national objectives unmet at the time of sale will primarily be for economic development. It is important that a community selling its economic development loan portfolio take precautions to ensure that the national objective has already been met for each loan (usually by creation of jobs) or that the responsibility for doing so is passed on to the purchaser of the loan.

Program income

Program income is income received by the recipient or subrecipient directly generated from the use of CDBG funds. Generally, program income must be treated as additional CDBG funds, subject to all applicable requirements governing the use of CDBG funds (24 CFR 570.504). If a grantee sells a loan, the proceeds of the sale are program income. In such a case, the income from the loan repayments, which are received by the investor, is no longer program income. Also, if the aggregate amount of income received by the grantee and its subrecipients during the program year totals no more than \$25,000, such income would not be program income (24 CFR 570.500(a)(4)(i)).

Portfolio management

The HUD-funded study identified deficiencies in portfolio management as one of the most common road blocks to the sale of CDBG loans. Such management deficiencies may also result in a grantee's failure to effectively meet its community development objectives or in unwitting regulatory

violations. In the context of this Appendix, sensible portfolio management can decrease loan defaults and delinquencies and thereby increase the sale value of CDBG loans. Although local government community development policies that dictate higher-risk loan types or clients may also entail a higher default rate, prudent management can maximize the value of even the riskiest loans.

HUD encourages grantees to take a “systems approach” to improving portfolio management. This means that, although portfolio management technically is concerned with activities taking place after loans are made, an effective portfolio manager examines every step of the process from marketing and application review to loan closing and disbursement, through the years of loan management until the final payoff. A systems approach to portfolio management will not only decrease delinquency and default rates, it will assure the best service for the borrowers and ensure CDBG regulatory compliance.

The systems approach to portfolio management allows each decision made in designing the loan program to be examined for its ultimate effect on default and delinquency rates and payoff. Clearly, designing a loan program with the sole goal of the highest possible return and lowest delinquency-default rates would not result in a program that served low- and moderate-income borrowers or loan needs such as gap financing for small start-up businesses. Using the systems approach to design a program to serve higher-risk borrowers will result in the lowest possible delinquency-default rates for that type of program. Already, some trade magazines for the home mortgage and banking industries have noted, with some surprise, that the default rates for many programs offering supposedly higher-risk lending to lower-income borrowers are not nearly as high as expected, often falling within acceptable mainstream rates. This record can be further improved by following the principles of effective loan portfolio management, which are:

- ❖ Institutional commitment to recovering funds,
- ❖ Active management of the portfolio,
- ❖ Comprehensive systems planning,
- ❖ Written policies and procedures,
- ❖ Complete documentation of loans, and
- ❖ Dedication to staff training in all aspects of the portfolio management process.

For in-depth information on the systematic approach to portfolio management, HUD has developed a guide called “Loan Portfolio Management” through a contract with Price Waterhouse. The guide includes a self-assessment for grantees to complete in determining how to improve their portfolio management system and program design. A paper or electronic copy of this guide, plus a list of any other available publications on related topics, may be obtained by contacting the Communities Connections Information Center (telephone 800-998-9999, or electronic mail at Comcon@aspensys.org). This guide was developed with a focus on economic development loans, but the principles are the same for almost any type of loan management by local governments.

Attachment A
Department of Housing and Urban Development
Office of Community Planning and Development

Section 108 Loan Guarantees

Section 108 is the loan guarantee provision of the Community Development Block Grant (CDBG) program. Section 108 provides communities with a source of financing for economic development, housing rehabilitation, public facilities, and large scale physical development projects. Regulations governing the Section 108 program may be found at 24 CFR 570, Subpart M, “Loan Guarantees.”

Eligible Applicants and Activities

Eligible applicants include the following public entities:

- ✓ Metropolitan cities and urban counties (i.e., CDBG entitlement recipients);
- ✓ Nonentitlement communities that are assisted in the submission of applications by States that administer the CDBG program; and
- ✓ Nonentitlement communities eligible to receive CDBG funds under the HUD-Administered Small Cities CDBG program.

The public entity may be the borrower or it may designate a public agency to be the borrower.

Activities eligible for Section 108 financing include:

- ✓ Economic development activities eligible under CDBG;
- ✓ Acquisition of real property;
- ✓ Rehabilitation of publicly owned real property;
- ✓ Housing rehabilitation eligible under CDBG;
- ✓ Construction, reconstruction, or installation of public facilities (including street, sidewalk, and other site improvements);
- ✓ Related relocation, clearance, and site improvements;
- ✓ Payment of interest on the guaranteed loan and issuance costs of public offerings;
- ✓ Debt service reserves;
- ✓ Public works and site improvements in colonias; and
- ✓ In limited circumstances, housing construction as part of community economic development, Housing Development Grant, or Nehemiah Housing Opportunity Grant programs.

For purposes of determining eligibility, the CDBG rules and requirements apply. As with the CDBG program, all projects and activities must either principally benefit low- and moderate-income persons, or aid in the elimination or prevention of slums or blight, or meet urgent needs of the community.

How the Program Operates

Maximum commitment amount. Commitments are limited as follows:

- ❖ *Entitlement public entities.* An entitlement public entity may apply for up to five times the public entity's latest (approved) CDBG entitlement amount, minus any outstanding Section 108 commitments and/or principal balances on Section 108 loans.
- ❖ *State-assisted public entities.* A nonentitlement public entity may apply for up to five times the latest (approved) CDBG amount received by its State, minus any outstanding Section 108 commitments and/or principal balances on Section 108 loans for which the State has pledged its CDBG funds as security.
- ❖ *Nonentitlement public entities eligible under the HUD administered Small Cities Program.* For a public entity in Hawaii, the maximum commitment amount is five times the public entity's latest grant under 24 CFR Part 570, Subpart F, minus any outstanding Section 108 commitments and/or principal balances on Section 108 loans. A nonentitlement public entity in New York may apply for up to five times the greater of:
 - ♦ the most recent grant made to the public entity under Subpart F,
 - ♦ the average of the most recent three grants made to the public entity under Subpart F, or
 - ♦ the average of grants made under Subpart F to units of general local governments in New York State in the previous fiscal year.

(The maximum amount calculated above for any New York State public entity is reduced by any outstanding Section 108 commitments and/or principal balances on Section 108 loans.)

Security. The principal security for the loan guarantee is a pledge by the applicant public entity or the State (in the case of a nonentitlement public entity) of its current and future CDBG funds. Additional security will also be required to assure repayment of the guaranteed obligations. The additional security requirements will be determined on a case-by-case basis, but could include assets financed by the guaranteed loan.

Loan repayment. The maximum repayment period for a Section 108 loan is twenty years. HUD has the ability to structure the principal amortization to match the needs of the project and borrower. Each annual principal amount will have a separate interest rate associated with it.

Financing source. Section 108 obligations are financed through underwritten public offerings. Financing between public offerings is provided through an interim lending facility established by HUD.

Interest rates. Interest rates charged on interim borrowing is priced at the three-month London Interbank Offered (LIBO) rate plus 20 basis points. Permanent financing is pegged to yields on Treasury obligations of similar maturity to the principal amount. A small additional basis point spread, depending on maturity, will be added to the Treasury yield to determine the actual rate.

Default. To date, there has been no default under Section 108 resulting in a payment by HUD. In the event of default requiring a payment, HUD would continue to make payments on the loan in accordance with its terms. The source of payments by HUD pursuant to its guarantee would almost always be pledged CDBG funds. However, HUD does have borrowing authority with the Treasury if the pledged funds are insufficient.

Developing an application. Public entities wishing to apply for Section 108 loan guarantee assistance are advised to contact HUD in advance for guidance in preparing an application. Public entities may contact either the Community Planning and Development staff at the appropriate HUD field office or the Section 108 office in Washington at (202) 708-1871.* Application guidance can also be found in the Section 108 regulations at 24 CFR 570.704, "Application Requirements."

**Hearing impaired users may call the Federal Information Relay Service at 1-800-877-8339.*

Program Trends and Accomplishments

The Section 108 program has undergone several major changes since its establishment in 1974. In 1987, HUD was directed by Congress to utilize a private sector financing mechanism to fund the loan guarantees as opposed to using Federal funds. In 1990, legislative changes increased public entities' borrowing authority to five times the CDBG allocation, extended the maximum repayment period to twenty years, and made units of general local government in nonentitlement areas eligible to apply for loan guarantee assistance. Since its implementing regulations were published in 1970 the following activity has occurred: