



State Community Development Block Grant Program

Guide to National Objectives and Eligible Activities



December 2014

State Community Development Block Grant Program Guide to National Objectives and Eligible Activities

This guide is designed to assist state Community Development Block Grant grantees in ensuring that activities funded under the program are both eligible and address a CDBG national objective, as established by law. The guide describes and provides examples of eligible activities and details the process for selecting activities that properly address a national objective. Extensive documentation, in the form of laws, regulations, notices and memos is also provided.

This edition of the guide incorporates statutory, regulatory and other changes and guidance issued since the publication of the previous version in 2002, including the following:

- The use of data from the American Community Survey in determining the service area for area benefit activities
- Changes in the eligible use of funds for administrative expenses and technical assistance
- Revisions to the definition of “family” and “household”
- Application of statutory provisions on “job pirating”
- The addition of the CPD notice on Timely Distribution of State CDBG funds (Appendix L)

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1. Selecting Activities that Comply

1.1 Scope of Selection Decisions

While there are many aspects that must be considered in selecting activities to assist under the State CDBG program, there are **six** key steps a grant recipient 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 falls within a category of explicitly authorized activities in the CDBG statute. Generally, if an activity does not fall within a category of explicitly authorized activities in the statute, the activity is considered ineligible. This Guide describes all categories of basic eligibility that were authorized at the time of publication.

The **second step** is to determine if a proposed activity that appears not to be included in the statute's list of eligible activities has actually been interpreted as eligible under the statute by the CDBG Entitlement regulations. Guidance for determining this eligibility is provided in Chapter 2, Categories of Eligible Activities, in this Guide.

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 state violating its certification that at least 70 percent of CDBG expenditures will be for activities considered to benefit low and moderate-income persons over the one, two, or three consecutive program years specified by the grant recipient. 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. **These OMB Circulars have been superseded by the OMB Financial Supercircular. The related guidance entitled, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards can be found at: www.cfo.gov/cofar . The Supercircular requirements will apply to audits of funds allocated in fiscal years that begin on or after December 26, 2014.**

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. Law prohibits HUD from releasing funds for a CDBG activity until the grant recipient certifies that it has met its responsibilities with respect to environmental protection.



1.2 Waivers

HUD may waive any provision of the regulations covering the CDBG program that is not required by the statute. 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 grant recipient 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 grant recipient can show that applying the provision in the particular situation would result in “undue hardship” and “adversely affect” the purposes of the HCD Act. The applicability of the Part 5 waiver thresholds to the State program is cross-referenced at 24 CFR 570.480(b). Again, the local HUD field office can help the grant recipient with determining whether the test can be met. Waivers may only be granted by the Assistant Secretary for Community Planning and Development 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.

2. Categories of Eligible Activities

2.1 Introduction

The State CDBG program regulations (24 CFR 570.482) are minimal compared to the more explicit CDBG Entitlement regulations (24 CFR 570.200 – .207). Since the eligible activities provisions of the HCDA govern both the State and Entitlement programs, HUD has presented much of the information in this chapter from the point of view of the Entitlement regulations. (Note that there are significant differences between the State and Entitlement programs in the areas of Planning and Capacity Building, Program Administration Costs, assistance to Nonprofit Development Organizations, and Technical Assistance.) Therefore, the eligibility information presented in this Guide should be considered as interpretive guidance. State officials may, within reasonable limits, employ their own guidelines for interpreting the HCDA. States may even apply more restrictive eligibility requirements than the HCDA, providing that state restrictions are not inconsistent with or contradictory to the HCDA. For example, the HCDA prohibits a state from declaring certain statutorily eligible activities as ineligible for funding in that state's program, but allows a state to establish relative funding priorities among types of eligible activities.

Generally, if an activity is not specified in the HCDA it is not considered eligible under the State CDBG program. However, if Entitlement regulations have made an interpretation that an activity is actually eligible under the HCDA, that interpretation of eligibility may then be applied to the State CDBG program.

2.2 Purpose

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

This chapter describes separately each category of basic eligibility under the program, in the order of their appearance in Section 105(a) of the HCDA:

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

The purpose of this chapter is to help ensure that grant recipients will: (1) use CDBG funds only for activities that fall under categories of basic eligibility authorized by the HCDA; (2) properly classify the activity; and (3) provide adequate documentation for each activity as required by the selected category. 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 HCDA and regulations place very different requirements on the various eligibility categories. For example, there is a statutory and regulatory limitation on the amount of CDBG funds that 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 grant recipient under another category, would not be subject to the 15 percent public service cap.

The HCDA also places 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 might be eligible under the requirements of another category not selected by the grant recipient.

It should be noted that two categories of eligibility which appear in the HCDA are not applicable to states:

- Section 105(a)(10) completion of federal Urban Renewal projects: There are no Urban Renewal projects in nonentitlement areas, which are still open and uncompleted.
- Section 105(a)(18) rehabilitation or development of housing under Section 17 of the U.S. Housing Act of 1937: Section 17 of the 1937 Act has since been repealed.

2.3 Acquisition of Real Property

2.3.1 The HCDA

Section 105(a)(1)

(a) Activities assisted under this title may include only –

- (1) the acquisition of real property (including air rights, water rights, and other interests therein) which is
 - (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;
 - (B) appropriate for rehabilitation or conservation activities;
 - (C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;
 - (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or
 - (E) to be used for other public purposes

2.3.2 Eligible Activities

The HCDA authorizes the use of CDBG funds by a state grant recipient 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 can be considered to constitute a permanent interest for this purpose. In the Entitlement program, policy memos have established that a lease period of 15 years or more gives sufficient control to the acquiring party to constitute a permanent interest.

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

- The state grant recipient,
- Any other public agency,
- A public nonprofit entity, or
- A private nonprofit entity

to acquire real property for any public purpose. However, the acquisition costs attributable to a building to be used for the general conduct of government, and acquisition of property to be used for political activities, are not eligible.

Example

Real property to be acquired could include:

- 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 cost 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 assistance to a for-profit business, 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 that 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. (However, if land is acquired and then given or sold at less than the purchase price to a for-profit business as part of an economic development project, this could be eligible under HCDA Section 105(a)(17) as assistance to a for-profit business.”
- 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 housing construction, which is generally ineligible for CDBG assistance.

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 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.
- 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.

2.3.3 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 that 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 24 CFR 570.489(j), as applicable.

Acquisition of real property may qualify as meeting the low/moderate income, slum and blight or urgent need national objectives as indicated in the charts that follow section 2.3.4.

2.3.4 Additional Considerations

If property acquired with CDBG funds, or any interest therein, is subsequently transferred to another entity within five years of closeout, 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 that meets a CDBG national objective. Sale proceeds would be considered program income.

The purchase of real property by the grant recipient 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: 24 CFR 570.488 and –.606; 49 CFR Part 24.*

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 to reflect this change. 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 state made for the year’s allocation of funds which the state used to fund the activity. See Chapter 4, Overall Expenditures—Benefit to L/M Income Persons, of this Guide for further information on the 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 percent of those residents (or fewer if the exception criteria apply) are L/M income persons.	Purchasing land for use as a park serving a primarily residential neighborhood that is predominantly L/M income.	For more information, see page 3-5.
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 percent of who are L/M income persons.	Buying a building to be converted into a sheltered workshop for developmentally-disabled adults.	For more information, see page 3-10.
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 percent of the units will be occupied by L/M income households.	For more information, see page 3-13.
L/M Income Jobs	The property acquired is to be used for an activity that will create or retain permanent jobs at least 51 percent 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 percent of the new permanent jobs that will be created to L/M income persons.	For more information, see page 3-16.
Slum or Blighted Area	The acquired property is in an area designated by the grant recipient as a blighted area, and the property will be used in a manner that addresses one or more of the conditions that contributed to the deterioration of the area.	Using CDBG funds to acquire deteriorated buildings located in a blighted area for rehabilitation or demolition.	For more information, see page 3-26.

National Objectives – Acquisition of Real Property

Objective	Qualifies If	Example	Additional Information
Spot Blight	The acquisition of property is located outside a designated blighted area and the acquisition is a prerequisite for clearance that will eliminate specific conditions of blight or physical decay on a spot basis.	The acquisition of a dilapidated property containing an abandoned grain elevator, the presence of which is detrimental to public health and safety which will be demolished.	For more information, see page 3-28.
Urgent Needs	The acquisition is part of an activity designated to alleviate existing conditions, and the state grant recipient certifies and the state determines 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 state grant recipient 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 that was severely damaged by a recent flood.	For more information, see page 3-30.

2.4 Public Facilities and Improvements and Privately- Owned Utilities

2.4.1 The HCDA

Section 105(a)(2)

- (a) Activities assisted under this chapter may include only
- (2) the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements;

2.4.2 Eligible Activities

CDBG funds may be used by the grant recipient 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).

Neither the HCDA 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. Such facilities include firehouses, civil defense shelters, public schools, libraries, and housing shelters. 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 Entitlement program regulations specify that facilities 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 include nursing homes, convalescent homes, hospitals, shelters for victims of domestic violence, shelters and transitional facilities/housing for the homeless, itinerant farm workers, group homes for the developmentally disabled, and shelters for disaster victims.

In the CDBG program, site improvements of any kind made to publicly owned property are considered a “public improvement” eligible for assistance under this category. This distinction would be of particular importance if a community sought to construct new housing on a publicly-owned property--direct CDBG assistance could not be used for the new construction, but could be used for site improvements such as water and sewer connections and development of streets and sidewalks.

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.

As defined in Section 102(a)(21) of the HCDA, 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 or general administrative affairs of government are conducted.” The term includes courthouses but does not include jails or prisons. It does not include buildings used to deliver services to the public, such as police stations or fire stations. County service centers, which are used by some communities to make certain services available to the public at a long distance from the main center, are also not included under this term.

Generally speaking, buildings that 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.

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

- Costs of operating or maintaining public facilities or improvements;
- Costs of purchasing construction equipment;
- Costs of furnishings and other personal items such as uniforms;
- New construction of public housing

2.4.3 Inclusion of Privately-Owned Utilities

The inclusion of this category 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.

2.4.4 Eligible Activities for Privately-Owned Utilities

The grant recipient, 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. This includes placing existing lines and facilities underground.

Definition: A privately owned utility may be defined as a publicly-regulated service 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 cable television services.

For example, a grant recipient 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 or a rural water system.

2.4.5 Complying with National Objectives: Public Facilities and Improvements and Privately-Owned Utilities

Except for highly specialized facilities, such as senior centers and day-care centers, most public facilities and improvements 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 a primarily residential area having at least 51 percent L/M income residents.

Different types and sizes of public facilities and improvements have different service areas. The service area might differ from existing census groupings. It may be larger than the boundary limits of the city. The service area may even be multi-county, or even statewide. Note that public facilities that serve the entire jurisdiction of the state grant recipient, such as a main library, 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.

Some facilities, by their nature, serve an area that is larger--sometimes much larger--than the grant recipient’s jurisdiction. Regional parks and education facilities, such as community colleges, 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 meets the L/M Income Area Benefit subcategory of the L/M Income Benefit national objective.

A municipal fire department, rescue squad, or other emergency department may also serve the surrounding rural areas; small towns may contract with the county sheriff’s office to provide police protection in their jurisdiction. The service area of the CDBG activity may thus need to include these surrounding areas as well. However, territory covered by “mutual aid” agreements, such as with other nearby jurisdictions’ fire departments, would not need to be included in the service area.

Jails and other detention facilities are considered to benefit the entire community served by the facility; L/M income benefit determinations must be based on the service area of the facility, not just on the occupants of the facility. State and federal prisons are particularly problematic in this regard; the service area could be an entire state or multiple states. The few prisons that have been assisted with CDBG funds have been funded on the basis of job creation for L/M Income Persons, not Area Benefit.

States are responsible for establishing policies for their program concerning:

- Determining the appropriate service area of activities,
- When surveys may be used instead of census tract/block numbering area data to generate L/M income beneficiary data, and
- Appropriate survey methodologies for obtaining the L/M income beneficiary data.

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.

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.

2.4.6 Additional Considerations

Water/sewer hook-ups:

- The costs of connecting individual properties (such as private homes) to service collection or distribution lines are NOT eligible as a public facility. Similarly, costs of constructing, installing, or reconstructing water wells, septic tanks, drain fields, etc. for individual properties are not eligible as a public facility. These activities must be classified as a cost of construction or rehabilitation of a building, as appropriate. (For further information, refer to Eligibility of Rehabilitation Activities, page 2-20.) (For further information, refer to Special Situations, page 3-8)

“911” Emergency telephone response systems:

- The HCDA and the State CDBG regulations impose special requirements on how the establishment or operation of emergency telephone numbering systems can qualify under the L/M Income Benefit national objective. See Chapter 3, Meeting a National Objective, and 24 CFR 570.483(b)(1)(iii) (For further information, see Appendix B, Code of Federal Regulations, State CDBG regulations.)

“211” Calling systems:

- 211 calling systems reduce the number of calls made to access community-based organizations and government agencies. Many community service referrals (low cost housing, meals, utility assistance, etc.) are made to low- and moderate-income persons. There are special requirements on how the establishment or operation of a 211 calling system can qualify under L/M Income Benefit national objective. See HUD Notice CPD-04-07, 6/9/04 for more information.

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.

Facilities containing both eligible and ineligible uses:

- If a public facility contains both eligible and ineligible uses, 24 CFR 570.200(b)(1) of the Entitlement regulations should be consulted for guidance on funding 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.

Special assessments:

- 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. These include Davis-Bacon labor standards as well as the rules described in Appendix D, Special Assessments under the CDBG Program, concerning the requirement to pay assessments on behalf of L/M income property owners.
- 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:
 - (1) 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
 - (2) a one-time charge made as a condition of access to the public improvement.
- The term “special assessment” does not relate to taxes, or to the establishment of the value of real estate for the purpose of levying real estate, property or ad valorem taxes. The term does not include periodic charges based on the use of public improvements (such as water and sewer user charges) even if such charges include the recovery of all or some portion of the capital costs of the public improvement.
- 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.
- Although impact fees generally are not eligible to be paid with CDBG funds, there are several instances in which impact fees are eligible for CDBG funding. For example, impact fees associated with housing developed under Section 105(a)(15) (activities carried out through nonprofit development organizations) or developed as housing of last resort may be paid with CDBG funds. In either case, the impact fees must be a necessary expense of developing housing in the community in order to be an eligible expense.
- Where CDBG funds are used to pay all or part of the cost of a public improvement, the rules at 24 CFR 570.482(b) (described in Appendix B, Code of Federal Regulations, Title 24 570.482 – .497) apply if special assessments are used to recover capital costs.

2.4.7 Other Considerations

Economic development infrastructure projects:

- Not all public facilities or improvements activities are designed to benefit a primarily residential service area; certain public facility activities may be undertaken for economic development purposes. For example, a city may install or upgrade water, sewer, or road facilities to serve a commercial/ industrial site, in exchange for a business agreeing to locate or expand there. In such activities, the activity may be funded on the basis of meeting a national objective by creating jobs for L/M income persons.

- In certain cases, the area served by a public improvement that enables a business to create or retain jobs may also include other properties (for example, 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.

(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.)

Combining CDBG funds with other federal money:

- State CDBG money is frequently combined with funding from other federal programs to finance the construction of public facilities. Water and sewer systems are commonly funded with a combination of State CDBG, EPA Clean Water or Drinking Water State Revolving Fund, and USDA-Rural Utilities Service money. Because Congress authorizes these various programs under different statutes, different sets of federal requirements apply to each of them. (Some federal requirements, such as the Davis-Bacon Wage Rate Act, apply to some federal programs but not others.)
- If State CDBG funds are commingled with those of other federal programs, or are used to jointly fund the same improvements, the statutory and regulatory requirements of the CDBG program must be applied to the entire project. However, if State CDBG funds are used to exclusively finance one type of improvement, and other federal funds are used to construct another type of improvement, the CDBG requirements will only apply to the improvements paid with CDBG funds.

2.4.8 Example

- A city uses a combination of State CDBG and State Clean Water Revolving Fund money to install 30 blocks of sanitary sewer lines, which are engineered, bid and constructed as one project. The CDBG requirements apply to the entire project.
- A city receives State CDBG funds to run several miles of water lines that will connect the existing city water system to a new rural water system; the rural water system is being built using Rural Utilities Service loans and grants. The city has contracted with the rural water system to administer their State CDBG grant for them. The CDBG program requirements apply only to the city's project, not to the entire rural water system, provided that separate engineering and construction contracts have been advertised and let for the city's project versus the rural water system project.
- A village receives State Drinking Water Revolving Fund money to expand and upgrade its water treatment plant; at the same time, it receives State CDBG funds to replace all the existing water distribution lines in the village. Each program is run by a separate state agency, but under the state's "single application" process, the village submitted only one application presenting all the improvements as one project. The two state agencies committed their respective funding based on the knowledge that the other funding would also be provided. The CDBG program requirements would apply only to the replacement of the distribution lines, not to the water treatment plant, provided that separate engineering and construction contracts have been advertised and let for the city's distribution lines versus the treatment plant.

- One year, a town receives Rural Utilities Service funding to extend water and sewer lines to a previously unserved neighborhood. The next year, the town receives a State CDBG Housing Rehabilitation Grant for the same neighborhood, and one of the activities will be providing water and sewer hookups to income-eligible residents. The CDBG requirements apply only to the housing rehabilitation/water and sewer hookups, provided that the water and sewer hookups are not included in the construction contract for the distribution/collection lines.

National Objectives - Public Facilities and Improvements and Privately-Owned Utilities			
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 percent of those residents are L/M income persons.	Paving of gravel road and the installation of drainage in a predominantly L/M income community.	For more information, see page 3-5.
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 percent of whom are L/M income persons.	Rehabilitation of a building to be used as a center for training severely disabled adults to enable them to live independently.	For more information, see page 3-10.
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 3-13.
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 percent of the jobs with L/M income persons.	For more information, see page 3-16
Slum or Blighted Area	The public facilities and improvements are located in a designated blighted area and are designed to address one or more conditions which contributed to the deterioration of the area.	Renovation of an abandoned, deteriorated elementary school building, located in an area designated by the grant recipient as blighted pursuant to CDBG rules, in order to re-open it as a library and community center.	For more information, see page 3-26.

National Objectives - Public Facilities and Improvements and Privately-Owned Utilities			
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 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 blighted area (and does not serve an L/M income area).	For more information, see page 3-28.
Urgent Needs	The acquisition, construction, or reconstruction of a public facility or improvement designed to alleviate existing conditions and the grant recipient certifies that those conditions are a serious and immediate threat to the health or welfare of the community, the conditions are of recent origin, there is no other known source of funds it can use to implement the activity and the locality is unable to finance the activity on its own.	Extension of municipal water system distribution lines into a residential area where residents' private wells have recently been found to be contaminated with high levels of fecal coliform bacteria.	For more information, see page 3-30.

2.5 Code Enforcement

2.5.1 The HCDA

Section 105(a)(3)

- (a) Activities assisted under this chapter may include only –
 - (3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public or private improvements or services to be provided, may be expected to arrest the decline of the area;

2.5.2 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.

Eligible code enforcement activities do not include the costs of correcting code violations identified during inspections. The cost of correcting such violations may be eligible for CDBG assistance under other eligibility categories, such as rehabilitation.

2.5.3 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.

2.5.4 Additional Considerations

Code enforcement expenditures should not be included in costs subject to the 20 percent 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 grant recipient and: At least 51 percent 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 an L/M income deteriorated neighborhood targeted for rehabilitation assistance, construction of a neighborhood facility, and street reconstruction.	For more information, see page 3-5.
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
Slum or Blighted Area	The code enforcement is targeted at a designated 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 3-26.
Spot Blight	Not applicable	Not applicable	Not applicable

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> <ol style="list-style-type: none"> (1) The code enforcement is targeted at a deteriorated or deteriorating area; (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 (3) The grant recipient 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 grant recipient is unable to finance the activity on its own, and other sources of funds are not available. * 	Code enforcement activities taking place in an area that has been severely affected by a flood and are part of the community's overall response to the emergency.	For more information, see page 3-30.

* In cases where disaster causes the blight of an area, it may be easier to qualify the code enforcement under the "Blighted Area" category than under the "Urgent Need" category.

2.6 Clearance, Rehabilitation, Reconstruction, and Construction of Buildings (Including Housing)

2.6.1 The HCDA

Section 105(a)(4)

- (a) Activities assisted under this chapter may include only –
- (4) clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately owned properties, and including the renovation of closed school buildings);

Section 105(a)(25)

- (a) Activities assisted under this chapter may include only –
- (25) lead-based paint hazard evaluation and reduction, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

2.6.2 Eligibility of Clearance and Remediation Activities

Under this category, CDBG funds may be used for:

- Clearance, demolition, and removal of buildings and improvements,
- The movement of structures to other sites,
- The remediation of known or suspected environmental contamination, including project-specific environmental assessment costs not otherwise eligible, and
- The demolition of HUD-assisted or HUD-owned housing units with prior approval of HUD

2.6.3 Additional Clearance 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.

2.6.4 Eligibility of Rehabilitation Activities

The HCDA provision for rehabilitation activities, Section 105(a)(4), provides limited information on how to apply eligibility. The following information on rehabilitation eligibility was developed as interpretation of the Entitlement program regulations and therefore can be used as interpretive guidance.

2.6.5 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 and is classified as real property.



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.

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.

2.6.6 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 (for example, the heating system). The purchase and installation of washers, dryers, and dishwashers are allowed since activities, including rehabilitation, that promote energy efficiency, 42 U.S.C. 5305(a)(4), are permissible. The January 14, 2011 Memorandum on "Guidance Regarding the Use of CDBG Funds for Washers, Dryers, and Dishwashers" provides more information for CDBG grantees.

HOME Administrative Costs – CDBG funds can be used to pay for HOME administrative costs.

Financing: Grants, loans, loan guarantees, interest supplements, and other forms of financial assistance may be provided under this category. (A grant recipient may make a "lump sum drawdown" for the purpose of financing rehabilitation of privately-owned properties. See 24 CFR 570.513 for details.)

Refinancing: Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds, if such refinancing is determined by the grant recipient 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, dead bolt locks, and other devices for security purposes.

Insurance: The costs of initial homeowner warranty premiums and, where needed to protect the grant recipient'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 24 CFR 570.605.

Conservation: Costs required to increase the efficient use of water (for example, 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, or installing wells, septic tanks, septic fields for individual houses, as well as replacing any of the above. (Costs of installing water and sewer collection lines are not eligible as rehabilitation.)

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: 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 (for example, the renovation of a closed school building to residential use). Note that rehabilitation of a closed building for re-use as a public facility would be eligible as a public facility.

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 in the State CDBG program in conjunction with other rehabilitation activities under Section 105(a)(4) of the HCDA or as a separate activity under Section 105(a)(25). In addition to lead hazard abatement work itself, CDBG funds may be used for: testing the blood of children to determine the lead levels, inspecting and testing homes for lead hazards, temporarily relocating families during lead control work, community education and outreach, job training for lead hazard control workers, and collection and analysis of data on lead hazards.

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 that are participating or seeking to participate in rehabilitation activities eligible under this category.

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.

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
- The value of the homeowner's sweat equity to rehabilitate their own property

2.6.7 Use of subrecipients

Grant recipients often use nonprofit entities to carry out a rehabilitation program. Where the nonprofit entity is acting in the same capacity as the grant recipient in selecting properties to be rehabilitated, it is appropriately designated as a subrecipient of the unit of local government. However, there are instances in which a nonprofit entity may not be considered 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 it takes advantage of the grant recipient's program to use CDBG funds for such rehabilitation (in the same manner as other property owners do), the entity should not be considered a subrecipient for purposes of the program. The most significant aspect here is that any income the nonprofit might receive from the use or rental of the rehabilitated property would not be considered CDBG program income.

2.6.8 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 means that a state and its grant recipients are to minimize the elapsed time between the state's receipt of funds from its line of credit (the Treasury) and the state grant recipient's disbursement of funds for CDBG activities. The rules also generally 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 24 CFR 570.489(f)). 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.

2.6.9 Special note on lump sum drawdowns and escrow accounts

Section 104(h) of the HCDA requires HUD to establish standards governing the use of lump sum drawdowns. These standards are at 24 CFR 570.513 of the Entitlement program regulations. Any state or state grant recipient wishing to use a lump sum drawdown must follow the provisions of 24 CFR 570.513. Escrow accounts are not expressly authorized in the HCDA. States and state grant recipients wishing to use escrow accounts are advised to follow the provisions of 24 CFR 570.511 of the Entitlement program regulations.

Lump Sum Drawdown: A state grant recipient 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 24 CFR 570.513(b)(2) and if it complies with other requirements under 24 CFR 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.

Reference: 24 CFR 570.513

Escrow Account: Some state grant recipients have experienced difficulty in making timely payments from their CDBG account to contractors engaged in rehabilitation. Where a CDBG rehabilitation 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, a state grant recipient 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 24 CFR 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 a state grant recipient 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.

Reference: 24 CFR 570.511

2.6.10 Additional Considerations for Rehabilitation

When CDBG funds are used under this category for refinancing, the state or state grant recipient 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.

If a state grant recipient or a subrecipient makes a number of loans for rehabilitation, it is important that appropriate steps be taken to manage its portfolio of loans. Some guidance and advice on this matter is contained in Appendix H, Selling or Securitizing CDBG-Funded Loans.

2.6.11 Eligibility of Reconstruction Activities

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 grant recipients' ability to use CDBG funds for "reconstruction" of properties.

While the HCDA 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. A reconstructed unit need not contain the same number of rooms as the unit it replaces. States are cautioned that reconstruction that involves increasing the number of housing units on a site may constitute new housing construction. However, there could be situations in which a single-unit structure could be reconstructed as a multi-unit structure, such

as to allow existing residents to comply with local housing standards or occupancy standards. (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.) The cost of replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing could also be covered under reconstruction of residential structures.

2.6.12 Eligibility of Construction of Buildings (Including Housing)

The construction of new buildings, particularly new residential housing, is not explicitly eligible under the HCDA. However, CDBG funds may be used in certain specified circumstances to finance the construction of new permanent residential structures. Those limited circumstances are as follows:

- A state grant recipient may construct housing of last resort under 24 CFR Part 42, Subpart I. (This is housing that the grant recipient 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.)
- Local development corporations and certain nonprofit organizations eligible under Section 105(a)(15) of the HCDA may construct new housing (including shared housing) as part of a neighborhood revitalization or community economic development project.

Note: Section 105(a)(18) of the HCDA lists as eligible the rehabilitation or development of housing assisted under Section 17 of the U.S. Housing Act of 1937. However, that section of the U.S. Housing Act has been repealed.

2.6.13 Additional Considerations for Construction of Buildings (Including Housing)

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

- Acquisition of sites on which buildings will be constructed for use or resale as housing;
- Clearance of toxic contaminants of property to be used for the new construction of housing;
- 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; and
- The cost of disposing of real property, acquired with CDBG funds, which will be used for new construction of housing.

In addition, certain “soft costs” necessary for the new construction of housing that would otherwise be ineligible have been previously determined to be eligible as general administrative costs under HCDA Section 105(a)(12). Such “soft costs” include:

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



24 CFR 570.206(g) of the Entitlement program regulations further describes the types of “soft costs” which may be eligible. The limitations on the use of this provision by direct HUD grant recipients (under the Entitlement program and the HUD-Administered Small Cities program) are not applicable to the State CDBG program. 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 use 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 grant recipient 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.

2.6.14 Complying with National Objectives - Clearance

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

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 percent of those residents are L/M income persons.	Demolishing a vacant structure and removing the debris to make a community park and playground serving a predominantly residential L/M income community.	For more information, see page 3-5.
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 percent of who are L/M income persons.	Demolishing a dilapidated structure from the site on which a community center will be built, the use of which will be limited to the elderly.	For more information, see page 3-10.
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 seriously dilapidated buildings being used as temporary housing for migrant farm laborers, to make room for new migrant farmer housing.	For more information, see page 3-13.
L/M Income Jobs	The clearance is part of an activity that will create or retain permanent jobs, at least 51 percent of which are for L/M income persons.	Using CDBG funds to clear an environmentally contaminated (brownfield) site on which a new business will locate and agrees that at least 51 percent of the jobs to be created will be for L/M income persons.	For more information, see page 3-16.
Slum or Blighted Area	The clearance activities are within a designated blighted area and are designed to address one or more conditions that contributed to the deterioration of the area.	Using CDBG funds to demolish one or more deteriorated buildings located in a designated blighted area.	For more information, see page 3-26.

National Objectives - Clearance			
Objective	Qualifies If	Example	Additional Information
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 grain elevator, the presence of which is detrimental to public health and safety, located in an area that is not designated as a slum or blighted area.	For more information, see page 3-28.
Urgent Needs	The clearance is part of an activity designed to alleviate existing conditions and the grant recipient 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 grant recipient 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 tornado and that constitutes a safety hazard to the community.	For more information, see page 3-30.

2.6.15 Complying with National Objectives - Rehabilitation

Section 105(c)(3) of the HCDA requires that, in order for an activity involving 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 following charts which provide general guidance on how rehabilitation activities may qualify as meeting a national objective under the CDBG program.

This section of the HCDA also limits the extent to which CDBG expenditures for housing activities may count towards the overall expenditures benefit requirement, as discussed in Chapter 4, Overall Expenditures—Benefit to L/M Income Persons, of this Guide. It should also be noted that the section on L/M Income Benefit for housing in Chapter 3, Meeting a National Objective, of this Guide covering National Objectives contains important information on the rules 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 an 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.

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 3-5.
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 3-13.
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 is held by L/M income persons.	For more information, see page 3-16.
Slum or Blighted Area	Rehabilitation of residential structures located in a 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.	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 3-26.

National Objectives - Rehabilitation			
Objective	Qualifies If	Example	Additional Information
Spot Blight	Rehabilitation of a structure located outside a designated 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 manufacturing building located in an area that has not been designated as 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 blighted and where rehabilitation is limited to corrections of code violators that are detrimental to public health and safety.	For more information, see page 3-28.
Urgent Needs	The rehabilitation is part of an activity designed to alleviate existing conditions for which the grant recipient 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 grant recipient 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 a tornado and has been condemned.	For more information, see page 3-30.

National Objectives - Construction of Buildings (Including 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	L/M income households will occupy the new housing. Rental units must be occupied at affordable rents.	New construction of “last resort” housing needed for an L/M income household being displaced by a CDBG-assisted project.	For more information, see page 3-13.
L/M Income Jobs	Not applicable	Not applicable	Not applicable
Slum or Blighted Area	New housing qualifies if: (1) The new housing is located within a designated blighted area and (2) Development of new housing addresses one of the conditions that contributed to the deterioration of the area.	New, modest-income rental housing constructed by a nonprofit Community Development Corporation on a formerly-contaminated site in a designated blighted area, using a combination of CDBG and Low Income Housing Tax Credit funding.	For more information, see page 3-26.
Spot Blight	Not applicable	Not applicable	Not applicable
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 3-30.

2.7 Architectural Barrier Removal

2.7.1 The HCDA

Section 105(a)(5)

(a) Activities assisted under this title may include only –

- (5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

2.7.2 Eligible Activities

The HCDA 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 grant recipients 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 grant recipients 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.

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

If the construction of or improvement to a building is eligible for assistance with CDBG, a state may consider the costs of making the building or improvement accessible to persons with handicaps to be eligible under either:

- HCDA Section 105(a)(5) or
- HCDA Section 105(a)(2), as an integral cost of the construction.

Similarly, the removal of architectural barriers when undertaken as part of the rehabilitation or reconstruction of public facilities or buildings may be considered to be eligible under:

- HCDA Section 105(a)(5);
- HCDA Section 105(a)(2) (for public facilities, as an integral cost of the activity); or
- HCDA Section 105(a)(4) (for other buildings, as an integral cost of the activity).

Activities involving the construction or reconstruction of buildings for economic development purposes, or by certain types of nonprofit entities, may qualify under Section 105(a)(5) or

Section 105(a)(14), (15), or (17) as appropriate. However, if the basic building, facility, or activity is not otherwise eligible under another provision of the HCDA, then the removal of architectural barriers in such a building or facility must be eligible under Section 105(a)(5). The most obvious example of such an activity would be the removal of architectural barriers in a building for the general conduct of government.

The main issue with respect to handicapped accessibility lies in the ability to meet a national objective, as required under the CDBG program. 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 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 HCDA, the removal of accessibility barriers may be presumed to meet the L/M Income Limited Clientele criteria if the costs of removal are 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 problematic as the use of the term “handicapped” broadened to include categories of disability that do not necessarily impact a person’s ability to work. Thus, HUD revised the regulations to include 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.

2.8 Loss of Rental Income

2.8.1 The HCDA

Section 105(a)(6)

(a) Activities assisted under this title may include only –

- (6) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this chapter;

2.8.2 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 grant recipient to have an existing, available unit held open for the household for a short period until the displacement actually occurs.

2.8.3 Complying with National Objectives - Loss of Rental Income

Determining compliance of this activity with the national objectives of the CDBG program must be 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 “Blight” or “Urgent Needs” national objectives, then paying housing owners for losses incurred in holding units for those displacees also would qualify under “Blight” or “Urgent Needs,” as applicable.

2.8.4 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 grant recipient determined that the housing was needed to be kept available for the displaced household.

2.9 Disposition of Real Property

2.9.1 The HCDA

Section 105(a)(7)

(a) Activities assisted under this title may include only –

- (7) disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;

2.9.2 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 until final disposition of the property is made.

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.

2.9.3 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 an example on how such acquired property may meet a national objective, see the charts on National Objectives—Acquisition of Real Property on pages 2-7 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 2-3 for more details. Property acquired with CDBG funds may be used for purposes that do not meet a national objective, but only after the CDBG program is reimbursed as specified under 24 CFR 570.489(j)(2).

2.9.4 Additional Considerations

The gross proceeds from the disposition of real property acquired with CDBG funds that are received by the grant recipient or a subrecipient more than 5 years after expiration of the grant agreement between the state and the unit of general local government (UGLG) are not considered program income. The proceeds from the sale of real property less than 5 years from the expiration of the grant agreement between the state and the UGLG are considered program income. *Reference: 24 CFR 570.489(e)(1)*

2.10 Public Services

2.10.1 The HCDA

Section 105(a)(8)

(a) Activities assisted under this title may include only –

- (8) provision of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy

conservation, welfare or recreation needs, if such services have not been provided by 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 any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this title, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 per centum of the amount of any assistance to a unit of general local government (or in the case of nonentitled communities not more than 15 per centum statewide) under this title including program income may be used for activities under this paragraph unless such unit of general local government used more than 15 percent of the assistance received under this title for fiscal year 1982 or fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law).98-8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount, except that of any amount of assistance under this title (including program income) in each of fiscal years 1993 through 2000 to the City of Los Angeles and County of Los Angeles, each such unit of general government may use not more than 25 percent in each such fiscal year for activities under this paragraph, and except that of any amount of assistance under this title (including program income) in each of the fiscal years 1999, 2000, and 2001, to the City of Miami, such city may use not more than 25 percent in each fiscal year for activities under this paragraph;

2.10.2 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 grant recipient's applicable Action Plan. (This requirement is intended to prevent the substitution of CDBG funds for recent support of public services by the grant recipient using local or state government funds.)

HUD may grant an exception to this limitation 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.

- (2) No more than 15 percent of a state's yearly allocation of funds, plus program income distributed by the state as part of that year's method-of-distribution, may be expended for public service activities. Note that the 15 percent cap applies to the state, not to individual local governments receiving state CDBG funds. A state could make a grant to a town solely for public services activities. In the State CDBG program, compliance with the 15 percent cap is determined by expenditures over the life of a given fiscal year's allocation of funds (plus program income). (In contrast,

compliance is determined in the Entitlement program based on obligations during each 12-month program year period.)

Public services that are not subject to the cap: Certain types of services fall under other categories of basic eligibility (such as Sections 105(a)(15) and 105(a)(23)) and are not subject to the limitation that applies to services carried out under Section 105(a)(8). (See especially the category of Special Activities by Nonprofit Development Groups and Appendix E, Community Revitalization Strategy Areas.) In addition, discussion of the factors to consider in deciding how to categorize public services that a grant recipient 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 2-86. *Reference: 24 CFR 570.482(c)(2)*

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. See categories Special Economic Development Activities and Special Activities by Nonprofit Development Organization),
- Recreation programs,
- Education programs,
- Public safety services,
- Fair housing activities (see Program Administration category),
- Services for senior citizens,
- Services for homeless persons, and victims of domestic violence (See also categories of supportive services under the Continuum of Care and Emergency Solutions Grants programs),
- Drug abuse counseling and treatment,
- Energy conservation counseling and testing,
- Homebuyer down payment assistance,
- Emergency assistance payments (for example, to keep tenants from losing housing), and
- Legal services (including walk-in legal counseling, foreclosure mitigation and prevention, landlord/tenant matters, veterans and public benefit appeals, child support orders, reasonable accommodations for persons with disabilities, and consumer protection).

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 CDBG-funded contributions for those services.

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

- Political activities;
- Ongoing grants or non-emergency payments (defined in the Entitlement program as more than three consecutive months) to individuals for their food, clothing, rent, utilities, or other income payments.
- Payment of expenses in connection with litigation against the Department.

2.10.3 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.

2.10.4 Additional Considerations

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 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.

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.

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 percent of those residents are L/M income persons.	Operation of after-school programs for children attending an elementary school serving a predominantly L/M income area.	For more information, see page 3-5.
L/M Income Limited Clientele	The public service is limited to a specific group of people, at least 51 percent of who 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 3-10.
L/M Income Housing	Not applicable	Not applicable	Not applicable
L/M Income Jobs	Not applicable	Not applicable	Not applicable
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 or blighted area.	For more information, see page 3-26.
Spot Blight	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 grant recipient 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 3-30.



2.11 Payment of Non-Federal Share

2.11.1 The HDCA

Section 105(a)(9)

(a) Activities assisted under this title may include only –

- (9) payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under this chapter;

2.11.2 Eligible Activates

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 that 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 program 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 HCDA 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.

2.12 Relocation

2.12.1 The HCDA

Section 105(a)(11)

(a) Activities assisted under this title may include only –

- (11) relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

2.12.2 Eligible Activities

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

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

Relocation payments are **required** in certain circumstances. See 24 CFR.570.488 and 24 CFR 570.606 for additional information.

A state may permit CDBG funds to 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, a state grant recipient 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 grant recipient 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 displacees. *References: 24 CFR 570.488 and 24 CFR 570.606(d)*

2.12.3 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 grant recipient.

Where such assistance is **required** under the Uniform Act or the HCDA, 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 grant recipient 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 grant recipient 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 grant recipient, 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 grant recipient'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.

2.12.4 Additional Considerations

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

2.13 Planning and Capacity Building

2.13.1 The HCDA

Section 105(a)(12)

(a) Activities assisted under this title may include only –

(12) activities necessary

- (A) to develop a comprehensive community development plan, and
- (B) to develop a policy-planning-management capacity so that the recipient of assistance under this title may more rationally and effectively
 - (i) determine its needs,
 - (ii) set long-term goals and short-term objectives,
 - (iii) devise programs and activities to meet these goals and objectives,
 - (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and
 - (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

Section 105(a)(16)

(a) Activities assisted under this title may include only –

- (16) activities necessary to the development of energy use strategies related to a recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items such as--
 - (A) an analysis of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements, budgeting, waste management, district heating and cooling, land use planning and zoning, and traffic control, parking, and public transportation functions; and
 - (B) a statement of the actions the recipient will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low- and moderate-income persons) to make energy conserving improvements to residential structures and any other proposed energy conservation activities;

2.13.2 Eligible Activities

CDBG funds may be used for:

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

Under HCDA Section 105(a)(14), planning activities may also be carried out by public or private nonprofit entities.

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;
- Local analyses 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).

Such funds may also be used under this category for activities designed to improve a state grant recipient's capacity (or that of its subrecipients) to plan and manage programs and activities for the grant recipient's CDBG program. However, the amount of CDBG funds that may be used for activities under this category (whether by the grant recipient or its subrecipients) is subject to the statutory limitation on planning and administrative costs.

Planning and capacity building activities do not include:

- Engineering, architectural, and design costs related to a specific project (for example, 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.

2.13.3 Complying with National Objectives - Planning and Capacity Building

CDBG funds spent for planning and capacity building costs, *when undertaken in conjunction with other CDBG assisted activities*, are considered to address the national objectives of the CDBG program as a whole; no documentation of such compliance is required. *Reference: 24 CFR 570.483(f)*

However, states may also award grants to units of general local government in which planning is the only activity, or in which planning activities are unrelated to any other activity funded as part of the grant. These are often referred to as “*planning-only grants*” or “*planning-only activities*.” Planning-only grants or activities must comply with the requirements of the L/M income or slum and blight national objectives. (It is not possible for a planning-only grant or activity to comply with the Urgent Needs national objective.)

Planning-only grants or activities can meet the L/M Income Benefit objective if it can be shown that at least 51 percent of the persons who would benefit from implementation of the plan are L/M income persons. Planning-only grants or activities can meet the Slum/Blight national objective if the plans are for a slum or blighted area, or if all the elements of the planning are both necessary for and related to an activity which, if implemented, could be shown to meet the Slum/Blight national objective criteria. For either the L/M Income Benefit or the Slum/Blight national objective, such determinations are not dependent on the planned-for activity or project actually being implemented at some point. *Reference: 24 CFR 570.483(b)(5); 24 CFR 570.483(c)(3).*

2.13.4 Additional Considerations – Capacity Building

Note that capacity building is also eligible under two other categories of Technical Assistance. The Technical Assistance provision (HCDA Section 105(a)(19)) 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. The use of funds under that category is not subject to the 20 percent cap, but must be shown to meet a national objective. In addition, a state may use up to three percent of the grant amount for a combination of program administration and to provide technical assistance to local governments and nonprofit program recipients. These funds are subject to neither the 20 percent cap nor the requirement to meet a national objective. These two provisions are discussed in this Guide under the subsection of this chapter entitled Technical Assistance as well as in Appendix G.

2.13.5 Additional Considerations – Planning

The cost of implementing plans, while not eligible as planning costs, may qualify for CDBG funding if the implementing actions are otherwise eligible activities.

A market study performed on behalf of the grant recipient 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 hotel project on a specific site would have to qualify under the Special Economic Development Activities category.

2.14 Program Administration Costs

2.14.1 The HCDA

Section 105(a)(13)

(a) Activities assisted under this title may include only –

- (13) payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones and payment of reasonable administrative costs and carrying charges related to
- (A) administering the HOME Program under title II of the Cranston-Gonzalez National Affordable Housing Act; and
 - (B) the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981;

2.14.2 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 HOME programs.

Program administration costs include staff and related costs required for overall program management, coordination, monitoring, reporting, and evaluation. In the State CDBG program, this category includes both the state's costs of administering the CDBG program as well as units of general local governments' (and their subrecipients') costs of administering grants awarded to them by the state.

Other activities eligible under this category include:

- Citizen participation costs,
- Fair housing activities,
- Indirect costs charged using an accepted cost allocation plan,
- Development of submissions or applications for federal programs,
- Staff and overhead costs for project delivery, and
- Certain costs of administering the HOME program or a federally designated Empowerment Zone or Enterprise Community.

Office space:

A state or state grant recipient 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 grant recipient 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 percent cap:

Costs that are charged to administrative costs and to planning and capacity building under Section 105(a)(12) are subject to a statutory limitation that not more than 20 percent of grant funds plus program income may be used for planning and administration. This 20 percent limitation applies to the entire state grant, not individual local governments. A state could make a grant to a town solely for planning activities. In the State CDBG program, compliance with the 20 percent cap is determined by expenditures over the life of a given fiscal year's allocation of funds (plus program income distributed by the state as part of that year's method-of-distribution).

State administration cap:

States can spend \$100,000 of their CDBG grant amount on state administrative costs, and can also spend up to three percent of the total CDBG grant on a combination of administrative costs and the cost of providing technical assistance to their sub grantees. The additional amount, above the \$100,000, spent on administrative costs, must be matched, on a one-for-one basis, by state or in-kind funds. The allowance of \$100,000 plus up to three percent for state administrative and technical assistance costs is also included within the overall 20 percent cap on planning plus administrative costs. For additional information see Appendix G.

Example

Overall program administration, 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;
- Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;
- Developing the Consolidated Plan; and
- Providing application workshops for potential sub grantees.

Not Eligible

Costs associated with the following activities are not authorized under Program Administration:

- Political activities
- The acquisition, construction, or reconstruction of space in a government office building for staff administering the grant recipient's CDBG 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.

2.14.3 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 grant recipient does not have to maintain any other documentation for this purpose.

2.14.4 Other Considerations

In general, states' approach to the eligibility of administrative costs is very different from that allowed under the CDBG Entitlement program. In the Entitlement program regulations, a distinction is made between general administrative costs and activity-specific administrative costs related to carrying out other eligible activities. The latter, sometimes called "activity delivery costs," represent the administrative costs incurred in implementing specific activities; they are considered part of the cost of those activities and are not subject to the 20 percent planning plus administrative cost cap. (Examples of such activity-specific administrative costs include: costs of printing brochures advertising the availability of housing rehabilitation loan funds; staff costs of underwriting and approving loans to businesses; staff costs of housing rehabilitation specialists performing work write-ups and inspecting completed construction work.)

Few, if any, states elect to make such distinctions between "activity delivery costs" and "general administrative costs" (such as indirect costs, staff costs of a bookkeeper, or costs of obtaining an audit when required). Most states choose to categorize all types of administrative costs together for administrative and eligibility purposes, since no distinctions are made under HCDA Section 106 (d)(3)(A). (No such distinction would be possible in any event for the state's own \$100,000 plus three percent administrative cost and technical assistance allowance, as states do not directly carry out activities in the CDBG program, with the exception of direct provision of TA by state staff.)

In addition, states may choose to limit state grant recipients to a lower percentage allowance for program administration costs. Some states set different maximum administrative cost allowances for different types of activities; for instance, up to ten percent for housing rehabilitation grants, but only six percent for infrastructure grants. Some states do not allow state grant recipients to charge any administrative costs to their CDBG grant and require the state grant recipient to cover all administrative expenses as a form of local funding match.

2.15 Activities Carried Out through Nonprofit Development Organizations

2.15.1 The HDCA

Section 105(a)(14)

(a) Activities assisted under this title may include only –

- (14) provision of assistance including loans (both interim and long-term) and grants for activities which are carried out by public or private nonprofit entities, including
 - (A) acquisition of real property;
 - (B) acquisition, construction, reconstruction, rehabilitation, or installation of

- (i) public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and
- (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and

(C) planning;

Section 105(a)(15)

(a) Activities assisted under this title may include only –

- (15) assistance to neighborhood-based nonprofit organizations, local development corporations, nonprofit organizations serving the development needs of the communities in nonentitlement areas, or entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of section 101(c), and assistance to neighborhood-based nonprofit organizations, or other private or public nonprofit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities (other than by construction of new facilities) in which elderly families (as defined in section 3(b)(3) of the United States Housing Act of 1937) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing;

Preface

Two consecutive provisions of the HCDA authorize state grant recipients to provide funding to various types of nonprofit organizations to carry out CDBG activities. At first glance, they may appear redundant. It is important to note the differences between these two sections, as they deal with different types of organizations and deal with the eligibility of different types of activities.

2.15.2 Eligible Activities – Section 105(a) (14)

HCDA Section 105(a)(14) authorizes funds to be provided (in the form of loans or grants) from state grant recipients to public and private nonprofit entities to carry out:

- Acquisition,
- Construction,
- Rehabilitation,
- Reconstruction,
- Installation of commercial or industrial buildings or structures and other related real property equipment and improvements, and
- Planning.

At first glance, this section might appear to add little to the scope of activities eligible under the HCDA. The activities listed are generally eligible under other statutory eligibility categories as well, and the list is illustrative rather than exclusive.

2.15.3 Eligible Entities -Section 105(a)(14)

Neither the statute nor the CDBG regulations further define the term “public and private nonprofit entities,” and there is no language elsewhere in the HCDA that prohibits a grant recipient from using other entities to carry out otherwise-eligible activities.

However, this section of the HCDA is significant in that:

- It was written with a distinct orientation toward economic development and physical development activities;
- Inclusion of “public nonprofit entities” allows certain publicly sponsored or quasi-governmental organizations to carry out CDBG activities (depending on state law, this may include industrial development, redevelopment or port authorities, local development corporations, housing authorities, etc.);
- The HUD entitlement regulations (at 24CFR570.203) implement and interpret this provision to make eligible the installation of rail spurs, private utilities, and other site improvements on private property, and the development of such projects as industrial parks and business incubators; and
- The HUD entitlement regulations (at 24 CFR 570.203) implement and interpret this provision to clarify that such activities may also be carried out directly by a grant recipient itself.

Examples of Eligible Entities - Section 105(a)(14)

- Construction by a subrecipient of a business incubator designed to provide inexpensive space and assistance to new firms to help them become viable businesses;
- Acquisition of land and installation of infrastructure by a County Industrial Development Authority to expand an existing industrial park;
- A loan to a private nonprofit organization to finance the development of a sheltered workshop to provide training and employment for developmentally disabled adults.

Planning activities eligible under this provision are discussed elsewhere in this Chapter under the “planning and capacity-building” section (page 2-43).

2.15.4 Eligible Entities - Section 105(a)(15)

The range of entities and activities eligible under HCDA Section 105(a)(15) is simultaneously broader and narrower than under HCDA Section 105(a)(14).

When initially added to the HCDA, Section 105(a)(15) was limited to:

- Neighborhood-based nonprofit organizations,
- Local development corporations, and
- Entities organized under Section 301(d) of the Small Business Investment Act of 1958.

Making use of this provision in rural areas and small communities was difficult, given the dearth of organizations serving these areas that qualified, and given the vagaries of defining a “neighborhood” in such areas. The 1992 Amendments to the HCDA revised this section to make it much more useful in small communities and rural areas, adding the following to the above list:

- Nonprofit organizations serving the development needs of the communities in nonentitlement areas.

HUD has chosen not to further define what constitutes a nonprofit organization serving the development needs of nonentitlement communities. (In the preamble to the 1995 CDBG Economic Development regulations, the Department suggested that such an organization should, at a minimum, meet the IRS definition of a nonprofit organization.) HUD also defers to states on what constitutes “the development needs” of nonentitlement communities. Nevertheless, this phrase should not be overlooked. In considering whether a given nonprofit organization qualifies under HCDA Section 105(a)(15), a state or a state grant recipient should make a determination that the nonprofit is organized under state or local law to carry out community development activities which address the development needs of the community in question.

In the entitlement regulations (24 CFR 570.204) there is a lengthy description of the criteria an organization must meet in order to qualify as a Community Based Development Organization (CBDO) under HCDA Section 105(a)(15). The term “community based development organization” is also occasionally used in the State CDBG program as a generic term. It is important for states and their grant recipients to understand that they are not bound by the Entitlement program’s CBDO qualification requirements in 24 CFR 570.204. The language in HCDA Section 105(a)(15) allows a much broader range of nonprofit organizations to qualify under this provision in the State CDBG program than in the Entitlement program. There is nothing to prevent a regional or even a statewide entity from qualifying.

Examples of Eligible Entities - Section 105(a)(15)

The following are examples of entities that may qualify as nonprofit development organizations under HCDA Section 105(a)(15). A state or state grant recipient should research any nonprofit under consideration to ensure that it meets the other requirements of HCDA Section 105(a)(15) discussed below:

- Small Business Investment Companies organized under 15 USC Section 681,
- SBA Section 504 Certified Development Companies,
- Community Action Agencies,
- Community Development Corporations,
- Local Development Corporations, and
- Community Housing Development Organizations (CHDOs) under the HOME program.

2.15.5 Eligible Activities & Projects - Section 105(a)(15)

Concerning the activities eligible under HCDA Section 105(a)(15), the statutory language is similarly both expansive and limiting. This category authorizes a grant recipient to designate certain types of entities to carry out a range of activities, including activities the grant recipient may not otherwise 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 nonprofit development organization in the CDBG program: specifically, for the purpose of providing public services that in certain

circumstances are not subject to the limitations on the use of funds for Public Services. (This exception is explained in more detail later in this subsection.)

Under the provisions of HCDA Section 105(a)(15), a qualified nonprofit development group may only carry out the following three types of projects:

- Neighborhood revitalization projects,
- Community economic development projects, and
- Energy conservation projects.

The following discussion of these terms appears in the CDBG Entitlement program regulations at 24 CFR 570.204; states are free to use this as interpretive guidance. HUD defers to states in interpreting what constitutes a “neighborhood” for purposes of this provision but suggests that a state’s definition should be consistent with terminology used under its Community Revitalization Strategy process.

- **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 community (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 grant recipient’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 expect to be realized.

The typical CDBG eligibility categories (for example, 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.

2.15.6 “Carry out” Section 105(a)(15) Activities

The authority conveyed under this category requires that the nonprofit development group “carry out” the funded activities. This means that the nonprofit development group will undertake the activity directly or through contracts with an entity other than the state grant recipient. In any case where the nonprofit development group provides CDBG funds to another entity, it must be clear that the nonprofit development group has a direct and controlling interest in how and where the activities are undertaken. The purpose of this restriction is to ensure that the state grant recipient itself is not playing a major and controlling role.

Nothing prevents a nonprofit development group from entering into a contract with another entity to assist in project implementation, so long as the contract provides the nonprofit development group with sufficient control over the project to ensure compliance with all program requirements. (For example, a nonprofit development group can contract with a developer to build housing and not have to use nonprofit development group staff to construct the units.)

Entities that do not meet the nonprofit development group requirements could establish 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. Perhaps the “litmus test” which can be deduced from the above discussion is whether the entity has the authority, independent of the state grant recipient or other involved/related entities, to stop the project if something is going wrong.

If a state grant recipient intends to fund a nonprofit development group that lacks capacity to carry out complex development activities without substantial “hand-holding,” careful consideration must be paid to the “carry out” aspect to ensure that program requirements are not violated. One solution may be to assist the nonprofit development group 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 state or its grant recipients could also break a project into two parts and, in the first year, fund capacity building for the nonprofit development group before the nonprofit development group carries out the project.

Fundamentally, in order to use the authority provided under this category of activities by nonprofit development groups, the grant recipient must ensure that four key tests are met:

- (1) That the entity selected qualifies as a nonprofit development group under HCDA Section 105(a)(15);
- (2) That the project that the nonprofit development group will undertake qualifies under HCDA Section 105(a)(15);
- (3) That the nonprofit development group will be “carrying out” the activities; and
- (4) That the nonprofit development group is not carrying out an activity that is specifically ineligible under the CDBG program.

2.15.7 Additional Considerations

When an activity is being carried out by a nonprofit development group under this category and the activity is of such nature that it would also qualify under the category of economic development assistance to a for-profit business (as specified in HCDA Section 105(a)(17)), that activity will be subject to the Public Benefit requirements described in Appendix C of this Guide, Public Benefit Standards. However, if the nonprofit development group is carrying out any such activities pursuant to a state-approved Community Revitalization Strategy (CRS), the state may allow the activities to be exempted from the aggregate public benefit standards. See Appendix E, Community Revitalization Strategy Areas, and Appendix C, Public Benefit Standards.

A further discussion of the eligibility or ineligibility of new housing construction appears in the “Other Provisions Relating to Eligible Activities” subsection near the end of this chapter.

Public services:

There are two situations in which public services activities carried out by nonprofit development groups can be excluded from the limitations placed on public services expenditures (for example, the 15 percent cap):

- Any services provided by a nonprofit development group that are specifically designed to increase economic opportunities through job training and placement and other employment support services (for example, peer support programs, legal services to secure or retain employment, counseling, child care, transportation, and other similar services), and
- Services of any type being provided by a nonprofit development group pursuant to a state-approved Community Revitalization Strategy. (Reference: 24 CFR 91.315(g) and Appendix E, Community Revitalization Strategy Areas, for further information.)

Repayments and program income requirements:

Any revenue (such as loan repayments) paid to a nonprofit development organization and generated by an activity carried out by that nonprofit under HCDA Section 105(a)(15) is not considered to be CDBG program income. The nonprofit organization would thus be free to use these repayments to carry out activities that would not be eligible under the CDBG program. If, for example, the organization administers a regional revolving loan fund, the repayments could be used to fund additional loans in communities other than the one to which the state's grant was awarded. Or, the funds could be lent to a high-technology business start-up project that could not meet the L/M Income Benefit national objective requirements. *Reference: 24 CFR 570.489(e)(2)(ii)*

This may be a way to carry out local economic development objectives that, while worthwhile, do not fit into the requirements of the CDBG program. This may also be a way to help a high-performing nonprofit development group secure ongoing funding to continue its mission following completion of the CDBG-funded project. However, states and their grant recipients should keep the following considerations in mind:

- Since such revenue is not program income, it cannot be included in the bases for calculating the public services or planning/administration caps.
- A state or a state grant recipient can override the provisions of 24 CFR 570.489(e)(2)(ii) and require that a nonprofit development organization re-use the repayments in accordance with any or all CDBG program requirements.
- When a state grant recipient provides funds to a nonprofit development group in the form of a loan, such as under the provisions of HCDA Section 105(a)(14), any payments made by the nonprofit development group to the state grant recipient on that loan would be CDBG program income.
- Any repayments that the state requires to be returned to the state are automatically CDBG program income.

2.15.8 Complying with National Objectives – Activities by Nonprofit Development Groups under Sections 105(a) (14) and (15)

The majority of activities carried out by a nonprofit development group under this authority are also eligible under other categories covered in this Guide. The fact that they are carried out by a nonprofit organization does not affect how they can meet a national objective. Even for



“otherwise ineligible activities” such as new housing construction, the parallels with requirements for similar eligible activities are fairly obvious. Readers can refer to the other relevant sections in this chapter concerning the considerations necessary to determine how to meet the CDBG national objectives. For reference, information on new housing construction by nonprofit development organizations is provided here.

NATIONAL OBJECTIVES - ACTIVITIES BY NONPROFIT DEVELOPMENT ORGANIZATIONS

Objective	Qualifies If	Example	Additional Information
L/M Income Housing	<p>L/M income households will occupy the new housing. Rental units must be occupied at affordable rents.</p> <p>New housing construction can only be undertaken:</p> <ul style="list-style-type: none"> • By a non-profit development organization pursuant to HCDA Section 105(a)(15), or • Under the last resort housing provisions in 49 CFR Part 24. 	New construction of multi-family (rental) apartment building for lower-income households by a Community Development Corporation	For more information, see page 3-13

2.16 Economic Development Assistance to For-Profit Business

2.16.1 The HCDA

Section 105(a)(17)

(a) Activities assisted under this title may include only –

- (17) provision of assistance to private, for-profit entities, when the assistance is appropriate to carry out an economic development project (that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods) that--
 - (A) creates or retains jobs for low- and moderate-income persons;
 - (B) prevents or eliminates slums and blight;
 - (C) meets urgent needs;
 - (D) creates or retains businesses owned by community residents;
 - (E) assists businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or
 - (F) provides technical assistance to promote any of the activities under subparagraphs (A) through (E);

Preface

While this section of the statute deals exclusively with economic development activities, it is important to note that this is not the only section of the HCDA under which economic development activities may be undertaken. Indeed, the term “economic development” has different meanings to different people. At its broadest, the term can be interpreted to include all endeavors intended to sustain or increase the level of business activity. Remember, too, that not everything that might constitute “economic development” in its broadest sense is eligible in the CDBG program.

Providing direct financial assistance to a business may be the most common use of CDBG funds to promote economic development, but it certainly is not the only way. Land acquisition, clearance and disposition, provision of infrastructure, and microenterprise assistance are just a few of the other statutory eligibility categories under which economic development activities can be carried out. Even within the realm of direct financial assistance, there can be grants, loans, interest rate subsidies, loan loss reserve funds, credit enhancements, third-party guarantees, etc. A particular project utilizing any of these may be a stand-alone, single-user deal, or may be funded through a revolving loan fund.

For any given economic development project, the structure of the deal may be the biggest determinant of how the activity qualifies as eligible for CDBG funding. As discussed below, the structure of the deal, and the activity(ies) funded by CDBG affect whether or not the activity is subject to the Public Benefit Standards and Underwriting Guidelines.

This section describes what is possible under the statute and the regulations. Not all states design their CDBG programs to encompass all possible activities. It is important for both states and state grant recipients to understand what is and is not allowed under the CDBG program, and to distinguish between federal program requirements and additional state-imposed requirements.

Each state takes a slightly different approach to economic development in its CDBG program, reflecting the unique needs and established priorities of that state. One state may choose to fund only single-user deals emphasizing manufacturing facilities which promote economic diversification; another may encourage regional revolving loan funds focusing on revitalizing small town business districts. A third state may be willing to assist any type of business so long as it agrees to meet “social goals,” such as moving hard-to-employ people from public assistance into the labor force, paying higher-than-minimum wages, or providing health care benefits; yet another may limit its economic development assistance activities to job training and provision of infrastructure. Many states set maximum-assistance-per-job-created levels below those established under HUD’s Public Benefit Standards.

2.16.2 Eligible Activities

- Direct financial assistance to private for-profit entities for an activity determined by the grant recipient to be appropriate to carry out an economic development project. This may include, but is not limited to:
 - grants,
 - loans,
 - loan guarantees,
 - interest supplements, and
 - any other form.
- 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.
- Technical assistance to businesses, including assistance in the development of business plans or plans to reduce energy costs
- For activities funded under HCDA Section 105(a)(17), the statute requires that the state and its grant recipients shall minimize, to the extent practical, displacement of existing businesses and jobs in neighborhoods.

Example

Activities eligible under this section include:

- Loans, grants, or other direct financial assistance to pay for the expansion of a factory or commercial business, or the establishment of a new facility or business. Under this

provision, there are no restrictions on how this financial assistance might be structured. For example, the CDBG funds could be provided to the for-profit company in order to:

- Purchase land;
 - Construct a building or other improvements;
 - Renovate an existing building to accommodate the business;
 - Construct tenant improvements/finishes;
 - Lease space in or purchase an existing building;
 - Purchase capital equipment;
 - Purchase inventory;
 - Use as working capital;
 - Provide employees with higher wages or fringe benefits (such as health insurance) that the company would not otherwise provide; and
 - Provide job training to newly-hired employees who otherwise would not qualify for those jobs.
- Technical assistance to a business facing bankruptcy or otherwise at-risk.
 - Providing services or benefits to newly-hired employees that allow them to hold the jobs, such as transportation to the jobsite or day care assistance. The company could provide subsidies or vouchers to employees to obtain such services on their own; or the company could provide these services directly for their employees (for example, operating an on-site day care center); or the company could contract with a third party to provide/operate these services (for example, contracting with a bus service to transport employees to work).
 - Providing training needed by persons receiving public assistance to enable them to qualify for jobs created by CDBG-assisted special economic development activities.

Ineligible Activities

*Economic development activities eligible under HCDA Section 105(a)(17) do **not** include:*

- Assistance to a for-profit business in the form of lobbying or other political activities.
- 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.
- New Housing Construction. This activity may, however, be eligible under HCDA Section 105(a)(15) when undertaken by nonprofit development groups. When a project to be assisted includes new construction of housing as part of a commercial structure (for example, a “mixed use” project), those costs clearly attributable to the commercial portion of the project may be eligible as economic development assistance to a for-profit business.
- 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.

- Assisting directly in the relocation of any industrial or commercial plant, facility, or operation from one area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs. (see 24 CFR 570.482(h))
- Job training that is not part of a CDBG-eligible economic development activity to create or retain permanent jobs.

There are important distinctions to be made by the state and its grant recipients between the types of job training eligible under this section and more generalized job training activities that may be eligible under the categories of Public Services or Activities by Nonprofit Development Groups. Examples of training activities eligible under this section include:

- Training unskilled, low-income persons for specific jobs for which they have been hired and which require skill levels beyond what they now have;
- Training a pool of low-income prospective employees for specific jobs being created as a result of a CDBG-funded industrial expansion, where the employer agrees to give first consideration to filling the new positions with people from this pool (for example, training of disabled workers for jobs in a new warehouse facility being assisted with CDBG funds);
- Re-training existing employees of a business as part of a project which qualifies as retaining jobs under the L/M Income Jobs national objective criterion.

In contrast, the following are examples of training which would not qualify under HCDA Section 105(a)(17), but which could qualify under HCDA Section 105(a)(8) or (15):

- Providing generalized “how to find and keep a job” training to public assistance recipients who have never been in the labor force before;
- Providing specialized training to low-income high school dropouts so they are qualified to find jobs in some particular industry or employment field, such as information technology, in the absence of any linkage to specific positions at specific firms. (In other words, the job openings must come first; training residents in some field of endeavor in hopes of attracting businesses in that industry cannot qualify as providing assistance to a for-profit business.)

2.16.3 Complying with National Objectives – Economic Development Assistance to For-Profit Businesses

Section 105(c)(1) of the HCDA specifies certain limitations on how activities under Section 105(a)(17) 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.

NATIONAL OBJECTIVES - ECONOMIC DEVELOPMENT ASSISTANCE TO FOR-PROFIT BUSINESS

Objective	Qualifies If	Example	Additional Information
L/M Income Area Benefit	The assistance is to a business that provides goods or services to residents of an L/M income <i>residential</i> area.	Working capital or expansion loan to a neighborhood business such as a grocery store or laundromat, serving a neighborhood area with 62 percent L/M income residents.	For more information, see page 3-5.
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 percentage of total project cost contributed by CDBG does not exceed the percentage of all persons assisted who are L/M income, but the percentage of L/M income persons assisted is less than 51 percent.	Training for 30 new employees, ten of whom (30%) are L/M income, hired by a manufacturer adding new machinery to its plant where CDBG pays no more than one-third (30%) of the total cost of the project, including the training. CDBG can also provide assistance for the purchase of new machinery.	For more information, see page 3-10.
L/M Income Jobs	The assisted project involves the creation or retention of jobs at least 51 percent of which benefit L/M income persons.	Financial assistance to a manufacturer for the expansion of its facilities, through purchase of additional land or building expansion or improvements, where the expansion is expected to create permanent jobs, at least 51 percent of which will be available to L/M income persons.	For more information, see page 3-16
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 that contributed to the deterioration of the area.	A low-interest loan to a private development company to acquire and clear an abandoned rail yard complex in a designated, blighted redevelopment district so that the site can be redeveloped as an industrial park.	For more information, see page 3-26.

NATIONAL OBJECTIVES - ECONOMIC DEVELOPMENT ASSISTANCE TO FOR-PROFIT BUSINESS

Objective	Qualifies If	Example	Additional Information
Spot Blight	<p>The assistance is to a business located outside of a designated slum or blighted area where:</p> <ol style="list-style-type: none"> (1) The assistance is designed to eliminate specific conditions of blight or physical decay; and (2) The assistance is limited to the following activities: <ul style="list-style-type: none"> • acquisition, • clearance, • relocation, • historic preservation, and • building rehabilitation. <p>Rehabilitation must be limited to the extent necessary to eliminate specific conditions detrimental to public safety and health.</p>	Financial assistance to a business to demolish a dilapidated structure it owns and construct a new building on the site.	For more information, see page 3-28.
Urgent Need	<p>The assistance to a commercial or industrial business is designed to alleviate existing conditions and the grant recipient 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 grant recipient is unable to finance the activity on its own, and other sources of funds are not available.</p>	Provision of direct assistance to reconstruct the only grocery store in a small, remote town that was damaged by a tornado, where no other funds are available for the reconstruction.	For more information, see page 3-30.

2.17 Additional Applicable Requirements - Activities Funded Under Section 105(a)(14), (15), and (17)

2.17.1 The HDCA

Section 105(e)

(e) Guidelines for evaluating and selecting economic development projects

(1) Establishment

The Secretary shall establish, by regulation, guidelines to assist grant recipients under this title to evaluate and select activities described in subsection (a)(14), (15), and (17) for assistance with grant amounts. The Secretary shall not base a determination of eligibility of the use of funds under this title for such assistance solely on the basis that the recipient fails to achieve one or more of the guidelines' objectives as stated in paragraph (2).

(2) Project costs and financial requirements

The guidelines established under this subsection shall include the following objectives:

- (A) The project costs of such activities are reasonable.
- (B) To the extent practicable, reasonable financial support has been committed for such activities from non-Federal sources prior to disbursement of Federal funds.
- (C) To the extent practicable, any grant amounts to be provided for such activities do not substantially reduce the amount of non-Federal financial support for the activity.
- (D) Such activities are financially feasible.
- (E) To the extent practicable, such activities provide not more than a reasonable return on investment to the owner.
- (F) To the extent practicable, grant amounts used for the costs of such activities are disbursed on a pro rata basis with amounts from other sources.

(3) Public benefit

The guidelines established under this subsection shall provide that the public benefit provided by the activity is appropriate relative to the amount of assistance provided with grant amounts under this title.

2.17.2 Public Benefit

The 1992 Amendments to the HCDA added new requirements for economic development activities funded under HCDA Section 105(a)(14), (15), and (17). The previous requirement (that assistance to certain economic development activities be determined to be "appropriate") was 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. HUD revised the CDBG

regulations in 1995 to implement this requirement through the addition of the Public Benefit Standards and Underwriting Guidelines. These requirements, found at 24 CFR 570.482(e) and (f) and are further discussed in Appendix C, Public Benefit Standards, apply to **all economic development** activities funded under HCDA Section 105(a)(14), (15), and (17). The regulations provide several avenues by which states and their grant recipients can demonstrate that reasonable public benefits are accruing from CDBG-assisted economic development activities.

Grant recipients are also expected to perform due diligence through financial underwriting of any assistance being provided to a for-profit business and HUD has developed guidelines that a grant recipient may use for this purpose. It is important to note, however, that grant recipients are not required to use the HUD-supplied underwriting guidelines. (See Appendix C, Public Benefit Standards.)

How the assistance to a given project is structured affects more than just the category under which the activity may be eligible; it affects the applicability of the public benefit standards and underwriting guidelines to the activity as well. The public benefit standards and underwriting guidelines do not apply to a number of other eligibility categories under which economic development activities could be carried out, such as:

- Microenterprise assistance activities funded under HCDA Section 105(a)(22),
- Acquisition funded under HCDA Section 105(a)(1),
- Rehabilitation or construction of buildings funded under HCDA Section 105(a)(4),
- Provision of public facilities under HCDA Section 105(a)(2), in most cases.
(However, HUD has by regulation applied them to certain economic development infrastructure activities.)

The public benefit standards and underwriting guidelines do not apply to non-economic development activities (such as new housing construction) carried out by nonprofit organizations under HCDA Section 105(a)(15).

On the other hand, states and state grant recipients should be aware that the public benefit standards and underwriting guidelines do apply to job training and other economic development services activities funded under HCDA Section 105(a)(17), even though they may not involve direct financial assistance to a business. Furthermore, it is important to remember that the public benefit standards are part of the statutory eligibility requirements of the program. Their applicability is triggered by the eligibility category under which the activity is funded, not by what national objective the activity is designed to address.

2.17.3 Prohibition of Job Relocation

It is common practice in the economic development field for communities to compete against one another to be the site of new commercial or industrial facilities. One of the more controversial aspects of this practice occurs when communities offer CDBG assistance to a business to induce the business to move its existing operations from another community. The gaining community seeks to provide new jobs for its residents, but those gains sometimes come at the expense of employees currently holding jobs with that business in another community, who are not in a position to follow their employer (and their job) to a new location. This practice has come to be known as “job relocation,” or more commonly, “job piracy.”

Section 588 of Public Law Section 105-276 (the FY 1999 HUD Appropriations Act) amended Section 105 of the HCDA to prohibit CDBG funds from being used "...to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from (one) area to another, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs."

HUD issued the Prohibition on Use of CDBG Assistance for Job-Pirating Activities final rule on May 24, 2006, which finalized the interim rule published on December 23, 2005 clarifying the statute.

HUD urges states to collect and consider the following information regarding any proposed project that might fall under the purview of Section 588:

- Determine whether anti-pirating provisions apply to economic development activities and particularly those involving the relocation of jobs. Factors to consider include the labor market area where the company is currently located and the projected number of jobs that will be lost once the company vacates its current labor market and relocates to another.
- Determine whether any loss of employment is significant so that a determination can be made if the regulation applies. Section 588 of Public Law 105-276 sets parameters for whether the relocation from one LMA to another and the number of jobs being lost is significant enough to trigger the anti-pirating provisions. The loss of 25 or fewer jobs would not constitute a significant job loss, while the loss of 500 or more jobs would likely invoke the anti-job pirating rule. Job losses between 25 and 500 must be less than one tenth of one percent of the area's labor force to avoid being counted as significant.
- Any recipient of CDBG funds used to relocate a business must sign a written agreement including: a statement of intent of relocating from one labor market area to another and the number of jobs that will be relocated to each labor market area; a certification from the business that none of the relocations will result in a significant job loss; and a provision for reimbursement should the provided assistance result in a relocation prohibited by the regulation.
- All jobs targeted for transfer should be in place at the new location within three years.

2.17.4 Additional Considerations

States and their grant recipients should take special precautions in the design and implementation of economic development assistance programs, 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 is to be expected that businesses will focus heavily on their own interests; 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. States and their grant recipients must therefore maintain proper documentation in the activity files and offer technical assistance to avoid non-compliance with program rules. Care should be taken to protect the community's interests in their dealings with those entities that work in the economic development sphere.

If a state grant recipient, subrecipient, or other nonprofit organization makes a number of CDBG loans for economic development, it will be important to take appropriate steps to manage the

loan portfolio. Some guidance and advice concerning this matter may be found in Appendix H, Selling or Securitizing CDBG-funded Loans Using the Section 108 Program and Other Secondary Markets.

2.18 Technical Assistance

2.18.1 The HCDA

Section 105(a)(19)

(a) Activities assisted under this title may include only –

- (19) provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities, which assistance shall not be considered a planning cost as defined in paragraph (12) or administrative cost as defined in paragraph (13);

Section 106(d)(5)

From the amounts received for distribution in nonentitlement areas, the state may deduct an amount, not to exceed one percent of the amount so received, to provide technical assistance to local governments and nonprofit program recipients.

2.18.2 Eligible Activities

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 state grant recipient itself.) In order to use the funds under this authority, the state 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 percent cap), the category 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 state should have a reasonable expectation that the activity to be undertaken by the entity would comply with a national objective before funding capacity building.

The 2004 Consolidated Appropriations Act amended Section 106(d) of the Act with respect to CDBG funds received on or after January 24, 2004. On October 17, 2008, HUD issued a proposed rule to reflect that statutory amendment. On April 23, 2012, HUD issued the final rule, "State CDBG Program: Administrative Rule Changes" which responded to comments and made the interim rule final. The rule allows states to use up to 3 percent of their allocations on administrative expenses, technical assistance, or a combination thereof, in addition to the \$100,000 base amount that states may use for administrative expenses. This change provides states with increased flexibility to allocate up to 3 percent of CDBG funds between

administrative expenses and technical assistance, according to the states' preferences. Amounts used for provision of technical assistance are not subject to a match requirement and are presumed to have met a national objective. Further information regarding this "mix and match" provision, can be found in Appendix G along with the original CPD Notice 99-09 which describes eligible uses of technical assistance funds and required documentation.

States may distribute technical assistance funds to ensure provision of technical assistance as follows:

- Provide the technical assistance directly, using state staff;
- Hire a contractor to provide the assistance;
- Grant the funds to sub recipients, such as Regional Planning Organizations to provide or secure the assistance;
- Allocate the funds to nonprofits or units of general local government (UGLGs) to secure or contract for the assistance;
- Pay for tuition, training and or travel for specific trainees from UGLGs or nonprofits;
- Transfer funds to another state agency to provide TA;
- Contract with institutions of higher education to provide assistance.
- The technical assistance does not have to be directly related to State CDBG-funded activities.

Some actions and expenses that a state undertakes in administering the CDBG program could be eligible as either state administrative costs or technical assistance costs. Examples of these include presenting workshops on applying for or implementing CDBG-funded activities or on-site technical assistance by state staff to grant recipients on improving some aspect of grant implementation.

There are several categories of activities which are ineligible for funding under the Technical Assistance category:

- General administrative activities of the state which are required aspects of their administration of the CDBG program, such as monitoring state grant recipients or developing the state's Consolidated Plan or Analysis of Impediments to Fair Housing;
- State grant recipients' general grant administrative costs, such as salaries for grant administrators;
- Local administrative expenses not related to community development, such as providing guidance on computerizing county personnel records;
- Training of state staff to perform required administrative functions, such as training state staff to conduct or review fiscal audits of local governments; and
- Training designed exclusively for entities other than local government and nonprofit program participants, such as lead paint abatement certification training for contractors. (Training of this sort may qualify as eligible under one of the HCDA Section 105(a) eligibility categories.)

Please note that some of these activities may be eligible under the Administrative Costs category.

Reference: HCDA Section 105(d)(5); Appendix G, Use of Funds for Program Administration and Technical Assistance

2.18.3 Additional Considerations

Activities funded under the Technical Assistance and Administrative costs categories are presumed to have met a national objective. These funds represent the only situation in which a state can directly carry out an activity using CDBG funds, if a state elects to directly provide the technical assistance itself. A state is required to include the proposed amount and use of technical assistance funds in its method-of-distribution contained in the state's annual Action Plan.

2.19 Housing Services

2.19.1 The HCDA

Section 105(a)(20)

- (a) Activities assisted under this title may include only –
 - (20) housing services, such as housing counseling in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act, 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 housing activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act;

2.19.2 Eligible Activities

HCDA 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, Meeting a National Objective, to determine how these services can meet the CDBG national objectives.

(Note that activities funded under this provision are 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.)

2.20 Assistance to Institutions of Higher Education

2.20.1 The HCDA

Section 105(a)(21)

- (a) Activities assisted under this title may include only –

- (21) provision of assistance by recipients under this title to institutions of higher education having a demonstrated capacity to carry out eligible activities under this subsection for carrying out such activities;

2.20.2 Eligible Activities

This authority may be used by a grant recipient to provide assistance to an institution of higher education (for example, universities, community colleges, Historically Black Colleges) when the grant recipient 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.

2.21 Microenterprise Assistance

2.21.1 The HCDA

Section 105(a)(22)

- (a) Activities assisted under this title may include only –

- (22) provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by--
 - (A) providing credit (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of microenterprises;
 - (B) providing technical assistance, advice, and business support services (including assistance, advice, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises; and
 - (C) providing general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises;

Section 102(a)(22)

- (a) Definitions

- (22) The term "microenterprise" means a commercial enterprise that has 5 or fewer employees, 1 or more of whom owns the enterprise.

2.21.2 Eligible Activities

Under this category, grant recipients and other public or private organizations may use CDBG funds to facilitate economic development through the establishment, stabilization, and expansion of microenterprises.

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.

Technical assistance to microenterprises may include assistance in market analysis, development of business plans. Grantees (or sub grantees) often work with other entities, such as technical colleges, in these endeavors.

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 provisions of HCDA Section 105(a)(15) [assistance to nonprofit organizations] and Section 105(a)(17) [assistance to for-profit businesses]. However, if carried out under either of those categories, such assistance would be subject to the requirements concerning Public Benefit (see Appendix C, Public Benefits Standards).

2.21.3 Complying with National Objectives – Microenterprise Assistance

Because microenterprises are for-profit businesses, most of the guidelines for meeting national objectives under other economic development eligibility categories also apply here. There is one notable exception, however. A microenterprise assistance activity may qualify under the L/M Income Limited Clientele national objective criteria if it assists 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 (for example, Area Benefit or Jobs). See the following chart for further elaboration on meeting the L/M Income Benefit national objective.

2.21.4 Additional Considerations

In the Entitlement program regulations (24 CFR 570.201(o)), a “Person developing a microenterprise” means any person who has expressed an interest and who is, or after an initial screening is expected to be, actively working towards developing a business that is expected to be a microenterprise at the time it is formed.

Many communities 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 grant recipients 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, it is not precluded from being assisted under the category of Special Economic Development. However, when a state grant recipient provides assistance to such businesses under that category, all applicable requirements, including Public Benefit (see Appendix C, Public Benefits Standards), will apply. In order to take advantage of the special advantages



available under the Microenterprise Assistance category, the state grant recipient would need to establish an activity for providing such assistance separate from all other business assistance it might elect to provide. This is necessary to avoid the confusion that would result from mixing assistance under two categories having different requirements. Therefore, states and state grant recipients should design 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 (with no more than 5 employees, including the owner) in a neighborhood having more than 51 percent L/M income residents.	For more information, see page 3-5.
L/M Income Limited Clientele	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 childcare or providing assistance to an owner/proprietor to purchase a tow truck to establish a towing business.	For more information, see page 3-10.
L/M Income Housing	Not applicable	Not applicable	Not applicable
L/M Income Jobs	The microenterprise assisted will create or retain jobs, 51 percent 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 3-16.

For other national objective possibilities, see pages 2-61 through 2-62 (chart on Economic Development Assistance to For-Profit Business).

2.22 In Rem Housing

2.22.1 The HCDA

Section 105(a)(23)

(a) Activities assisted under this title may include only –

- (23) activities necessary to make essential repairs and to pay operating expenses necessary 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;

2.22.2 Eligible Activities

Section 105(a)(23) of the HCDA, 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.

2.22.3 Complying with National Objectives

Since these expenses are statutorily 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 grant recipient 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.

2.23 Homeownership Assistance

2.23.1 The HCDA

Section 105(a)(24)

(a) Activities assisted under this title may include only –

- (24) provision of direct assistance to facilitate and expand homeownership among persons of low and moderate income (except that such assistance shall not be considered a public service for purposes of paragraph (8)) by using such assistance to--
 - (A) subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;
 - (B) finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;
 - (C) acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that amounts received under this title

may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this title may not directly provide such guarantees);

- (D) provide up to 50 percent of any down payment required from low- or moderate-income homebuyer; or
- (E) pay reasonable closing costs (normally associated with the purchase of a home) incurred by low- or moderate-income homebuyers;

Such activities may be carried out by a state grant recipient or a subrecipient thereof.

2.23.2 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 grant recipient/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 percent 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*.

2.23.3 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 must qualify under the national objective of benefit to low- and moderate-income persons-housing activities; no further consideration needs to be given here.

2.23.4 Additional Considerations

Homeownership assistance may also be eligible under the categories of Public Services or assistance to nonprofit development groups (HCDA Section 105(a)(8) and (15)). While these categories do not have the same restrictions on the type of assistance that may be provided, they may have to comply with the public services cap. However, under these provisions, assistance is not specifically limited by HCDA to L/M income persons. Therefore, a state grant

recipient 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 a community submits (and a state approves) a Community Revitalization Strategy (CRS) which includes homeownership assistance, two further considerations should be given. First, if the state grant recipient elects to use a nonprofit development group to deliver services in the strategy area, any services provided by the nonprofit development group (including homeownership assistance) may be exempt from the expenditures cap on Public Services. Second, 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 nonprofit development group 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 CRS area, meeting the L/M Income Benefit national objective is made feasible by a special feature offered by a CRS. 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 percent plus occupancy requirement. See Appendix E, Community Revitalization Strategy Areas that describes the CRS feature of the CDBG program in further detail.

2.24 Construction of Tornado-safe Shelters

2.24.1 The HCDA

Section 105(a)(25)

The construction or improvement of tornado-safe shelters for residents of manufactured housing, and the provision of assistance (including loans and grants) to nonprofit and for-profit entities (including owners of manufactured housing parks) for such construction or improvement, except that -

- (A) A shelter assisted with amounts provided pursuant to this paragraph may be located only in a neighborhood (including a manufactured housing park) that—
 - (i) Contains not less than 20 manufactured housing units that are within such proximity to the shelter that the shelter is available to the residents of such units in the event of a tornado;
 - (ii) Consists predominantly of persons of low and moderate income; and
 - (iii) Is located within a State in which a tornado has occurred during the fiscal year for which the amounts to be used under this paragraph were made available for any of the 3 preceding fiscal years, as determined by the Secretary after consultation with the Administrator of the Federal Emergency Management Agency;
- (B) Such a shelter shall comply with standards for construction and safety as the Secretary, after consultation with the Administrator of the Federal Emergency Management Agency, shall provide to ensure protection from tornadoes;

- (C) Such a shelter shall be of a size sufficient to accommodate, as a single time, all occupants of manufactured housing units located within the neighborhood in which the shelter is located; and
- (D) Amounts may not be used for a shelter as provided under this paragraph unless there is located, within the neighborhood in which the shelter is located (or, in the case of a shelter located in a manufactured housing park, within 1,500 feet of such park), a warning siren that is operated in accordance with such local, regional, or national disaster warning programs or systems as the Secretary, after consultation with the Administrator of the Federal Emergency Management Agency, considers appropriate to ensure adequate notice of occupants of manufactured housing located in such neighborhood or park of a tornado.

2.24.2 Eligible Activities

Public Law 108-146, enacted December 3, 2003, otherwise known as the Tornado Shelters Act, amended Title I of the HCDA of 1974 to make CDBG eligible for the construction of tornado shelters in neighborhoods where there are residents of manufactured housing.

Grantees can provide assistance to nonprofit and for-profit entities (as loans or grants) for the purpose of constructing tornado-safe shelters. The construction of tornado shelters may be carried out in neighborhoods that may or may not contain a manufactured housing park, provided such a neighborhood contains not less than 20 manufactured housing units and the shelter is available to the manufactured housing residents. Furthermore, a neighborhood or manufactured housing park that receives assistance under this provision must meet the following criteria:

- (1) Consist predominantly of low- and moderate-income persons;
- (2) Be located in a state in which a tornado has occurred within the past three years;
- (3) Have a warning siren in the neighborhood where the shelter will be located or, if the shelter is located in a manufactured housing park, within 1,500 feet of the park;
- (4) Ensure the shelter is sufficient in size to accommodate all of the occupants of the manufactured housing units at the same time and be located in the neighborhood in which the shelter will be used; and
- (5) Comply with the standards for construction as identified by the Federal Emergency Management Agency (FEMA) in Publication FEMA 361, Design and Construction Guidance for Community Shelters. This publication is available on FEMA's website at <http://www.fema.gov/library/viewRecord.do?id=1657>

2.24.3 Complying with National Objectives: Tornado-Safe Shelters

Because the statute requires that shelter-assisted neighborhoods be comprised of predominantly low- and moderate-income residents, any use of CDBG funds under this category must qualify under the national objective of benefit to low- and moderate-income persons. A grantee must be able to document that at least 51 percent of the residents of the tornado shelter service area are low- and moderate-income persons.

2.25 Lead-based Paint Hazard Evaluation and Reduction

2.25.1 The HCDA

Section 105(a)(26)

Lead-based paint hazard evaluation and reduction, as defined in Section 485(1)(b) of this title.

2.25.2 Eligible Activities

The costs associated with the evaluation and reduction of lead-based paint hazards are eligible expenses under CDBG whether undertaken alone or in conjunction with other rehabilitation. Lead-based paint evaluation and abatement can either be completed as its own activity or as part of a rehabilitation activity.

Typically these expenses might include:

- Inspecting buildings for possible lead-based paint hazards;
- Testing surfaces to see if they contain-lead based paint;
- The abatement of lead hazards; and
- Payment of temporary relocation costs to protect residents from hazards while abatement work is taking place.

2.25.3 Complying with National Objectives

Lead-based paint hazard evaluation and reduction activities may qualify under the Housing category of the LMI Benefit national objective.

In order to provide these activities for homeownership units, the residents of the units must be Low or Moderate Income (LMI).

For rental units the following conditions must be met:

- Rents must be set at levels which are affordable to LMI persons. Grantees must adopt standards for determining “affordable rents”.
- The general rule is that 51 percent of the units in each assisted structure are to be occupied by LMI households.

Single unit properties must be occupied by a LMI household. In structures with two units, at least one must be occupied by a LMI household. For properties with three or more units, at least 51 percent must be occupied by LMI households.

If a lead-based paint activity does not directly benefit LMI persons, it may qualify under the Slum/Blight national objective. However, the use of this category should be limited due to the fact that grantees must ensure that 70 percent of CDBG expenditures benefit LMI persons.

- The requirements for meeting the Slum/Blight national objective under the Area Basis category include:
 - The area delineated by the grantee in which the activity occurs must meet a definition of a slum, blighted, deteriorated, or deteriorating area under state or local law;

- In addition, at least 25 percent of properties throughout the area experience one or more conditions identified at § 570.208(b)(1)(ii)(A), and the activity must address one or more of the conditions which contributed to the deterioration of the area.

Caution: lead-based paint activity meets this requirement only if the building to be rehabilitated is considered substandard under local definition (at least Section 8 Housing Quality Standards). In addition, if non-critical items will be addressed through the rehabilitation, then all deficiencies making the building substandard must be eliminated. Thus, a program that involved only the evaluation and not the reduction of lead hazards would not qualify under the Area Slum/Blight category.

Lead-based paint activities must be undertaken as part of an eligible rehabilitation activity in order to qualify under the Spot Slum/Blight national objective (because only acquisition, clearance, rehabilitation, relocation, brownfields, and historic preservation are eligible under Spot Slum/Blight).

2.26 Other Provisions Relating to Eligible Activities

2.26.1 New Housing Construction

The construction of new permanent residential structures is ineligible in the State CDBG program *except* under two limited circumstances:

- Under the housing of last resort provisions of 49 CFR Part 24 (discussed below) and
- When undertaken by a nonprofit development organization which qualifies under HCDA Section 105(a)(15), and when undertaken as part of an eligible project under Section 105(a)(15).

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

- Acquisition of sites on which buildings will be constructed for use or resale as housing;
- Clearance of environmental contamination from sites to be used for the construction of new housing;
- 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; and
- The cost of disposing of real property acquired with CDBG funds which will be used for the construction of new housing.

It should also be noted that the cost of converting an existing non-residential structure to residential use is generally not considered to constitute new construction under the CDBG program; it is thus covered under the basic category of Rehabilitation. However, in some cases, the conversion may involve construction that goes beyond the envelope of the non-residential structure; in other cases, a portion of the structure (or additions thereto) may be in such condition that it must be removed and reconstructed. State grant recipients should consult their state, and states should consult their HUD field office, to ensure that the extent of such construction would not violate the prohibition against new construction of housing.

2.26.2 Last Resort Housing

The regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the “Uniform Act”) are issued by the U.S. Department of Transportation, and are found at 49 CFR Part 24. In certain circumstances, 49 CFR 24.404(c)(1) authorizes the construction of new housing units as a last resort for providing replacement housing for persons displaced as a result of CDBG-assisted activities. (This is housing that the state or state grant recipient 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.)

The provision of last resort housing under the Uniform Act is not specifically listed in the categories of eligible activities in HCDA Section 105, though it is included in the Entitlement program eligibility regulations. New construction of last resort housing is eligible in the State CDBG program pursuant to 49 CFR 24.404, because the Uniform Act is one of the other applicable laws to which the State CDBG program is subject.

2.26.3 Brownfields Redevelopment Activities

In the Fiscal Year 1999 (FY99) HUD Appropriations Act (PL Section 105-276), Congress explicitly stated the eligibility of environmental cleanup and economic development activities under the CDBG program. The corresponding regulation at 24 CFR 570.482 was revised by the Final Rule issued May 24, 2006, which incorporates the following under eligible activities:

- (3) Environmental cleanup and economic development or redevelopment of contaminated properties. Remediation of known or suspected environmental contamination may be undertaken under the authority of section 205 of Public Law 105-276 and section 105(a)(4) of the Act. Economic development activities carried out under sections 105(a)(14), (a)(15), or (a)(17) of the Act may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination.

The intent of the language, as worded, is to clarify that environmental remediation and development of environmentally contaminated sites are indeed eligible activities within the existing categories of eligible activities.

2.26.4 Interim Assistance

HCDA Section 105 contains no discussion of “interim assistance” as a separate category of eligible activity. The CDBG Entitlement program regulations, at 24 CFR 570.201(f), have interpreted the HCDA as allowing CDBG funds to be used for certain activities on an interim basis, providing that the activities meet a national objective. The following Entitlement program policy information is provided as interpretive guidance that states may follow if they choose.

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 grant recipient 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 from Entitlement program regulations (to be used as interpretive guidance only):
24 CFR 570.201(f)(1) and 24 CFR 570.200(e)

- (2) The second subcategory covers activities to alleviate an emergency condition. To qualify under the second subcategory:
 - The grant recipient'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 exceed what is necessary to alleviate the emergency condition.

*References from Entitlement program regulations (to be used as interpretive guidance only):
24 CFR 570.201(f)(2) and 24 CFR 570.200(e)*

2.27 Activities Specified as Ineligible

2.27.1 Ineligible Activities

The general rule in the State CDBG program is that any activity that is not stated in the HCDA as eligible should be considered ineligible. However, through the Entitlement program regulations, HUD has interpreted some activities not specifically stated in the HCDA to fall under the HCDA categories of eligibility. These eligible activities are set forth in the preceding subsections of this chapter. The activities stated below have been determined to be ineligible under the HCDA.

2.27.2 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 in HCDA Section 102(a)(21). 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 to 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
- General government expenses. Except as otherwise specifically authorized 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.
- 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.

2.27.3 Generally Ineligible

The following activities may not be assisted with CDBG funds unless undertaken either:

- As part of an activity providing economic development assistance to a for-profit business under HCDA Section 105(a)(17) or
- By an eligible nonprofit organization under HCDA Section 105(a)(15).

Purchase of equipment

The purchase of equipment with CDBG funds is generally ineligible, with the following possible exceptions:

- **Construction equipment:** The purchase of construction equipment is ineligible. 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.
- **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.

- **Furnishings and personal property.** The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible, unless eligible as part of an administration or public service activity.

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, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDBG funds to pay the allowable costs of operating and maintaining a facility used in providing a public service (for example, salaries, rent) would be eligible, 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.

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 nonprofit development groups.

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. However, 24 CFR 570.207(b)(4) of the Entitlement program regulations allows, as eligible, 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.

Other Limitations of the Eligibility of Activities

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. 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 C, Public Benefit Standards, for further details.

Statutory Provision Regarding “Job Pirating”

Section 588 of Public Law Section 105-276 amended Section 105 of the Housing and Community Development Act of 1974 to prohibit CDBG funds from being used “...to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from one area to another, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.”

States are encouraged to examine the following issues in considering whether this provision applies to an economic development assistance activity which may result in a shift in the company’s operations from one labor market area (LMA) to another:

- Whether the provision of CDBG assistance to for-profit businesses and CBDOs for the relocation of a plant or facility results in a significant loss of jobs in the area from which the relocation occurs.
- States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this provision. 24 CFR 570.482(h)(2)(ii).

The regulation establishes a de minimis definition of job loss – a loss of 25 or fewer jobs would not constitute a significant job loss. The loss of 500 jobs or more would constitute a significant job loss and would invoke the job anti-pirating rule. Job losses between 25-500 must be less than 0.1 percent of the area’s labor force, (i.e., the area losing jobs) to avoid being counted as significant. See Section 2.17.3, Prohibition of Job Relocation, 24 CFR 570.482(h)(2)(iv) and 57 Federal Register 76362 (December 23, 2005).

Documenting Compliance

This section of the chapter provides special guidance on the requirement under which the state and state grant recipient must document that each assisted activity falls within a specified category and that it meets the requirements that apply to that category. Both the state and the local grant recipient must maintain records related to the State CDBG grant. The state must also conduct reviews of recipients to ensure compliance with applicable laws.

HUD and states jointly developed record-keeping requirements in response to 24 CFR 570.490 of the State CDBG regulations that were issued in 1992. Several changes to the State CDBG regulations have since been issued, and HUD anticipates issuing further changes to the State CDBG regulations. The current Model Record-Keeping Requirements (included in Appendix I, Model Record-Keeping Requirements), therefore, have become outdated. At some future point, HUD and the states will update the record-keeping requirements. In the meantime, the Model Record-Keeping Requirements should be used for documenting compliance with State CDBG regulations.

The Model Record-Keeping Requirements identify the records that must be collected and maintained by states and local governments, as well as the state grant recipient, to establish:

- Each activity funded by state block grant money is eligible under HCDA Section 105(a) and
- Each activity meets one of the national objectives

The Model Record-Keeping Requirements establish what documentation is required on the state and local level to demonstrate compliance with eligibility requirements. The Model Record-Keeping Requirements spell out a system for states to review state grant recipients. States are required to have a process to review state grant recipients to ensure compliance of state CDBG-funded activities. Refer to Appendix I, Model Record-Keeping Requirements.

2.28 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 state and state grant recipients in making the wisest choice among them.

The most common among these activity types and the requirements that the state and state grant recipients should consider are:

- Public services (public services cap),
- Commercial/industrial projects (for a discussion of public benefit requirements see Appendix C, Public Benefits Standards), and
- Planning and administration (planning/admin cap).
- The following discussion of these key areas is intended to assist states and state grant recipients 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.

2.28.1 Public Services

While the CDBG program was, from the onset, intended to be a physical development program, it was recognized that certain services could be very helpful to stabilize a community 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 percent of a state's yearly allocation of 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, when funded under the provisions of HCDA Section 105(a)(24);
- Employment services (including job training) related to employment opportunities generated by CDBG-eligible economic development activities (see 24 CFR 570.482(c)(2)(ii));
- Services provided by a nonprofit development organization that are specifically designed to increase economic opportunities through job training and placement and other related support services, such as child care and transportation (see 24 CFR 570.482(c)(2)(ii));
- Services of any kind that are provided by a nonprofit development group and that are carried out pursuant to a Community Revitalization Strategy approved by HUD under 24 CFR 91.315(e)(2) (see also Appendix E, Community Revitalization Strategy Areas, and 24 CFR 570.482(c)(2)(ii)); and

- General support services provided to owners of and/or persons developing microenterprises, under the provisions of HCDA Section 105(a)(22) and 24 CFR 570.482(c).

2.28.2 Commercial/Industrial Projects

Usually, when a commercial or industrial project is provided assistance through a for-profit business under HCDA Section 105(a)(17), or when it is carried out through a nonprofit organization eligible under HCDA Section 105(a)(14) or (15), the assistance will be subject to the public benefit requirements, described in 24 CFR 570.482(f) of the State CDBG regulations (discussed further in Appendix C, Public Benefits Standards). In certain limited cases, provision of infrastructure to assist an economic development project may also trigger the requirements of the public benefit standards. 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 also eligible under the Public Services category;
- Depending on the size of the business, assistance that is eligible may also be eligible under the Microenterprise Assistance category of HCDA Section 105(a)(22);
- Property acquisition undertaken by a nonprofit organization may also be eligible under the category of Acquisition of Real Property under HCDA Section 105(a)(1);
 - Rehabilitation or reconstruction of a commercial or industrial property that is eligible under HCDA Section 105(a)(14), (15), or (17) may also be eligible, at least in part, under the category of Rehabilitation under HCDA Section 105(a)(4);
 - Provision of one or more public improvements or utilities needed by the business may qualify under the category of Public Improvements under HCDA Section 105(a)(2).

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 the Economic Development Assistance, which might be more desirable for the grant recipient 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.

2.28.3 Planning/administration

There are a few activities eligible under the categories of Planning and Capacity Building and Program Administrative costs that are also eligible under other eligibility categories. Such activities include:

Fair Housing Counseling

States and state grant recipients 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 a state grant recipient 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 percent cap and the 15 percent cap), it is not likely that a state would reach both caps in the same program year, thus allowing the state or its grant recipient 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 may be considered to be “activity delivery costs” as 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 percent cap. The Entitlement program regulations allow charging these costs under 24 CFR 570.205. As is discussed on page 2-49, states may adopt this approach from the Entitlement program (though most do not).

Split-function Staff

- State grant recipients and their subrecipients frequently have staff that performs both program administration and activity delivery functions. The Entitlement regulations provide grant recipients (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 of the staff 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.

Capacity Building

- A discussion of the alternatives available for the costs of capacity building may be found under the sections of this chapter entitled Technical Assistance and Planning and Capacity Building. How such costs are categorized may affect a state’s compliance with its 20 percent planning/administration cap and its administrative and technical assistance set-aside. In some cases, it may affect whether such activities must meet a national objective.

3. Meeting a National Objective

3.1 Purpose

The purpose of this chapter is to describe the criteria that must be met and the records that 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.

Note that states can be more restrictive than the statutory and regulatory national objective requirements, so long as the State requirements do not contradict federal requirements. For example, a state may choose to fund only low- and moderate-income (L/M) benefit activities. In addition, documentation requirements for local governments meeting national objectives are set by the state.

3.2 Basic Requirements

Section 101(c) of the Housing and Community Development Act (HCDA) 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 in Section 104(b)(3) 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 grant recipient must ensure that at least 70 percent 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 certain activities carried out under the eligibility categories of Planning and Capacity Building, Program Administration, and Technical Assistance, meet specific tests for either:

- Benefiting low- and moderate-income persons,
- Preventing or eliminating 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.

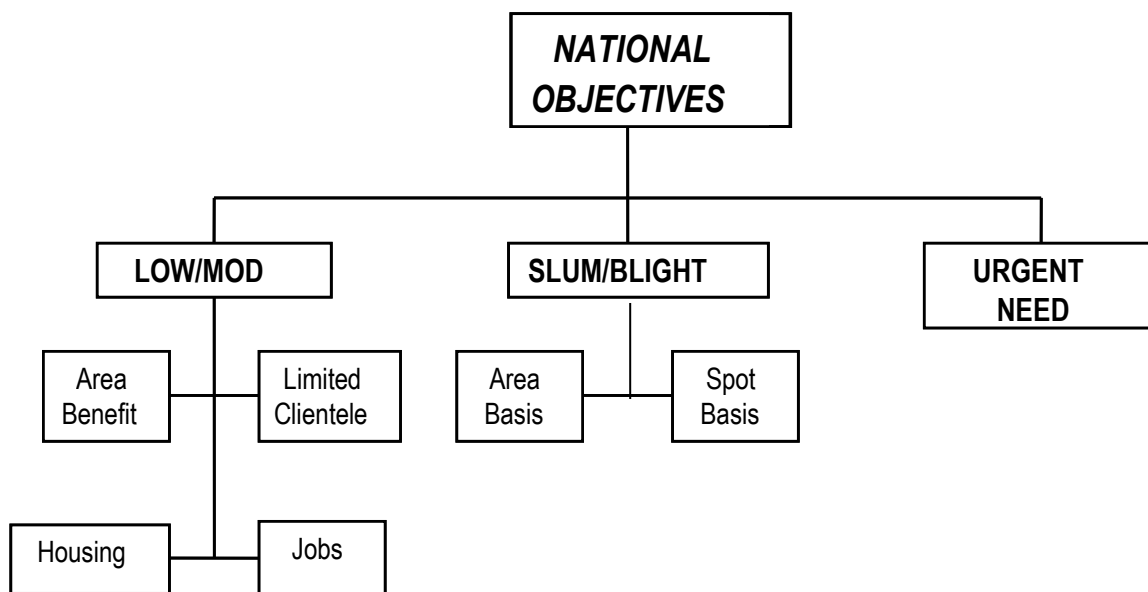
This requirement, which is sometimes called the “overall benefit” requirement, together with the rules to be used in calculating the total percentage of funds actually expended for purposes of complying with this requirement, are both covered in Chapter 4.

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.

Please note that the requirement that each activity must meet a national objective should not be confused with the requirement that at least 70 percent of a grant recipient's funds over a particular time period must be used for activities that benefit L/M income persons.

3.3 National Objective Categories and Subcategories

The remainder of this chapter provides guidance on the national objective categories and subcategories, guidance on documenting compliance, and some thoughts about making the wisest choice among available alternatives.



3.4 Activities Benefiting L/M Income Persons

Benefitting Low- and Moderate-Income Persons 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.

In metropolitan areas, Section 8 program income limits are established for an entire metropolitan area, which may include both entitlement and non-entitlement jurisdictions. For any given state grant recipient located in a metropolitan area, the state must use the Section 8 income limits for that metropolitan area. In non-metropolitan areas, HUD establishes Section 8 program income limits on a county-by-county basis. HUD also determines equivalent figures for the entire non-metropolitan area of each state. For any given non-metropolitan state grant recipient, a state may apply either the Section 8 income limit for that county or the statewide non-metropolitan area figures.

3.4.1 Definitions

Section 102(a)(20) of the HCDA defines the term "low- and moderate income persons" as families and individuals whose incomes are no more than 80 percent of the median income of the area involved. The "area involved" is determined for the CDBG program the same way it is determined for the Section 8 Housing program. The 80 percent of median income figure is determined by HUD based on a four-person family and is adjusted upward or downward for larger or smaller families.

The State CDBG program regulations do not contain specific definitions of the terms "family" or "household," and do not contain a definition of what constitutes "income." States are free to develop their own definition of "income" and can follow the CDBG Entitlement regulations for interpretive guidance (see 24 CFR 570.3). States may use the following definitions of "family" and "household" from the Entitlement program as interpretive guidance:

A **family** is defined in the Entitlement program as a group of persons residing together, and includes **but is not limited to**: a family with or without children, an elderly family; a near-elderly family; a disabled family; a displaced family; 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 (for example, 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 **household** is defined in the Entitlement program 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.

3.4.2 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 income persons is to be met based on **L/M persons**. Only with the subcategory of L/M income 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.

CDBG-assisted housing units can be occupied by persons who are not related to each other. For purposes of meeting the CDBG national objective, the regulations provide that the income of all persons occupying a CDBG-assisted housing unit must be counted, first, without regard to their familial relationships, and second, 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.

3.4.3 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 to 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 grant recipient will have to show why the activity should nevertheless be considered to meet the L/M income benefit national objective. *Reference: 24 CFR 570.483(b)*

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 grant recipient ensure that moderate-income persons are not benefited to the exclusion of low-income persons (see 24 CFR 570.483(b)). This does not mean that each CDBG-assisted activity must involve both low- and moderate-income beneficiaries. However, it does mean that the grant recipient'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.

Planning-only grants:

Planning-only grants can meet the L/M income benefit national objective if at least 51 percent of the people who would benefit from implementation of the plan are of low or moderate incomes. This is most commonly (but not exclusively) demonstrated by planning activities undertaken for an area or community wherein at least 51 percent of the residents are low- and moderate-income. *Planning-only* means that planning is the only activity, or the planning activity is unrelated to any other activity assisted by the grant. *Reference: 24 CFR 570.483(b)(5)*

3.5 L/M Income Area Benefit

3.5.1 Criteria

For these purposes, an area benefit activity is an activity *that is available to benefit all the residents of an area* that 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 percent of the residents 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 HCDA Section 105(c)(2).) 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 below 51 percent, 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.

For example, typical area benefit activities include:

- Street and sidewalk improvements,
- Water and sewer lines,
- Acquisition of land to be used as a neighborhood park,
- Construction of a community center or health clinic
- Facade improvements in neighborhood commercial districts.

Determining the service area:

The determination of the area served by an activity is critical to this subcategory. The inclusion or exclusion of a particular portion of a community'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 state. HUD will generally accept a state's determination unless the nature of the activity or its location raises serious doubts about the area claimed by the state. In making this determination, a state may use the HUD-provided data on percentage of L/M income residents by census tract/block group, derived from the most recently available decennial Census/American Community Survey, together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. (The American Community Survey offers Census data on population demographics, description of housing stock cost, condition and workforce characteristics, such as earnings by sector and travel time to work). The new Low/Moderate Income Summary Data (LMISD), based on the

2006-2010 ACS data, is available on HUD's website at: <https://www.hudexchange.info/manage-a-program/acs-low-mod-summary-data-block-groups-places>. The prior, 2000 Census-based data is on HUD's website at: <http://www.hud.gov/offices/cpd/systems/census/lowmod/>

Alternatively, a state may allow the use of methodologically sound local surveys to determine the percentage of L/M income residents in activity service areas (*Reference: 24 CFR 570.483(b)(1)(i)*). If so, the state must decide which survey methodology is appropriate for determining the L/M income beneficiary area to be served. For additional guidance on appropriate survey methodologies, see Notice CPD 05-06: Suggested Survey Methodology to Determine the Percentage of Low- and Moderate-Income (LMI) Persons in the Service Area of a Community Development Block Grant-Funded Activity (Appendix K).

The area that will be served by an activity need not be coterminous with census tracts, block groups, or other officially recognized boundaries. It is critical, however, that *the service area determined by the state be the **entire** area served by the activity*. For example, even though a predominantly L/M income neighborhood may be one of several neighborhoods served by an activity (for example, a grocery store) the percentage of L/M income persons in the *total area served by the activity* is considered for this purpose.

However, the service area boundaries of State CDBG-funded activities frequently do not coincide with census or other official geographic boundaries. This is especially true in smaller communities and rural areas, where low population densities mean that block groups or census tracts cover large areas. One census tract may cover an entire city; or there may be only two or three census tracts in an entire county. Scenarios commonly faced by states and state grant recipients include:

- The service area comprises only a small portion of the unit of general local government, or of a block group. In such situations, information on the percentage of L/M income persons in the unit of government or the block group/census tract is not useful, because the service area residents make up a small fraction of the total, and their economic characteristics may not mirror those of the larger area. A survey of the service area residents may be the most appropriate way to determine whether the service area qualifies under the L/M income area benefit criterion. Examples of such activities include: extending water lines to serve a small, unincorporated rural settlement in a county; construction of a neighborhood tot lot serving one subdivision in a city of 4,000, where the entire city is one census tract.
- The service area includes all or part of several units of general local government; the service area might contain both incorporated and unincorporated areas. The HUD-provided data may be usable for a portion of the service area, but may need to be supplemented by survey data for other portions of the service area. It may be necessary to survey a large area to determine the percentage of service area residents who are L/M income. Examples of such activities include: Construction of a rural water system which serves nine small incorporated towns plus portions of the surrounding unincorporated area of the two counties where the towns are located; construction of a new fire station in a city of 2,800, where the municipal fire department provides, through contract, fire protection service for two adjoining townships (one of which is in a different county).

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 emergency medical/rescue services. CDBG assistance to a for-profit entity that is a commercial/retail establishment generally also provides an area benefit (see the Clearance, Rehabilitation, Reconstruction and Construction of Buildings category concerning eligibility of commercial rehabilitation; see Economic Development Assistance to Businesses 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.

3.5.2 Special Situations

Activities outside the boundaries of the local government:

Any activity carried out by a recipient of State CDBG program funds must significantly benefit residents of the jurisdiction of the grant recipient, and the unit of general local government must determine that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act. For an activity to significantly benefit residents of the recipient jurisdiction, the CDBG funds expended by the unit of general local government must not be unreasonably disproportionate to the benefits to its residents. *Reference: 24 CFR 570.486(b) (regulation change published April 23, 2012)*

Activities benefiting Entitlement city residents:

Any activity carried out by a recipient of State CDBG program funds in entitlement jurisdictions must significantly benefit residents of the jurisdiction of the grant recipient, and the State CDBG recipient must determine that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act. For an activity to significantly benefit residents of the recipient jurisdiction, the CDBG funds expended by the unit of general local government must not be unreasonably disproportionate to the benefits to its residents. In addition, the grant cannot be used to provide a significant benefit to the entitlement jurisdiction unless the entitlement grantee provides a meaningful contribution to the project. *Reference: 24 CFR 570.486 (c) (regulation change published April 23, 2012)*

Activities benefiting residents of Indian reservations:

The issue of serving residents of a federally-recognized Indian Reservation is similar, but slightly more complicated. In most cases, Reservation residents are also residents of the county where the Reservation is located. Activities that benefit residents of Indian reservations that are contained within the boundaries of the unit of general local government that receives

the grant are considered to benefit the residents of the grant recipient, as reservation residents are citizens of the unit of local government(s) that their reservation is located in. State CDBG funds may benefit residents of Indian reservations not contained within the state grant recipient's boundaries, as long as the state grant recipient determines that the activity meets its housing and community development needs, in accordance with HCDA Section 106(d)(2)(D).

Other federal and state laws dealing with the legal status of Indian Reservations could affect unique situations, such as locating a facility owned by a unit of general local government on tribally-owned land, or activities that would exclusively benefit Native Americans. (For example, so-called "Indian preference" provisions which apply to certain federal funding given directly to tribes do not apply to State CDBG program funding.) If any questions of authority exist, it is suggested that units of general local government determine that they have sufficient legal powers to implement community development activities on reservations before proceeding in unusual situations.

Water and sewer hookups:

Hooking residential buildings up to water and sewer lines cannot be undertaken as an L/M income area benefit activity, because water and sewer hookups are not eligible under the public facility eligibility category. Water and sewer hookups are eligible under the Clearance, Rehabilitation, Reconstruction, and Construction of Buildings eligibility category, and must, therefore, meet the L/M income Housing criteria.

3.5.3 Special Situations Applicable to Specific Activities

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 grant recipient obtains prior HUD approval. The details concerning what the grant recipient must show and what HUD must determine for this purpose can be found at 24 CFR 570.483(b)(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 D, Special Assessments under the CDBG Program) 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. Section 105(c)(2)(A)(iii) of the HCDA authorizes the means of meeting the L/M income area benefit requirement.

Reference: 24 CFR 570.483(b)(1)(ii)

3.5.4 Grant Recipient Options for Job Creation/Retention

There are two special situations that provide the grant recipient 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 state has approved a Community Revitalization Strategy (CRS) pursuant to the authority of 24 CFR 91.315(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 grant recipient, be considered to meet the *area benefit* subcategory criteria in lieu of the *jobs* subcategory criteria (the area considered for this purpose is the CRS area); and *Reference: 24 CFR 570.483(e)(5)(i)*. (See Appendix E, Community Revitalization Strategies.)
- 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 percent L/M income persons, activities that the CDFI carries out for the purpose of creating or retaining jobs may, at the grant recipient's option, be considered to meet the *area benefit* subcategory criteria in lieu of the *Jobs* subcategory criteria. The area considered for this purpose is the CDFI's investment area. *Reference: 24 CFR 570.483(e)(4)(i)*

Please note, however, that although the reporting requirements focus on area benefit, it is still necessary 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.

3.5.5 Records to be Maintained

The records needed 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.
- Documentation of survey results and methodology, if the percentage of L/M income area residents is determined by survey rather than by HUD-provided data.

If the activity is one of the special situations described above, the records must identify the unique aspects of the activity that qualify it under the respective subcategory. (See Appendix I, Model Record-Keeping Requirements.)

3.6 L/M income Limited Clientele

3.6.1 Criteria

An *L/M income limited clientele activity* is an activity that provides benefits to a specific group of persons rather than everyone in a defined service area. It may benefit particular persons without regard to the area in which they reside, or it may be an activity that 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 percent 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 comprised principally of L/M income persons:
 - Abused children,
 - Elderly persons,
 - Battered spouses,
 - Homeless persons,
 - Adults meeting Bureau of Census' definition of severely disabled adults *,
 - Illiterate adults,
 - Persons living with AIDS, and
 - Migrant farm workers.

Reference: 24 CFR 570.483(b)(2)(ii)(A)

* See discussion about the change from the term “handicapped” in Chapter 2, Section 2-7, Architectural Barrier Removal.

(Note: this presumption may be challenged in a particular situation, if there is substantial evidence that the persons in the group the activity is designed 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 percent* 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: 24 CFR 570.483(b)(2)(ii)(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 (for example, a day care center that is designed to serve residents of a public housing complex). *Reference: 24 CFR 570.483(b)(2)(ii)(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: 24 CFR 570.483(b)(2)(iii)*

OR

- Be a microenterprise assistance activity carried out in accordance with the provisions of HCDA Section 105(a)(22) or 24 CFR 570.482(c) 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: 24 CFR 570.483(b)(2)(iv)

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 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: 24 CFR 570.483(b)(2)(v)*

The census definition of “severely disabled” is as 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, 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.

3.6.2 Examples

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.

3.6.3 Tips

Activities that 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.)

3.6.4 Records to be Maintained

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

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 (for example, 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 percent of the persons benefiting are L/M income persons. *Reference: 24 CFR 570.483*

3.7 L/M Income Housing

3.7.1 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 grant recipient is responsible for establishing the criteria it will use to determine rent affordability for this purpose and must make these criteria public. *Reference: 24 CFR 570.483(b)(3)*

3.7.2 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 percent* of the units occupied by L/M income households.

Exception:

Under the following circumstances, structures with less than 51 percent occupancy by L/M income households may be assisted.

The new construction of *non-elderly, multi-family rental* structures need only have at least **20 percent of the units** occupied by L/M income **households**. However, when occupancy by L/M income households falls between 20 and 50 percent, the CDBG portion of total development costs may not be greater than the proportion 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 35 percent of the units are occupied by L/M income households at affordable rents, the grant recipient could not provide more than \$350,000 in CDBG assistance for the project. *Reference: 24 CFR 570.483(b)(3)(i)*

“Presumed” single structures:

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

- Buildings used for rental housing which are under common ownership and management and are located on the same or contiguous properties; *Reference: 24 CFR 570.483(b)(3); or*
- All housing activities undertaken in Community Revitalization Strategy area, where a state has approved such a strategy area pursuant to 24 CFR 91.315(e)(2) of the regulations, *Reference: 24 CFR 570.483(e)(5)(ii); or*
- Where CDBG-assisted housing 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 percent 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: 24 CFR 570.483(e)(4)(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. (For purposes of satisfying the overall 70 percent L/M benefit requirement, it is advantageous for a state to qualify such activities under the housing criteria when it can legitimately do so.)

Project administration for HOME:

As noted in the discussion under the subsection entitled Housing Services 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 the requirements of 24 CFR 92.252 or 92.254 are met.

3.7.3 Examples

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,
- Assistance to a household to enable it to acquire ownership of a home (homeownership assistance), and
- Hookups to connect residential structures to water and sewer systems.

3.7.4 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; the CDBG program regulations do not contain any requirements for how long units must be occupied by L/M income residents in order to meet the national objective. Notwithstanding this, states and state grant recipients 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 HCDA Section 105(a)(24) 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.

A state grant recipient is responsible for determining and making public its standards for what constitutes “affordable rents,” for rental housing assisted with State CDBG funds. The CDBG program regulations do not contain any requirements for how long the affordable rents must be maintained. States are free to set standards regarding affordable rents in their program.

3.7.5 Records to be Maintained

In order to demonstrate compliance, the grant recipient 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; and
- 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 grant recipient.
- 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 percent.
- 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 HCDA Section 105(a)(20) (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.

3.8 L/M Income Jobs

3.8.1 Criteria

Most, but not all, economic development activities are undertaken for the purpose of job creation or retention; conversely, most, but not all, job creation or retention activities are classified as eligible under one of several economic development-oriented eligibility categories. (However, there are several noteworthy exceptions: acquisition of land, clearance, and construction of public improvements may all be undertaken to facilitate economic development, though those eligibility categories do not exclusively focus on economic development.)

The statutory basis for the CDBG regulations concerning the L/M income jobs national objective criterion is found in HCDA Section 105(c)(1). This section describes three ways in which certain economic development activities may meet the L/M income benefit national objective; one of these is to “Involve the employment of persons, the majority of whom are L/M income persons.” The State CDBG program regulations extend the applicability of this provision to be available to a wide range of economic development activities.

This section of the Guide provides the criteria for the so-called “L/M income jobs” standard, which implements the above-referenced statutory provision. *Reference: 24 CFR 570.483(b)(4)*

An *L/M income jobs activity* is one which creates or retains permanent jobs, at least 51 percent 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.

Examples of activities that may be qualified under the L/M income jobs national objective include:

- Clearance activities on a site slated for a new business;
- Rehabilitation activity that will correct code violations and enable a business to survive and retain jobs;
- Financial assistance to a manufacturer for the expansion of its facilities that is expected to create permanent jobs.

3.8.2 General Rules

What jobs can be counted:

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) (for example, a job that will require working only half time would count as only 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 (for example, jobs created by an unrelated company that supplies parts to the manufacturing firm being assisted).

Jobs "held by" L/M income persons:

A job is considered to be held by a L/M income person if the person is, at the time their employment commences, a member of a family whose income falls at or below the applicable Section 8 program income limits. The family's entire income must be counted. (This is particularly important when dealing with part-time jobs or jobs held by students.) The annual salary or hourly wage of the job that the person fills is irrelevant.

Jobs "available to" L/M income persons:

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:

- The jobs do not require special skills that can only be acquired with substantial (i.e., one year or more) training or work experience, and education beyond high school is not a prerequisite to fill such jobs, unless the business agrees to hire unqualified persons and train them and
- The state grant recipient 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 percent 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 percent 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
- Jobs not known to be held by L/M income persons, but which can be reasonably expected to “turn over” to L/M income persons within two years. (This would involve the grant recipient 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: 24 CFR 570.483(b)(4)(ii)*

Presumed L/M income status:

HCDA Section 105(c)(4) 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 in the following situations:

- The person resides within a census tract (or block group) that either:
 - Has at least 70 percent 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 block group that meets the criteria related to “enterprise zones.”

In order to qualify for one of the presumptions referred to above, the census tract or block group must either:

- Meet *all* of the following criteria:
 - Have a poverty rate of at least 20 percent 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 or block group has a poverty rate of at least 30 percent 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 percent;
 - the specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or
 - upon the written request of the recipient, HUD determines that the census tract or block group 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.

OR

- Be part of a federally-designated Empowerment Zone or Enterprise Community
Reference: 24 CFR 570.483(b)(4)(iv) and (v)

Note that under these “locational presumptions,” the area involved does not necessarily have to be part of a formally-designated Empowerment Zone (EZ) or Enterprise Community (EC), nor must the jurisdiction have applied for EZ/EC status. The area in question simply has to meet the above-mentioned criteria for eligibility under the EZ/EC program.

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 percent of the resultant created or retained jobs benefit L/M income persons. Even if the state or its grant recipient considers the CDBG-funded activity to be a business loan fund, HUD generally considers assistance to each business as a separate activity. However, there are certain circumstances under which state grant recipients 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 (for example, 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: 24 CFR 570.483(b)(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-year period may be aggregated. *Reference: 24 CFR 570.483(b)(4)(vi)(B)*
- Where CDBG funds are used *solely to provide technical assistance* to businesses, jobs created or retained by all of the businesses receiving such technical assistance during any one-year period may be aggregated. *Reference: 24 CFR 570.483(b)(4)(vi)(C)*
- Where CDBG funds are used for activities meeting the criteria under the public benefit standard at 24 CFR 570.482(f)(3)(v), the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during any one-year period may be aggregated. The list of activities at 24 CFR 570.482(f)(3)(v) is sometimes collectively referred to as the “important national interests” activities and includes:
 - Providing jobs exclusively for unemployed persons or participants in one or more of the following programs:
 - Jobs Training Partnership Act (JTPA),
 - Job Opportunities for Basic Skills (JOBS), or
 - Aid to Families with Dependent Children (AFDC);
 - Providing jobs predominantly for residents of Public and Indian Housing units;
 - Providing jobs predominantly for homeless persons;
 - Providing 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;
 - Providing jobs predominantly for persons residing within a census tract (or block group) with at least 20 percent of its residents in poverty;
 - Providing assistance to business(es) that operate(s) within a census tract (or block group) that has at least 20 percent of its residents in poverty;
 - Stabilizing or revitalizing a neighborhood that has at least 70 percent of its residents who are L/M income persons;
 - Providing assistance to a CDFI that serves an area that has at least 70 percent of its residents who are L/M income persons;
 - Providing assistance to a community development organization serving a neighborhood that has at least 70 percent of its residents who are L/M income persons;
 - Providing employment opportunities that are an integral component of a project designed to promote spatial de-concentration of LMI persons and minorities;
 - With prior HUD approval, providing substantial benefit to L/M income persons through other innovative approaches;

- Providing services to the residents of an area pursuant to a Community Revitalization Strategy approved by HUD (see Appendix E, Community Revitalization Strategy Areas);
- Creating or retaining jobs through businesses assisted in an area pursuant to a Community Revitalization Strategy approved by HUD (see Appendix E, Community Revitalization Strategy Areas); *or*
- Directly involving the economic development or redevelopment of environmentally contaminated properties.

Reference: 24 CFR 570.483(b)(4)(vi)(D) (Also see Appendix C, Public Benefits Standards, for further information on the public benefit standards in general and a complete list of “important national interests” activities .)

- Where CDBG funds are used by a Community Development Financial Institution (CDFI) to carry out activities for the purpose of creating or retaining jobs, the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during any one-year period may be aggregated. *Reference: 24 CFR 570.483(b)(4)(vi)(E)*

Note: If assistance to a given business would qualify under both the CDFI aggregation provision and the “important national interests” aggregation provision (as discussed above), then the jobs created or retained by that business can be aggregated under one provision or the other, but can’t be counted under both.

Note: For the above-mentioned aggregation provisions, it is up to the state to establish the dates for the one-year period. Many states use the dates of their Consolidated Plan program year cycle for this purpose.

- Where CDBG funds are used for public facilities or improvements (infrastructure), that will result in the creation or retention of jobs by more than one business, the jobs created or retained by all such businesses as a result of the public facility or improvement may (and sometimes must) be aggregated, using the following ground rules:
 - Where such an improvement is undertaken for the benefit of one or more specific businesses, but the improvement clearly benefits other businesses or allows other sites to be developed, jobs created or retained as a result of the public improvement, by all businesses in the service area of the infrastructure, must be aggregated.
 - For example: A city’s existing industrial park is fully developed and cannot accommodate a new metal stamping plant that wishes to locate in the city. The city buys an adjoining parcel, divides it into four lots, and uses CDBG funds to install water, sewer, and roads through the parcel to serve the new plant. However, the other three lots in the parcel are now developable because these improvements serve them too. The city must aggregate the metal stamping plant jobs plus any jobs which are created or retained as a result of other businesses subsequently locating on the other three lots—even if no other business had committed to locate there at the time the improvements were constructed.

- Where such an improvement is undertaken principally for the benefit of one or a few 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, only the jobs created or retained by those specific businesses for which the facility/improvement is principally undertaken need to be aggregated. The state grant recipient can disregard any incidental job creation that might occur because other businesses might also benefit from the improvement. Reference: 24 CFR 570.483(b)(4)(vi)(F)(1)
- For example: CDBG funds are used to widen and upgrade an access road to meet the needs of a manufacturing plant expansion that will create 175 new jobs. Other businesses located along or near the road may enjoy improved transportation access, but they did not request the improvements, have no known expansion plans, and have not committed to increase their employment levels.)
- Where the CDBG cost per FTE job expected to be created or retained (as determined under the paragraph above) is \$10,000 or more, jobs created or retained as a result of the public improvement, by *all businesses in the service area of the infrastructure*, must be aggregated. The aggregation must 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 state awards the CDBG funds to the state grant recipient 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 24 CFR 570.482(f). Reference: 24 CFR 570.483(b)(4)(vi)(F)(2)
- For example: A city needs to increase the capacity of its sewage treatment plant by 50 percent to accommodate the expansion of a poultry processing plant. The state provides a CDBG grant (which will allow the city to double the capacity of its sewage plant), at a cost of \$11,200 per new poultry plant job. Over the next 12 months, four new businesses decide to locate in town, because the city has sufficient sewage treatment capacity to handle their effluent. The increased economic activity prompts the local bank to hire more tellers and loan officers. The city must aggregate job creation figures for the poultry plant plus the four new businesses. The bank's jobs could arguably be excluded, as their contribution to the city wastewater flow is probably minuscule.

3.8.3 Examples

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

- Construction by the grant recipient of a business incubator which is designed to offer both space and assistance to new, small businesses to help them survive and grow;
- 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
- Installation of water and sewer lines to a site, and upgrading an access road, to serve a new distribution warehouse being built by a firm.

3.8.4 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 was 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 grant recipient 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 grant recipient will take to ensure that at least 51 percent 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:

When demonstrating that at least 51 percent of the jobs created will be available to low- and moderate-income persons, documentation for each assisted business must include:

- A written commitment by the business that it will make at least 51 percent of the jobs on a full time equivalent basis available to low- and moderate-income persons and will provide training for any of those jobs requiring special skills or education;
- A listing by job title of employees at the time the application for assistance is submitted;

- A listing, by job title, of the total permanent jobs to be created, indicating which jobs will be available to low- and moderate-income persons, which jobs require special skills or education, and which jobs are part-time;
- Evidence supporting the estimate of the total number of jobs;
- A description of actions to be taken by the recipient and business to ensure that low- and moderate- income persons will receive first consideration for these jobs;
- A listing, by job title, race, ethnicity, gender and handicapped status of the permanent jobs created; which jobs were made available to low- and moderate-income persons, and a description of how first consideration was given to such persons for those jobs. That description should include the hiring process used; the number of low- and moderate- income persons considered for each job; and the number of low- and moderate- income persons actually hired;
- A description of how the low- and moderate-income status of those given first consideration was determined; and
- A description of how the total number of jobs was determined.

When demonstrating that at least 51 percent of the jobs will be taken by low- and moderate-income persons, documentation for each assisted business must include:

- A written commitment by the business that at least 51 percent of the jobs on a full-time equivalent basis, will be held by low- and moderate-income persons;
- A listing, by job title, of employees at the time the application for assistance is submitted;
- A listing, by job title, of the permanent jobs to be created;
- Evidence supporting the estimated total number of jobs to be created;
- A listing, by job title, race, ethnicity, gender and handicapped status of the permanent jobs actually created and those initially taken by low- and moderate-income persons;
- A description of how the low- and moderate-income status of those hired was determined by the state during the review of the recipient; and
- A description of how the total number of jobs was determined.

Job retention:

The following are record-keeping requirements for documenting records that support compliance with job retention goals.

- Clear and objective evidence that in the absence of the CDBG assistance the jobs will be lost;
- A written commitment by the business to meet the standard for retained jobs involving the employment of low- and moderate-income persons; and
- A listing by job title, race, ethnicity, gender and handicapped status of the employees at the time the assistance is provided;

For each activity determined to benefit low- and moderate-income persons based on jobs to be created for or retained by low- and moderate-income persons:

- The number of jobs to be created and the number of additional jobs expected to be created, if any;
- The nature of the jobs created to date (number skilled, semiskilled, and unskilled, and for semi-skilled jobs, any special education or experience required) and the nature of additional jobs expected to be created; and,
- Any other evidence to support the conclusion that a majority of jobs will be filled by low- and moderate-income persons, such as:
 - Evidence to assure accessibility of the jobs to areas where substantial numbers of low- and moderate-income persons reside; and
 - Evidence to support any special outreach and/or training to be directed toward low- and moderate-income persons.

Refer to the record-keeping requirements in Appendix I. Model Record-Keeping Requirements, for more information.

3.8.5 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 family 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*.

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 Community 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 grant recipient 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 grant recipient 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.

3.9 Prevention/Elimination of Slums or Blight

3.9.1 Introduction

The second of the CDBG national objectives has its roots in the Urban Renewal program, one of the major federal programs that was 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.

The focus of activities under this national objective is a change in the physical environment of a deteriorating area. This contrasts with the LMI benefit national objective where the goal is to ensure that funded activities benefit LMI persons

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 defined *slum or blighted area* or are *strictly limited to eliminating* specific instances of blight outside such an area (“spot blight”).

Accordingly, the subcategories under this national objective are:

- Addressing slums/blight on an area basis (24 CFR 570.483(c)(1)); and
- Addressing slums/blight on a spot basis (24 CFR 570.483(c)(2)).

Planning-only grants may be used if the plans are for a slum or blighted area, or if all elements of the planning are necessary for and related to an activity that, if funded, would meet one of the other criteria of elimination of slums or blight. *Planning-only* means that planning is the only activity, or the planning activity is unrelated to any other activity assisted by the grant. *Reference: 24 CFR 570.483(c)(3)*

3.10 Addressing Slums or Blight on an Area Basis

3.10.1 Criteria

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

1. The area must be officially designated by the grant recipient 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 formally designate/declare the area to be blighted, but the area must meet the definitions for designation.)
2. The area must exhibit signs of economic disinvestment as indicated by at least one of the following physical signs of blight or decay:

- A. 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*:
- (1) 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**
 - (2) 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 meet the grant recipient’s definition of:
 - a) deteriorated or deteriorating;
 - b) abandoned;
 - c) experiencing chronic high occupancy turnover rates or chronic vacancy rates in commercial or industrial buildings;
 - d) experiencing significant declines in property values or abnormally low property values relative to other areas in the community; or
 - e) known or suspected of environmental contamination
- B. 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.)
3. Documentation must be maintained by the grant recipient on the boundaries of the area and the conditions that qualified the area at the time of its designation. The recipient must establish definitions of the conditions (listed above) and maintain records to substantiate how the area met the slums or blighted criteria.
- Note:** The area must be re-designated every 10 years for continued qualification and documentation must be retained.
4. Activities to be assisted with CDBG funds must be limited to those that address one or more of the conditions that 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 grant recipient 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 (for example, re-qualify) 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. (States are to ensure that state grant recipients have developed minimum building quality standards for this purpose. Local conditions may be taken into consideration; states are also free to set standards regarding building quality.)
- 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: 24 CFR 570.483(c)(1)*

Examples

When the assistance is designed to address one or more of the specific conditions that originally qualified the area, typical activities designed to address blight on an area basis include:

- Acquisition and clearance of blighted properties,
- Rehabilitation of substandard housing,
- Infrastructure improvements,
- Renovation and reuse of abandoned, historic buildings,
- Commercial revitalization through facade improvements, and
- Removal of environmental contamination on property to enable it to be redeveloped for a specific use.

3.10.2 Records to be Maintained

The records maintained must include:

- The boundaries of the area;
- 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.
 - Recipients must define and document their definition of the criteria used to qualify areas.
 - Grant recipients must adopt local definitions related to deteriorating or deteriorated buildings/improvements, abandonment of properties, chronic high turnover rates, chronic high vacancy rates, significant declines in property values, abnormally low property values, and environmental contamination); and
 - Designations must be re-determined every 10 years for continued qualification.
- A description of the activity showing how it addressed a condition that 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 state grant recipient's definition of "sub-standard" and
- As applicable, information showing that any deficiencies making the building substandard were eliminated prior to less critical work being done.

3.10.3 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 state grant recipient should consider choosing the L/M income benefit national objective in this case, since it would help meet the state's certification that at least 70 percent of CDBG expenditures will be for activities that meet the L/M income benefit national objective. The **lack** of public improvements in a designated slum/blight area **cannot** be equated with general deterioration of public facilities throughout an area, in demonstrating physical signs of blight or decay in the area.

3.11 Addressing Slums or Blight on a Spot Basis

3.11.1 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, physical decay or environmental contamination 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 below and also under the section entitled Documenting Compliance later in this chapter);
 - Clearance;
 - Remediation of environmentally contaminated properties;
 - Relocation (but see the discussion about this category below);
 - Historic Preservation; or
 - Rehabilitation of buildings, but only to the extent necessary to eliminate specific conditions detrimental to public health and safety.

Where the assisted activity is *acquisition* or *relocation*, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination. This requirement is not intended to

discourage acquisition and relocation as pre-development activities and does not mandate that a proposed plan be in place before CDBG funds can be spent. For example, a grantee could clean up a contaminated site without acquiring the site; however, if the grantee acquired the site first, the project would be considered to meet the slum/blight national objective criteria only after clean-up occurred. *Reference: 24 CFR 570.483(c)(2)*

Examples

- Historic preservation of a blighted public facility
- Demolition of a vacant, deteriorated, abandoned building
- Removal of environmental contamination on a property to enable it to be redeveloped for a specific use
- Elimination of faulty wiring, falling plaster or other similar conditions from a residential building which are detrimental to all potential occupants.

3.11.2 Records to be Maintained

The records maintained 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. Where rehabilitation of a building is carried out under this category, information showing how the activity eliminates conditions detrimental to public health and safety must be included.

3.11.3 Tips

To be considered 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 non-disabled 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 state has an obligation to use a minimum of 70 percent 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 24 CFR 570.489(j).

3.12 Urgent Needs

3.12.1 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 local government certifies and state determines:

- Pose a serious and immediate threat to the health or welfare of the community,
- Are of recent origin or recently became urgent,
- The state grant recipient is unable to finance the activity on its own, and
- Other sources of funding are not available to carry out the activity, as certified by both the State and the grant recipient.

A condition will generally be considered to be of recent origin if it is developed or became critical within 18 months preceding the state grant recipient’s certification. *Reference:* 24 CFR 570.483(d)

Examples

- Acquisition of property located in a flood plain that was severely damaged by a recent flood
- Public facility improvements such as reconstruction of a publicly-owned hospital that was severely damaged by a tornado
- Demolition of structures that were severely damaged by a major earthquake
- Interim assistance such as emergency treatment of health problems caused by a flood

3.12.2 Records to be Maintained

The records maintained should include:

- A description of the nature and degree of seriousness of the conditions requiring assistance;
- Evidence that the state grant recipient 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.

3.12.3 Tips

Planning—Only grants are not allowed under Urgent Needs.

States are free to establish criteria for what constitutes a “serious and immediate” threat. States are free to establish criteria or documentation requirements regarding the lack of other funding resources and local governments’ inability to finance activities on their own. Activities designated solely to prevent a serious health or welfare threat from developing in the future will not qualify under this criterion. Despite the flexibility available to states in establishing criteria

related to qualifying activities under the urgent need national objective, local communities should be made aware that this is a difficult standard to meet. Generally, activities that may not have met the standard for another national objective are unlikely to qualify under Urgent Need.

3.13 Documenting Compliance

3.13.1 Considering National Objectives First

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.

3.13.2 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 percent of the funds used must qualify under that objective. Even where it seems clear that the 70 percent requirement will be met, based on the activities currently planned to be funded by the state, it may still be useful to choose the L/M income benefit national objective over the other two national objectives. An unexpected 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 a state receives a request for “float loan,” Section 108 Loan Guarantee or “urgent need” assistance.)

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 percent of the jobs benefit L/M income persons, the state may be reluctant to fund it. If the activity could also qualify under the slum/blight area criteria, the state grant recipient 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 state could then switch the activity to the slum/blight national objective rather than have the activity in noncompliance with CDBG rules. States are free to establish their own policies in this area.

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 (for example, 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 state grant recipient 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 of L/M income residents is high enough to qualify, no further records would be needed to qualify the activity under the L/M income benefit national objective.

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 grant recipient 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 jobs national objective.

Some activities—most commonly, the installation of certain utilities or public improvements such as water, sewer and roads to facilitate economic development--may seem to result in dual benefits. Installation of public improvements in a residential area may serve an industrial or commercial site that can then be developed. The state and the state grant recipient need to determine if the activity, as designed, principally benefits the residential area (for example, potable water, improved municipal services), with only incidental job creation benefit resulting from the commercial/industrial development. Or, is the activity designed to principally serve the commercial/industrial development project, with neighborhood residents receiving only incidental benefit from the public improvement? In any case where CDBG funds are used for a public improvement activity which is clearly designed to serve a primarily residential area, the activity must meet the L/M income area benefit criterion, regardless of whether the activity could also meet the L/M income jobs criterion. Reference: 24 CFR 570.483(e)(1).

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 block group in which he/she resides, without having to check further for family size and income. If a state grant recipient 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 block group), it is necessary that the state grant recipient maintain information showing addresses that fall within the census divisions in its jurisdiction. The Census Bureau maintains American Fact Finder (<http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>) which includes an address search option that will return the census codes which can be referenced to the tract or block group in HUD's Low and Moderate Income Summary Data can be found at <https://www.hudexchange.info/resource/3856/acs-low-mod-summary-data/>. This would, in turn, indicate whether the person qualifies for the L/M income presumption.

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 state grant recipient in making this determination are important in demonstrating compliance for this purpose.

3.13.3 Acquisition of Real Property

24 CFR 570.483(e)(2) provides that, where the assisted activity falls under the basic eligibility category of Acquisition of Real Property (at HCDA Section 105(a)(1)), 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 grant recipient'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 24 CFR 570.489(j).

3.13.4 Defining and Documenting "Blight"

When an activity is intended to meet the slum/blight national objective, it is necessary 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. In the end, it is up to each state to establish specific documentation requirements for their program.

Many local governments 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 the area has to be delineated (have recognized boundaries) and must meet a state or local definition of what constitutes a slum, blighted, or deteriorated/deteriorating area. For purposes of the CDBG regulations, it is not necessary for the local government to legally designate or declare the area under state or local law. (It may be legally necessary under provisions of the state or local law to do so.) Some state laws use less controversial terms, such as "redevelopment district," rather than "slum" or "blighted." 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.

Remember that it is not sufficient for a local government simply to determine that an area qualifies under state or local definitions; there are additional HUD criteria which must be met. Many state redevelopment laws have qualification criteria which are quite broad or vaguely defined; areas could meet many states' definitions without having "objectively determinable signs of blight" (which is a statutory requirement of the HCDA). The HCDA sets a higher standard than is intended or required under some state laws, which have broader purposes. For example, "inappropriately zoned" or "underdeveloped" vacant land might qualify for Tax Increment Financing under state law, but HUD cannot accept inappropriate zoning or the presence of vacant land by themselves as evidence of blighted conditions.

3.14 National Objectives Compliance and Accomplishments Reporting

3.14.1 Documenting and Reporting

It is worthwhile to discuss the relationship between documenting compliance with a national objective and reporting on accomplishments and beneficiaries. There can be subtle differences between the two, in terms of when performance must be shown, and in terms of what (or who) to count.

States and state grant recipients are to maintain documentation demonstrating how each funded activity meets a national objective. (Refer to Appendix I, Model Record-Keeping Requirements.) The point at which national objectives compliance can be conclusively demonstrated will vary, depending on the type of activity. For example, an activity designed to meet the L/M income job creation national objective cannot be shown to meet that criteria until all the jobs have been created; this may stretch out some month after physical completion of the activity. On the other hand, an architectural barrier removal activity could be shown to meet the L/M income limited clientele criteria at the beginning of the implementation process.

3.14.2 State PER Report

Through the Performance and Evaluation Report (PER), states report annually to HUD on their use of CDBG funds. A PER is the mechanism by which states report on accomplishments and beneficiaries of activities, and document what has been accomplished for each funded activity during the previous 12-month period for all open activities. While the PER provides valuable information about how individual activities are meeting program requirements, states' reports are not intended to be the sole vehicle by which a state demonstrates that activities comply with national objectives requirements.

When a state funds an activity, the first PER in which an activity appears will indicate projected performance outputs (for example, number of persons to be served, number of units to be built, number of businesses to be assisted, or number of jobs to be created). As an activity is carried out, subsequent reports show the cumulative, actual performance outputs achieved since initiation of the activity. State PERs also report the actual racial, ethnic and gender characteristics of applicants and beneficiaries for activities which provide direct benefits to L/M income persons, once those benefits have been achieved.

As a "point in time" snapshot of activity, PER data alone may not provide a complete picture of compliance with national objectives. Taking the previously-cited example of an architectural barrier removal activity, construction might have barely begun at the end of the reporting period; the state may have no accomplishment information to report for this activity in its PER, even though it has all documentation on hand necessary to demonstrate that the activity meets the L/M income benefit national objective. Conversely, a state PER might show the aforementioned economic development activity to be physically completed; it might also show a large number of jobs as having been created. But until all job creation has occurred, neither the state nor HUD can conclude that the activity has met the L/M income benefit national objective requirement.

States report performance output data in terms of the number of persons assisted and the number of L/M income persons assisted for all activities regardless of the national objective the activity is to meet. There are two exceptions, however. For housing activities, states report the number of households, the number of L/M income households assisted, the number

of persons and the number of low- and moderate-income persons. For economic development activities, states report the number of jobs and L/M income jobs created, loans given, and businesses assisted.

3.14.3 Flexibility in Measuring

There are some situations where states have flexibility in deciding what to count as performance outputs to measure. This arises most commonly with "area benefit" activities, in which all residents of the service area of the activity have equal opportunity to take advantage of the benefits of the activity. For example, a sewer project may be undertaken in a neighborhood in which over 51 percent of the service area residents are L/M income. The activity is designed to serve all area residents, but that does not mean that all residents will choose to hook up to the sewer once constructed.

In reporting actual accomplishments for this activity, the state can choose whether to measure sewer benefits in terms of persons in the service area or in terms of persons whose houses are actually hooked up to the sewer. If the state uses the latter approach, the number of actual beneficiaries (and the percentage who are L/M income) will differ from the projected accomplishment figures, which were based on the characteristics of the entire service area.

Sometimes two different activities are carried out in the same service area, but might not have exactly the same beneficiaries. This most commonly occurs with public facility activities. Water and sewer improvements are two separate activities, even if they are undertaken in the same service area. Residents are receiving two different benefits, so the state will report these as separate activities. It is possible that some residents might choose to hook up to the water system but not the sewer system (or vice versa). While the same service area characteristics may be used to determine that both activities meet the L/M income area benefit criterion, the number and income characteristics of the actual beneficiaries could be different for each activity.

3.15 Making the Best Choice

Making the wisest choice among available alternatives for meeting a national objective is highly dependent on the individual state grant recipient. While the relative burden of record-keeping requirements is an important factor to consider, it may also be important for the individual state grant recipient 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 individual state grant recipient'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 state grant recipient may want to collect such information even for an activity that could qualify on an area benefit basis such as assisting a grocery store that serves an L/M income neighborhood, but that also creates jobs filled by residents of that area.

4. Overall Expenditures Level – Benefit To L/M Income Persons

4.1 Purpose

The purpose of this chapter is to describe the requirement with respect to the level of expenditures for activities that meet the L/M Income Benefit national objective. Consistent with the primary objective of Section 104(b)(3)(A) of the Housing and Community Development Act of 1974 as amended, the State program regulations require each CDBG grant recipient to certify that, in the aggregate, at least 70 percent of CDBG funds expended, during a one, two, or three- year period specified by the state for this purpose, will be for activities meeting the L/M Income Benefit national objective. State grantees may meet this requirement through any of the four sub-categories under the L/M Income Benefit national objective. Those subcategories are:

- L/M Income Area Benefit,
- L/M Income Limited Clientele,
- L/M Income Housing, and
- L/M Income Jobs.

This requirement applies to the sum total of CDBG funds received by the state during the specified period, not to individual subrecipient grant allocations or funds expended for individual activities. The 70 percent requirement should not be confused with the requirement that each individual activity meet a national objective (most national objectives criteria require that at least 51 percent of the beneficiaries be L/M income persons.).

Since compliance with the 70 percent overall L/M Income Benefit requirement under 24 CFR 570.484 involves showing the percentage of total expenditures used for activities benefitting persons of low- and moderate-income, the state must keep records documenting that it met the 70 percent benefit test. (Instructions on computing the overall benefit are provided later in this chapter. In addition, this calculation is performed automatically in the PR-28 Financial Summary of the State PER. Also, CPD Notice 11-03 provides guidance on the State PER.)

4.2 CDBG Funds

Note that this requirement applies to the expenditures of CDBG funds during the specified period. For this purpose, CDBG funds include the following:

- CDBG grants received from HUD,
- CDBG funds reallocated to the state by HUD,
- CDBG program income, including payments to revolving funds, received by the state and its state grant recipients
- EDI and BEDI grants (Section 108(q) of HCDA of 1974), and proceeds of loans guaranteed by HUD under Section 108.

All funds listed above should be included in the calculation except:

- Funds used by the state, or by the units of local government, for program administration, technical assistance and planning activities (except for “planning only” grants counted under the L/M Income Area Benefit or Slum/Blight national objectives); and
- Funds expended by the state for repayment of Section 108 loans;

For states, this requirement applies to funds expended against the one, two or three years' worth of allocations received from HUD, as specified by the state. The compliance period begins on the start date of the first program year and ends when the state has expended all funds from the consecutive program years specified by the state for the purpose of meeting the overall benefit requirement.

For example, a state selects a two-grant year period comprising Fiscal Year (FY) 2010 grant and the 2011 grant for determining compliance. The compliance period would begin with the state's 2010 program year start date, July 1; and end when all funds from both grants have been expended, Oct. 15, 2012. Compliance with the overall L/M Income Benefit requirement for this state will be based on all funds expended out of the FY 2010 and FY 2011 allocations, plus all program income, reallocated funds, loans guaranteed under Section 108, and EDI and BEDI grants associated with the state's Method of Distribution for those two years. Therefore, a final determination of compliance cannot be made until October 15, 2012 when all funds from both FY 2010 and FY 2011 allocations have been expended.

To demonstrate compliance with the 70 percent overall L/M Income Benefit requirement, states must track the expenditure of program funds against the specific FY allocation of funds from which each activity was funded.

To illustrate (continuing to use the example from above of the state determining compliance with overall L/M Income Benefit requirement for FY 2010 and FY 2011), during the July 1, 2010 – October 15, 2010 time period the state is also tracking expenditures for all open CDBG Grants. This includes the two-year period comprising FY 2008 and FY 2009 as FY 2009 funds have yet to be fully expended. It also includes the two-year period comprising FY 2012 and FY 2013 as FY 2012 started July 1, 2012. The state must track the expenditures related to FY 2008 and FY 2009 in the July 1, 2010 – October 15, 2010 time period separately as they must not be included in the L/M Income Benefit requirement calculations for FY 2010 and FY 2011. The L/M Income Benefit requirement calculations for FY 2008 and FY 2009 will be calculated independently, once all funds are expended out of the FY 2009 allocations.

In terms of the IDIS system, it is important to highlight that funds are tracked according to expenditures versus drawdowns. An "expenditure" is the disbursement or payment of funds, whereas a "drawdown," also called a voucher, is a request for payment against a grantee's line of credit for one or more activities.

Expenditures

States set up activities in IDIS and track the expenditures for those activities according to program year, using the budget fiscal year appropriation to define the source of funds. States are required to account for their expenditures and demonstrate compliance with 24 CFR 570.484 according to this timeframe.

Drawdowns

It is important to note that IDIS will display a "grant year" associated with vouchers which may not coincide with the "grant year" indicated by the grantee when funding the activity. For all grants prior to the FY 2015 grants, IDIS fulfills drawdown requests by withdrawing funds on a first in, first out (FIFO) basis, using the oldest fiscal year money still remaining in the grantee's

line of credit. Therefore, the specific grant on the voucher and the specific grant identified in activity funding may not reconcile with one another. Beginning with the FY 2015 grants, the grantee will have ability to indicate the grant year on both the funding and draws for each activity. Therefore, beginning with the FY2015 grants, the records on the line of credit, IDIS records, and grantee records on grant year for both activity funding and draws will coincide. For prior years, States should not use the grant year on the voucher as the basis for tracking compliance with the overall L/M Income Benefit requirement.

4.3 Calculating Overall Expenditures Benefit

4.3.1 Time Period

Given the option of choosing a one, two, or three program year period for the purpose of meeting the overall expenditures benefit, the state must specify the chosen time period in “Overall Benefit” criterion of the “Use of Funds” certification, one of the specific CDBG Certifications the state is required to include in its Consolidated Plan and/or Annual Action Plan (see text box below).

“Specific CDBG Certifications” at 24 CFR 91.325(b)(4)(ii):

2. Overall Benefit. The aggregate use of CDBG funds including section 108 guaranteed loans during program year(s) 199_, __, and __. (a period specified by the grantee consisting of one, two, or three specific consecutive program years), shall principally benefit persons of low or moderate income in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period;

For example: if a state makes a certification based on a single program year, PY 2010, the calculation testing whether the state met the overall expenditures benefit must include only the allocation of funds received for PY 2010. Alternatively, if a state certifies that it is basing the overall expenditures benefit on two program years, PY 2010 and PY 2011, the same certification applies to both program years (PY 2010 and PY 2011), and the calculation must include the aggregation of expenditures from both FY allocations received in PY 2010 and PY 2011. It is useful for HUD and the state to periodically observe the state’s progress in complying with the 70 percent overall L/M Income benefit requirement in order to ensure that the grantee meets the requirement by the end of the compliance period. (However, compliance problems with the 70 percent overall L/M Income Benefit requirement are rare in the state CDBG program.)

4.3.2 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:

- **Planning/Capacity Building and Program Administration:** Expenditures made for costs charged to the basic eligibility categories of Planning and Capacity Building (HCDA Section 105(a)(12)) and state and state grant recipients’ Program Administration Costs (HCDA Section 105(a)(13)).

Rationale: Since these expenditures are made in support of the grant recipient’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.

Note: Planning-only activities that must meet a national objective are not excluded.

- Section 108 Loan Repayments: Funds deducted from the grant by HUD or used by the state 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 also subjecting 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.

- Technical Assistance and Administrative Cost Set-Aside: Expenditures against the Technical Assistance and Administrative Cost Set-Aside, as provided for in HCDA Section 106(d)(5).

Rationale: Activities funded under HCDA Section 106(d)(5) do not have to meet a national objective.

4.3.3 Expenditures that meet the L/M Income Benefit National Objective

The following expenditures meet the L/M Income Benefit National Objectives:

Housing activities

Funds expended for activities that qualify under the L/M Income Housing subcategory are to be included, 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.

Specifically, Section 105(c)(3) of the HCDA 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. 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 toward meeting the state's 70 percent certification. The limit is determined as follows:

- Step 1: Find the percentage of all units occupied by L/M income households in each assisted structure (or where all the units have not yet been occupied, the percentage that is expected to be so occupied). This includes two or more structures that are "presumed" single structures such as:
 - Rental buildings located on the same or contiguous properties, when the buildings will be under common ownership and management;
 - All Community Development Financial Institution (CDFI) obligations related to housing activities during any one-year period; or
 - All housing activities, per unit of local government, undertaken pursuant to a Community Revitalization Strategy (CRS).
- Step 2: 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

- Step 3: 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 (i.e. it cannot be considered an expenditure that meets the L/M Income Benefit). The amount of funds claimed as benefiting L/M income persons cannot be greater than the amount of CDBG funds spent on the project.

Calculating the L/M Income Benefit for Housing Activities

The State funded the rehabilitation of a 10-unit building. Eight of the 10 units are to be occupied by L/M income households. The rehabilitation of that building cost \$200,000, funded solely with CDBG funds. Of the \$200,000 expended, what amount meets the L/M Income Benefit National Objective?

Step 1: Calculate the percentage of units occupied by L/M income households:

$$\frac{(8 \text{ units occupied by L/M income households})}{(10 \text{ total units rehabilitated using CDBG funds})} = .8$$

Step 2: Multiply the percentage calculated in Step 1 above (.8) by the total cost of the CDBG-assisted activity:
 $(\$200,000 \times 0.8 = \$160,000)$

The total amount considered eligible to meet the L/M Income Benefit National Objective is **\$160,000**.

Step 3: Determine the excess amount that cannot be considered to meet the L/M Income Benefit National Objective:
 $(\$200,000 - \$160,000 = \$40,000.)$

Reference: 24 CFR 570.484(b)(4)

- All other activities: Funds expended for an activity qualifying under another 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 their entirety as an expenditure counting toward the overall L/M Income benefit requirement.

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

Note that **no** expenditures for activities that the state qualifies under the Slum/Blight or Urgent Needs national objectives may be included even though such activities may provide some level of benefit to L/M income persons.

If an activity could meet the Slum/Blight or Urgent Needs criteria, but the state 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 as an expenditure counting toward the overall L/M Income benefit requirement.

4.3.5 All Other Expenditures

To determine whether the recipient is meeting the 70 percent expenditure requirement, compare the expenditures that meet the L/M Income Benefit National Objective to the total of all CDBG expenditures (minus the expenditures listed in the “Exclusions” section above). The total expenditures include activities qualifying under the Slum/Blight and Urgent Need national objectives as well as excess amounts for housing activities, as illustrated in the example above.

Example

Calculating the Overall L/M Benefit Percentage

The state has made a one-year certification covering its 2009 program year. The state's program year begins on July 1, 2009; the last funds are expended on February 22, 2012. Here is an itemized list of all the state's resources and expenditures for its 2009 grant:

1. **Allocation Amount:** The state's FY 2009 allocation amount is \$33,650,000.
2. **Program Income:** During the life of the FY 2009 allocation, the state receives \$1,750,000 of program income that is re-distributed to local governments as new grants.
3. **Section 108 Loan Guarantees:** Three Section 108 Loan Guarantees are approved for state grant recipients under the state's FY 2009 Method of Distribution, totaling \$4,700,000.
4. **Section 108 Loan Repayments:** No CDBG funds were used for the repayment of Section 108 loans.
5. **State Administrative Costs:** The state expends a total of \$1,090,000 for state administrative costs and technical assistance activities.
6. **Subrecipient Administrative Costs:** State grant recipients collectively expend \$3,150,000 on grant administration costs. Planning only grants are not excluded from the calculation if they meet the L/M Income Benefit national objective.
7. **Eligible L/M Income Benefit Activity Costs:** Of the remaining funds, \$35,860,000, expended by state grant recipients, \$33,856,000 was spent for activities that qualify under the L/M Income Benefit national objective.
 - a) **Housing Activity:** Included in those L/M income activities was one involving the rehabilitation of a 10-unit building, 8 of which are to be occupied by L/M income households. The rehabilitation of that building cost \$200,000, funded solely with CDBG funds. Of which, \$40,000 was determined to be excluded from the calculation.
 - b) **Activities Meeting Slum/Blight Criteria:** A total of \$983,250 was expended by the state grant recipients for activities that qualify under the Slum/Blight national objective.
 - c) **Activities Meeting Urgent Need Criteria:** Amount spent for activities that qualify under the Urgent Need national objective was \$1,020,750.

Calculation:

Calculating Total CDBG Expenditures

FY2009 allocation	33,650,000
Program Income	+1,750,000
Section 108 loans	+4,700,000
Expenditures sub-total	40,100,000
State administrative and TA costs	-1,090,000
State grant recipient admin-	-3,150,000
Total CDBG Expenditures	35,860,000

Calculating L/M Benefit National Objective Expenditures

Expenditures countable toward overall L/M Benefit requirement (see #7 on itemized list above)	33,856,000
Excess amount that cannot be considered to meet the L/M Income Benefit National Objective (see example under Housing Activities above) -	-40,000
Total L/M Benefit National Objective Expenditures	33,816,000

Calculating the percentage of L/M Benefit expenditures

Total L/M Benefit National Objective Expenditures	33,816,000/
Total CDBG Expenditures	35,860,000
Percentage of L/M Benefit Expenditures	94.3 %

The percentage of L/M Benefit Expenditures (94.3%) is sufficient to demonstrate compliance with the 70 percent certification.

4.3.6 Tips

The review of data in IDIS or on-site monitoring may result in activities being reclassified from one national objective to another in the case that one or more activities fail to meet a national objective or if changes are made to 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.

Appendix A: The Housing and Community Development Act of 1974 (HCDA) Eligible Activities for States

Introduction

This appendix consists of Section 105(a) of the Housing and Community Development Act of 1974 (HCDA). Because the Eligible Activities section of the State CDBG regulations (refer to 570.482 in Appendix B) are minimal, the states must use HCDA as the primary authority for determining eligibility of potential state CDBG activities.

HCDA Section 105(a)

Eligible Activities

Section 105(a) Activities assisted under this title may include only—

Section 105(a)(1)

- (1) the acquisition of real property (including air rights, water rights, and other interests therein) which is
 - (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;
 - (B) appropriate for rehabilitation or conservation activities;
 - (C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;
 - (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or
 - (E) to be used for other public purposes

Section 105(a)(2)

- (2) the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements;

Section 105(a)(3)

- (3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public or private improvements or services to be provided, may be expected to arrest the decline of the area;

Section 105(a)(4)

- (4) clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately owned properties, and including the renovation of closed school buildings);

Section 105(a)(5)

- (5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

Section 105(a)(6)

- (6) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this title;

Section 105(a)(7)

- (7) disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;

Section 105(a)(8)

- (8) provision of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by 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 any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this title, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 per centum of the amount of any assistance to a unit of general local government (or in the case of nonentitled communities not more than 15 per centum statewide) under this title including program income may be used for activities under this paragraph unless such unit of general local government used more than 15 percent of the assistance received under this title for fiscal year 1982 or fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98-8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount, except that of any amount of assistance under this title (including program income) in each of fiscal years 1993 through 2000 to the City of Los Angeles and County of Los Angeles, each such unit of general government may use not more than 25 percent in each such fiscal year for activities under this paragraph, and except that of any amount of assistance under this title (including program income) in each of the fiscal years 1999, 2000, and 2001, to the City of Miami, such city may use not more than 25 percent in each fiscal year for activities under this paragraph;

Section 105(a)(9)

- (9) payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under this title;

Section 105(a)(10)

- (10) payment of the cost of completing a project funded under title 11 of the Housing Act of 1949;

Section 105(a)(11)

- (11) relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

Section 105(a)(12)

- (12) activities necessary
 - (A) to develop a comprehensive community development plan, and
 - (B) to develop a policy-planning-management capacity so that the recipient of assistance under this title may more rationally and effectively
 - (i) determine its needs,
 - (ii) set long-term goals and short-term objectives,
 - (iii) devise programs and activities to meet these goals and objectives,
 - (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and
 - (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

Section 105(a)(13)

- (13) payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones and payment of reasonable administrative costs and carrying charges related to
 - (A) administering the HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act; and
 - (B) the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981;

Section 105(a)(14)

- (14) provision of assistance including loans (both interim and long-term) and grants for activities which are carried out by public or private nonprofit entities, including
 - (A) acquisition of real property;
 - (B) acquisition, construction, reconstruction, rehabilitation, or installation of
 - (i) public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and
 - (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and
 - (C) planning;

Section 105(a)(15)

- (15) assistance to neighborhood-based nonprofit organizations, local development corporations, nonprofit organizations serving the development needs of the communities in nonentitlement areas, or entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of section 101(c) of this title, and assistance to neighborhood-based nonprofit organizations, or other private or public nonprofit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities (other than by construction of new facilities) in which elderly families (as defined in section 3(b)(3) of the United States Housing Act of 1937) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing;

Section 105(a)(16)

- (16) activities necessary to the development of energy use strategies related to a recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items such as—
 - (A) an analysis of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements budgeting, waste management, district heating and cooling, land use planning and zoning, and traffic control, parking, and public transportation functions; and
 - (B) a statement of the actions the recipient will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low- and moderate-income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities;

Section 105(a)(17)

- (17) provision of assistance to private, for-profit entities, when the assistance is appropriate to carry out an economic development project (that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods) that—
 - (A) creates or retains jobs for low- and moderate-income persons;
 - (B) prevents or eliminates slums and blight;
 - (C) meets urgent needs;
 - (D) creates or retains businesses owned by community residents;
 - (E) assists businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or
 - (F) provides technical assistance to promote any of the activities under subparagraphs (A) through (E);

Section 105(a)(18)

- (18) the rehabilitation or development of housing assisted under Section 17 of the United States Housing Act of 1937;

Section 105(a)(19)

- (19) provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities, which assistance shall not be considered a planning cost as defined in paragraph (12) or administrative cost as defined in paragraph (13);

Section 105(a)(20)

- (20) housing services, such as housing counseling, in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act, 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 housing activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act;

Section 105(a)(21)

- (21) provision of assistance by recipients under this title to institutions of higher education having a demonstrated capacity to carry out eligible activities under this subsection for carrying out such activities;

Section 105(a)(22)

- (22) provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by—

- (A) providing credit (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of microenterprises;
- (B) providing technical assistance, advice, and business support services (including assistance, advice, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises; and
- (C) providing general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises;

Section 105(a)(23)

- (23) activities necessary to make essential repairs and to pay operating expenses necessary 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;

Section 105(a)(24)

- (24) provision of direct assistance to facilitate and expand homeownership among persons of low and moderate income (except that such assistance shall not be considered a public service for purposes of paragraph (8)) by using such assistance to—
 - (A) subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;
 - (B) finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;
 - (C) acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that amounts received under this title may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this title may not directly provide such guarantees);
 - (D) provide up to 50 percent of any down payment required from low- or moderate-income homebuyer; or
 - (E) pay reasonable closing costs (normally associated with the purchase of a home) incurred by low- or moderate-income homebuyers; and

Section 105(a)(25)

- (25) The construction or improvement of tornado-safe shelters for residents of manufactured housing, and the provision of assistance (including loans and grants) to nonprofit and for-profit entities (including owners of manufactured housing parks) for such construction or improvement, except that—
 - (A) A shelter assisted with amounts provided pursuant to this paragraph may be located only in a neighborhood (including a manufactured housing park) that—

- (i) Contains not less than 20 manufactured housing units that are within such proximity to the shelter that the shelter is available to the residents of such units in the event of a tornado;
 - (ii) Consists predominantly of persons of low and moderate income; and
 - (iii) Is located within a State in which a tornado has occurred during the fiscal year for which the amounts to be used under this paragraph were made available for any of the 3 preceding fiscal years, as determined by the Secretary after consultation with the Administrator of the Federal Emergency Management Agency;
- (B) Such a shelter shall comply with standards for construction and safety as the Secretary, after consultation with the Administrator of the Federal Emergency Management Agency, shall provide to ensure protection from tornadoes;
- (C) Such a shelter shall be of a size sufficient to accommodate, as a single time, all occupants of manufactured housing units located within the neighborhood in which the shelter is located; and
- (D) Amounts may not be used for a shelter as provided under this paragraph unless there is located, within the neighborhood in which the shelter is located (or, in the case of a shelter located in a manufactured housing park, within 1,500 feet of such park), a warning siren that is operated in accordance with such local, regional, or national disaster warning programs or systems as the Secretary, after consultation with the Administrator of the Federal Emergency Management Agency, considers appropriate to ensure adequate notice of occupants of manufactured housing located in such neighborhood or park of a tornado.

Section 105 (a)(26)

- (26) Lead-based paint hazard evaluation and reduction, as defined in Section 4851b of this title.

Appendix B: Code of Federal Regulations, Title 24 570.480 – .497, Regulations for State CDBG Program

Introduction

This appendix consists of Title 24 of the Code of Federal Regulations, Section 570.480 – 497, State CDBG regulations. Because the federal regulations for the State CDBG program regarding eligibility of activities are minimal, the states must use the HCDA (refer to Appendix A) as the primary authority for determining eligibility of potential state CDBG activities. These regulations are current as of October 25, 2012.

Subpart I—State Community Development Block Grant Program

Source: 57 FR 53397, Nov. 9, 1992, unless otherwise noted.

§ 570.480 General

- (a) This subpart describes policies and procedures applicable to states that have permanently elected to receive Community Development Block Grant (CDBG) funds for distribution to units of general local government in the state's non-entitlement areas under the Housing and Community Development Act of 1974, as amended (the Act). Other subparts of part 570 are not applicable to the State CDBG program, except as expressly provided otherwise. Regulations of part 570 outside of this subpart that apply to the State CDBG program include §§ 570.200(j) and 570.606.
- (b) HUD's authority for the waiver of regulations and for the suspension of requirements to address damage in a Presidentially-declared disaster area is described in 24 CFR part 5 and in section 122 of the Act, respectively.
- (c) In exercising the Secretary's obligation and responsibility to review a state's performance, the Secretary will give maximum feasible deference to the state's interpretation of the statutory requirements and the requirements of this regulation, provided that these interpretations are not plainly inconsistent with the Act and the Secretary's obligation to enforce compliance with the intent of the Congress as declared in the Act. The Secretary will not determine that a state has failed to carry out its certifications in compliance with requirements of the Act (and this regulation) unless the Secretary finds that procedures and requirements adopted by the state are insufficient to afford reasonable assurance that activities undertaken by units of general local government were not plainly inappropriate to meeting the primary objectives of the Act, this regulation, and the state's community development objectives.
- (d) Administrative action taken by the Secretary that is not explicitly and fully part of this regulation shall only apply to a specific case or issue at a specific time, and shall not be generally applicable to the state-administered CDBG program.
- (e) Religious organizations are eligible to participate under the State CDBG Program as provided in § 570.200(j).

- (f) In administering the CDBG program, a state may impose additional or more restrictive provisions on units of general local government participating in the state's program, provided that such provisions are not inconsistent with the Act or other statutory or regulatory provisions that are applicable to the State CDBG program.
- (g) States shall make CDBG program grants only to units of general local government. This restriction does not limit a state's authority to make payments to other parties for state administrative expenses and technical assistance activities authorized in section 106(d) of the Act.

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 11477, Mar. 20, 1996; 61 FR 54921, Oct. 22, 1996; 69 FR 41718, July 9, 2004; 77 FR 24142, Apr. 23, 2012]

§ 570.481 Definitions

- (a) Except for terms defined in applicable statutes or this subpart, the Secretary will defer to a state's definitions, provided that these definitions are explicit, reasonable and not plainly inconsistent with the Act. As used in this subpart, the following terms shall have the meaning indicated:
 - (1) *Act* means title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*).
 - (2) *CDBG funds* means Community Development Block Grant funds, in the form of grants under this subpart and program income, and loans guaranteed under section 108 of the Act.
- (b) [Reserved]

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 5209, Feb. 9, 1996; 74 FR 36389, July 22, 2009]

§ 570.482 Eligible activities

- (a) *General.* The choice of activities on which block grant funds are expended represents the determination by state and local participants, developed in accordance with the state's program design and procedures, as to which approach or approaches will best serve these interests. The eligible activities are listed at section 105(a) of the Act.
- (b) *Special assessments under the CDBG program.* The following policies relate to special assessments under the CDBG program:
 - (1) *Public improvements initially assisted with CDBG funds.* Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

- (i) Special assessments to recover the *CDBG funds* may be made only against properties owned and occupied by persons *not* of low and moderate income. These assessments constitute program income.
 - (ii) Special assessments to recover the *non-CDBG* portion may be made, provided that CDBG funds are used to pay the special assessment in behalf of all properties owned and occupied by low and moderate income persons; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate income persons if, when permitted by the state, the unit of general local government certifies that it does not have sufficient CDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.
- (2) *Public improvements not initially assisted with CDBG funds.* CDBG funds may be used to pay special assessments levied against property when this form of assessment is used to recover the capital cost of eligible public improvements initially financed solely from sources other than CDBG funds. The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments, provided that:
 - (i) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this subpart, including labor, environmental and citizen participation requirements;
 - (ii) The installation of the public improvement meets a criterion for national objectives. (See § 570.483(b)(1), (c), and (d).)
 - (iii) The requirements of § 570.482(b)(1)(ii) are met.
- (c) *Special eligibility provisions.* (1) Microenterprise development activities eligible under section 105(a)(23) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) (the Act) may be carried out either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients).
- (2) *Provision of public services.* The following activities shall not be subject to the restrictions on public services under section 105(a)(8) of the Act:
 - (i) Support services provided under section 105(a)(23) of the Act, and paragraph (c) of this section;
 - (ii) Services carried out under the provisions of section 105(a)(15) of the Act, that are specifically designed to increase economic opportunities through job training and placement and other employment support

services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services; and

(iii) Services of any type carried out under the provisions of section 105(a)(15) of the Act pursuant to a strategy approved by a state under the provisions of § 91.315(e)(2) of this title.

(3) Environmental cleanup and economic development or redevelopment of contaminated properties. Remediation of known or suspected environmental contamination may be undertaken under the authority of section 205 of Public Law 105-276 and section 105(a)(4) of the Act. Economic development activities carried out under sections 105(a)(14), (a)(15), or (a)(17) of the Act may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination.

(d) [Reserved]

(e) *Guidelines and objectives for evaluating project costs and financial requirements*—(1) *Applicability*. The following guidelines, also referred to as the underwriting guidelines, are provided to assist the recipient to evaluate and select activities to be carried out for economic development purposes. Specifically, these guidelines are applicable to activities that are eligible for CDBG assistance under section 105(a)(17) of the Act, economic development activities eligible under section 105(a)(14) of the Act, and activities that are part of a community economic development project eligible under section 105(a)(15) of the Act. The use of the underwriting guidelines published by HUD is not mandatory. However, states electing not to use these guidelines would be expected to ensure that the state or units of general local government conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business.

(2) *Objectives*. The underwriting guidelines are designed to provide the recipient with a framework for financially underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. Where appropriate, HUD's underwriting guidelines recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business to take into account the differences in the capacity and level of sophistication among businesses of differing sizes. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account. These underwriting guidelines are published as Appendix A to this part. The objectives of the underwriting guidelines are to ensure:

(i) That project costs are reasonable;

(ii) That all sources of project financing are committed;

- (iii) That to the extent practicable, CDBG funds are not substituted for non-Federal financial support;
 - (iv) That the project is financially feasible;
 - (v) That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and
 - (vi) That to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.
- (f) *Standards for evaluating public benefit — (1) Purpose and applicability.* The grantee is responsible for making sure that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds under the categories of eligibility governed by these standards. The standards set forth below identify the types of public benefit that will be recognized for this purpose and the minimum level of each that must be obtained for the amount of CDBG funds used. These standards are applicable to activities that are eligible for CDBG assistance under section 105(a)(17) of the Act, economic development activities eligible under section 105(a)(14) of the Act, and activities that are part of a community economic development project eligible under section 105(a)(15) of the Act. Certain public facilities and improvements eligible under section 105(a)(2) of the Act, which are undertaken for economic development purposes, are also subject to these standards, as specified in § 570.483(b)(4)(vi)(F)(2). Unlike the guidelines for project costs and financial requirements covered under paragraph (a) of this section, the use of the standards for public benefit is mandatory.
- (2) *Standards for activities in the aggregate.* Activities covered by these standards must, in the aggregate, either:
- (i) Create or retain at least one full-time equivalent, permanent job per \$35,000 of CDBG funds used; or
 - (ii) Provide goods or services to residents of an area, such that the number of low- and moderate-income persons residing in the areas served by the assisted businesses amounts to at least one low- and moderate-income person per \$350 of CDBG funds used.
- (3) *Applying the aggregate standards.* (i) A state shall apply the aggregate standards under paragraph (e)(2) of this section to all funds distributed for applicable activities from each annual grant. This includes the amount of the annual grant, any funds reallocated by HUD to the state, any program income distributed by the state and any guaranteed loan funds made under the provisions of subpart M of this part covered in the method of distribution in the final statement for a given annual grant year.
- (ii) The grantee shall apply the aggregate standards to the number of jobs to be created/retained, or to the number of persons residing in

the area served (as applicable), as determined at the time funds are obligated to activities.

- (iii) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, the grantee may elect to count the activity under either the jobs standard or the area residents' standard, but not both.
- (iv) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the aggregate standards.
- (v) Any activity subject to these standards which meets one or more of the following criteria may, at the grantee's option, be excluded from the aggregate standards described in paragraph (f)(2) of this section:
 - (A) Provides jobs exclusively for unemployed persons or participants in one or more of the following programs:
 - (1) Jobs Training Partnership Act (JTPA);
 - (2) Jobs Opportunities for Basic Skills (JOBS); or
 - (3) Aid to Families with Dependent Children (AFDC);
 - (B) Provides jobs predominantly for residents of Public and Indian Housing units;
 - (C) Provides jobs predominantly for homeless persons;
 - (D) Provides jobs predominantly for low-skilled, low- and moderate-income persons, where the business agrees to provide clear opportunities for promotion and economic advancement, such as through the provision of training;
 - (E) Provides jobs predominantly for persons residing within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;
 - (F) Provides assistance to business(es) that operate(s) within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;
 - (G) Stabilizes or revitalizes a neighborhood income that has at least 70 percent of its residents who are low- and moderate-income;
 - (H) Provides assistance to a Community Development Financial Institution (as defined in the Community Development Banking

and Financial Institutions Act of 1994, (12 U.S.C. 4701 note)) serving an area that has at least 70 percent of its residents who are low- and moderate-income;

- (I) Provides assistance to an organization eligible to carry out activities under section 105(a)(15) of the Act serving an area that has at least 70 percent of its residents who are low- and moderate-income;
 - (J) Provides employment opportunities that are an integral component of a project designed to promote spatial deconcentration of low- and moderate-income and minority persons;
 - (K) With prior HUD approval, provides substantial benefit to low-income persons through other innovative approaches;
 - (L) Provides services to the residents of an area pursuant to a strategy approved by the State under the provisions of § 91.315(e)(2) of this title;
 - (M) Creates or retains jobs through businesses assisted in an area pursuant to a strategy approved by the State under the provisions of § 91.315(e)(2) of this title.
 - (N) Directly involves the economic development or redevelopment of environmentally contaminated properties.
- (4) *Standards for individual activities.* Any activity subject to these standards which falls into one or more of the following categories will be considered by HUD to provide insufficient public benefit, and therefore may under no circumstances be assisted with CDBG funds:
- (i) The amount of CDBG assistance exceeds either of the following, as applicable:
 - (A) \$50,000 per full-time equivalent, permanent job created or retained; or
 - (B) \$1,000 per low- and moderate-income person to which goods or services are provided by the activity.
 - (ii) The activity consists of or includes any of the following:
 - (A) General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);
 - (B) Assistance to professional sports teams;

- (C) Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons;
 - (D) Acquisition of land for which the specific proposed use has not yet been identified; and
 - (E) 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 by the recipient.
- (5) *Applying the individual activity standards.* (i) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, it will be disqualified only if the amount of CDBG assistance exceeds both of the amounts in paragraph (f)(4)(i) of this section.
- (ii) The individual activity tests in paragraph (f)(4)(i) of this section shall be applied to 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 funds are obligated to activities.
- (iii) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the individual activity standards in paragraph (f)(4)(i) of this section.
- (6) *Documentation.* The state and its grant recipients must maintain sufficient records to demonstrate the level of public benefit, based on the above standards, that is actually achieved upon completion of the CDBG-assisted economic development activity(ies) and how that compares to the level of such benefit anticipated when the CDBG assistance was obligated. If a state grant recipient's actual results show a pattern of substantial variation from anticipated results, the state and its recipient are expected to take those actions reasonably within their respective control to improve the accuracy of the projections. If the actual results demonstrate that the state has failed the public benefit standards, HUD may require the state to meet more stringent standards in future years as appropriate.
- (g) *Amendments to economic development projects after review determinations.* If, after the grantee enters into a contract to provide assistance to a project, the scope or financial elements of the project change to the extent that a significant contract amendment is appropriate, the project should be reevaluated under these and the recipient's guidelines. (This would include, for example, situations where the business requests a change in the amount or terms of assistance being provided, or an extension to the loan payment period required in the contract.) If a reevaluation of the project indicates that the financial

elements and public benefit to be derived have also substantially changed, then the recipient should make appropriate adjustments in the amount, type, terms or conditions of CDBG assistance which has been offered, to reflect the impact of the substantial change. (For example, if a change in the project elements results in a substantial reduction of the total project costs, it may be appropriate for the recipient to reduce the amount of total CDBG assistance.) If the amount of CDBG assistance provided to the project is increased, the amended project must still comply with the public benefit standards under paragraph (f) of this section.

(h) *Prohibition on use of assistance for employment relocation activities —*

- (1) *Prohibition.* CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area (LMA) to another LMA if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs.
- (2) *Definitions.* The following definitions apply to the section:
 - (i) *Directly assist.* Directly assist means the provision of CDBG funds to a business pursuant to section 105(a)(15) or (17) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*). Direct assistance also includes assistance under section 105(a)(1), (2), (4), (7), and (14) of the Housing and Community Development Act of 1974, when the state's grantee, subrecipient, or nonprofit entity eligible under section 105(a)(15) enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the LMA. Provision of public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of “directly assist,” unless it includes the provision of infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business.
 - (ii) *Labor market area (LMA).* For metropolitan areas, an LMA is an area defined as such by the U.S. Bureau of Labor Statistics (BLS). An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, LMAs are non-overlapping and geographically exhaustive. For metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the affected business is currently located and from which current jobs may be lost. For non-metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the assisted business is currently located and from which current jobs may be lost. For non-metropolitan areas, a LMA is either an area defined by the BLS as an LMA, or a state may choose to combine non-metropolitan LMAs. States are

required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. Metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. For the Insular Areas, each jurisdiction will be considered to be an LMA. For the HUD-administered Small Cities Program, each of the three participating counties in Hawaii will be considered to be its own LMA. Recipients of Fiscal Year 1999 Small Cities Program funding in New York will follow the requirements for State CDBG recipients.

- (iii) *Operation.* A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity, or product line of the business.
- (iv) *Significant loss of jobs.* (A) A loss of jobs is significant if: The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA; or in all cases, a loss of 500 or more jobs. Notwithstanding the aforementioned, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

(B) A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years from the date the assistance is provided to the business or the time period within which jobs are to be created as specified by the agreement among the business, the recipient, and the state (as applicable) if it is longer than three years.
- (3) *Written agreement.* Before directly assisting a business with CDBG funds, the recipient, subrecipient, or (in the case of any activity carried out pursuant to 105(a)(15)) nonprofit entity shall sign a written agreement with the assisted business. The written agreement shall include:
 - (i) *Statement.* A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another and, if so, the number of jobs that will be relocated from each LMA;
 - (ii) *Required certification.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and
 - (iii) *Reimbursement of assistance.* The agreement shall provide for reimbursement to the recipient of any assistance provided to, or expended on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

- (4) *Assistance not covered by this paragraph.* This paragraph does not apply to:
- (i) *Relocation assistance.* Relocation assistance required by the Uniform Assistance and Real Property Acquisition Policies Act of 1970 (URA), (42 U.S.C. 4601-4655); optional relocation assistance under section 105(a)(11), as implemented at 570.606(d);
 - (ii) *Microenterprises.* Assistance to microenterprises as defined by section 102(a)(22) of the Housing and Community Development Act of 1974; and
 - (iii) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one LMA to another LMA and does not produce a significant loss of jobs in the LMA from which the relocation occurs.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1949, Jan. 5, 1995; 61 FR 54921, Oct. 22, 1996; 70 FR 76370, Dec. 23, 2005; 71 FR 30035, May 24, 2006]

§ 570.483 Criteria for national objectives

- (a) *General.* The following criteria shall be used to determine whether a CDBG assisted activity complies with one or more of the national objectives as required to section 104(b)(3) of the Act. (HUD is willing to consider a waiver of these requirements in accordance with § 570.480(b)).
- (b) *Activities benefiting low and moderate income persons.* An activity will be considered to address the objective of benefiting low and moderate income persons if it meets one of the criteria in paragraph (b) of this section, unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. The activities, when taken as a whole, must not benefit moderate income persons to the exclusion of low income persons:
 - (1) *Area benefit activities.* (i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. Units of general local government may, at the discretion of the state, use either HUD-provided data comparing census data with appropriate low and moderate income levels or survey data that is methodologically sound. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

- (ii) An activity, where the assistance is to a public improvement that provides benefits to all the residents of an area, that is limited to paying special assessments levied against residential properties owned and occupied by persons of low and moderate income.
- (iii) (A) An activity to develop, establish and operate (not to exceed two years after establishment), a uniform emergency telephone number system serving an area having less than 51 percent of low and moderate income residents, when the system has not been made operational before the receipt of CDBG funds, provided a prior written determination is obtained from HUD. HUD's determination will be based upon certifications by the State that:
 - (1) The system will contribute significantly to the safety of the residents of the area. The unit of general local government must provide the state a list of jurisdictions and unincorporated areas to be served by the system and a list of the emergency services that will participate in the emergency telephone number system;
 - (2) At least 51 percent of the use of the system will be by low and moderate income persons. The state's certification may be based upon information which identifies the total number of calls actually received over the preceding twelve-month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, enumeration districts, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. In analyzing this data to meet the requirements of this section, the state will assume that the distribution of income among callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. Alternatively, the state's certification may be based upon other data, agreed to by HUD and the state, which shows that over the preceding twelve-month period the users of all the services to be included in the emergency telephone number system consisted of at least 51 percent low and moderate income persons.
 - (3) Other federal funds received by the unit of general local government are insufficient or unavailable for a uniform emergency telephone number system. The unit of general local government must submit a statement explaining whether the problem is caused by the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the unit of general local government.

- (4) The percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low and moderate income persons in the service area of the system. The unit of general local government must include a description of the boundaries of the service area of the system; the census tracts or enumeration districts within the boundaries; the total number of persons and the total number of low and moderate income persons in each census tract or enumeration district, and the percentage of low and moderate income persons in the service area; and the total cost of the system.
- (B) The certifications of the state must be submitted along with a brief statement describing the factual basis upon which the certifications were made.
- (iv) Activities meeting the requirements of paragraph (e)(4)(i) of this section may be considered to qualify under paragraph (b)(1) of this section.
- (v) HUD will consider activities meeting the requirements of paragraph (e)(5)(i) of this section to qualify under paragraph (b)(1) of this section, provided that the area covered by the strategy meets one of the following criteria:
 - (A) The area is in a Federally-designated Empowerment Zone or Enterprise Community;
 - (B) The area is primarily residential and contains a percentage of low and moderate income residents that is no less than 70 percent;
 - (C) All of the census tracts (or block numbering areas) in the area have poverty rates of at least 20 percent, at least 90 percent of the census tracts (or block numbering areas) in the area have poverty rates of at least 25 percent, and the area is primarily residential. (If only part of a census tract or block numbering area is included in a strategy area, the poverty rate shall be computed for those block groups (or any parts thereof) that are included in the strategy area.)
 - (D) Upon request by the State, HUD may grant exceptions to the 70 percent low and moderate income or 25 percent poverty minimum thresholds on a case-by-case basis. In no case, however, may a strategy area have both a percentage of low and moderate income residents less than 51 percent and a poverty rate less than 20 percent.
- (2) *Limited clientele activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low and

moderate income persons. The following kinds of activities may not qualify under paragraph (b)(2) of this section:

- (A) Activities, the benefits of which are available to all the residents of an area;
 - (B) Activities involving the acquisition, construction or rehabilitation of property for housing; or
 - (C) Activities where the benefit to low- and moderate-income persons to be considered is the creation or retention of jobs, except as provided in paragraph (b)(2)(v) of this section.
- (ii) To qualify under paragraph (b)(2) of this section, the activity must meet one or the following tests:
- (A) It must benefit a clientele who are generally presumed to be principally low and moderate income persons. Activities that exclusively serve a group of persons in any one or a combination of the following categories may be presumed to benefit persons, 51 percent of whom are low and moderate income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers; or
 - (B) It must require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit; or
 - (C) It must have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or
 - (D) It must be of such a nature, and be in such a location, that it may be concluded that the activity's clientele will primarily be low and moderate income persons.
- (iii) 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" will be presumed to qualify under this criterion if it is restricted, to the extent practicable, to the removal of such barriers by assisting:
- (A) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under § 570.483(b)(1);

- (B) The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under § 570.483(b) (1) or (4); or
 - (C) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under § 570.483(b)(3).
- (iv) A microenterprise assistance activity (carried out in accordance with the provisions of section 105(a)(23) of the Act or § 570.482(c) and limited to microenterprises) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity who are low- and moderate-income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify as such for up to a three-year period.
- (v) 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 may qualify under this paragraph in the following limited circumstances:
- (A) In such cases where such training or provision of supportive services is an integrally-related component of a larger project, the only use of CDBG assistance for the project is to provide the job training and/or supportive services; and
 - (B) The proportion of the total cost of the project borne by CDBG funds is no greater than the proportion of the total number of persons assisted who are low or moderate income.
- (3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the unit of general local government, a subrecipient, an entity eligible to receive assistance under section 105(a)(15) of the Act, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. If two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the

grouped buildings may be considered for this purpose as a single structure. If housing activities being assisted meet the requirements of paragraph (e)(4)(ii) or (e)(5)(ii) of this section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The unit of general local government shall adopt and make public its standards for determining “affordable rents” for this purpose. The following shall also qualify under this criterion:

- (i) When less than 51 percent of the units in a structure will be occupied by low and moderate income households, CDBG assistance may be provided in the following limited circumstances:
 - (A) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project; and
 - (B) Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and
 - (C) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.
 - (ii) Where CDBG funds are used to assist rehabilitation delivery services or in direct support of the unit of general local government's Rental Rehabilitation Program authorized under 24 CFR part 511, the funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted, by the Rental Rehabilitation Program overall are for low and moderate income persons.
 - (iii) When CDBG funds are used for housing services eligible under section 105(a)(21) of the Act, such funds shall be considered to benefit low and moderate income persons if the housing units for which the services are provided are HOME-assisted and the requirements of § 92.252 or § 92.254 of this title are met.
- (4) *Job creation or retention activities.* (i) An activity designed to create permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate income persons. For an activity that creates jobs, the unit of general local government must document that at least 51 percent of the jobs will be held by, or will be made available to low and moderate income persons.

- (ii) For an activity that retains jobs, the unit of general local government must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that it will be filled by, or that steps will be taken to ensure that it is made available to, a low or moderate income person upon turnover.
- (iii) Jobs will be considered to be available to low and moderate income persons for these purposes only if:
 - (A) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and
 - (B) The unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.
- (iv) For purposes of determining whether a job is held by or made available to a low- or moderate-income person, the person may be presumed to be a low- or moderate-income person if:
 - (A) He/she resides within a census tract (or block numbering area) that either:
 - (1) Meets the requirements of paragraph (b)(4)(v) of this section; or
 - (2) Has at least 70 percent of its residents who are low- and moderate-income persons; or
 - (B) The assisted business is located within a census tract (or block numbering area) that meets the requirements of paragraph (b)(4)(v) of this section and the job under consideration is to be located within that census tract.
- (v) A census tract (or block numbering area) qualifies for the presumptions permitted under paragraphs (b)(4)(iv) (A)(1) and (B) of this section if it is either part of a Federally-designated Empowerment Zone or Enterprise Community or meets the following criteria:
 - (A) It has a poverty rate of at least 20 percent as determined by the most recently available decennial census information;
 - (B) It does 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 has a poverty rate of at least 30 percent as determined by the most recently available decennial census information; and

(C) It evidences pervasive poverty and general distress by meeting at least one of the following standards:

- (1) All block groups in the census tract have poverty rates of at least 20 percent;
- (2) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or
- (3) Upon the written request of the recipient, HUD determines that the census tract 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.

(vi) As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:

(A) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property, provided the businesses are not otherwise assisted by CDBG funds.

(B) Where CDBG funds are used to pay for the staff and overhead costs of an entity specified in section 105(a)(15) of the Act making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one-year period.

(C) Where CDBG funds are used by a recipient or subrecipient to provide technical assistance to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving technical assistance during any one-year period.

(D) Where CDBG funds are used for activities meeting the criteria listed at § 570.482(f)(3)(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 any one-year period, except as provided at paragraph (e)(6) of this section.

(E) Where CDBG funds are used by a Community Development Financial Institution 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 any one-year period, except as provided at paragraph (e)(6) of this section.

(F) Where CDBG funds are used for public facilities or improvements 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.

- (1) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally undertaken, provided that the cost (in CDBG funds) for the facility/improvement is less than \$10,000 per permanent full-time equivalent job to be created or retained by those businesses.
 - (2) In any case where the cost per job to be created or retained (as determined under paragraph (b)(4)(vi)(F)(1) of this section) is \$10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the public facility/improvement between the date the state awards the CDBG funds to the recipient and the date one year after the physical completion of the public facility/improvement. In addition, the assisted activity must comply with the public benefit standards at § 570.482(f).
- (5) *Planning-only activities.* An activity involving planning (when such activity is the only activity for which the grant to the unit of general local government is given, or if the planning activity is unrelated to any other activity assisted by the grant) if it can be documented that at least 51 percent of the persons who would benefit from implementation of the plan are low and moderate income persons. Any such planning activity for an area or a community composed of persons of whom at least 51 percent are low and moderate income shall be considered to meet this national objective.
- (c) *Activities which aid in the prevention or elimination of slums or blight.* Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:
- (1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or elimination of slums or blight in an area if the state can determine that:
 - (i) The area, delineated by the unit of general local government, meets a definition of a slum, blighted, deteriorated or deteriorating area under state or local law;

- (ii) The area also meets the conditions in either paragraph (c)(1)(ii)(A) or (c)(1)(ii)(B) of this section.
 - (A) At least 25 percent of properties throughout the area experience one or more of the following conditions:
 - (1) Physical deterioration of buildings or improvements;
 - (2) Abandonment of properties;
 - (3) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;
 - (4) Significant declines in property values or abnormally low property values relative to other areas in the community; or
 - (5) Known or suspected environmental contamination.
 - (B) The public improvements throughout the area are in a general state of deterioration.
 - (iii) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is also undertaken. The State shall ensure that the unit of general local government has developed minimum standards for building quality which may take into account local conditions.
 - (iv) The state keeps records sufficient to document its findings that a project meets the national objective of prevention or elimination of slums and blight. The state must establish definitions of the conditions listed at § 570.483(c)(1)(ii)(A) and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be re-determined every 10 years for continued qualification. Documentation must be retained pursuant to the recordkeeping requirements contained at § 570.490.
- (2) *Activities to address slums or blight on a spot basis.* The following activities can be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: Acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

- (3) *Planning only activities.* An activity involving planning (when the activity is the only activity for which the grant to the unit of general local government is given, or the planning activity is unrelated to any other activity assisted by the grant) if the plans are for a slum or blighted area, or if all elements of the planning are necessary for and related to an activity which, if funded, would meet one of the other criteria of elimination of slums or blight.
- (d) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the unit of general local government certifies, and the state determines, that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the unit of general local government is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became urgent within 18 months preceding the certification by the unit of general local government.
- (e) *Additional criteria.* (1) In any case where the activity undertaken is a public improvement and the activity is clearly designed to serve a primarily residential area, the activity must meet the requirements of paragraph (b)(1) of this section whether or not the requirements of paragraph (b)(4) of this section are met in order to qualify as benefiting low and moderate income persons.
- (2) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall 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 shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a “change of use” under § 570.489(j).
- (3) Where the assisted activity is relocation assistance that the unit of general local government is required to provide, the relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary, the unit of general local government may qualify the assistance either on the basis of the national objective addressed by the displacing activity or, if the relocation assistance is to low and moderate income persons, on the basis of the national objective of benefiting low and moderate income persons.
- (4) Where CDBG-assisted activities are carried out by a Community Development Financial Institution whose charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and

moderate-income persons, the unit of general local government may also elect the following options:

- (i) Activities carried out by the Community Development Financial Institution for the purpose of creating or retaining jobs may, at the option of the unit of general local government, be considered to meet the requirements of this paragraph under the criteria at paragraph (b)(1)(iv) of this section in lieu of the criteria at paragraph (b)(4) of this section; and
 - (ii) All housing activities for which the Community Development Financial Institution obligates CDBG assistance during any one-year period may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.
- (5) If the unit of general local government has elected to prepare a community revitalization strategy pursuant to the authority of § 91.315(e)(2) of this title, and the State has approved the strategy, the unit of general local government may also elect the following options:
- (i) 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 requirements of paragraph (b) of this section under the criteria at § 570.483(b)(1)(v) instead of the criteria at § 570.483(b)(4); and
 - (ii) All housing activities in the area undertaken pursuant to the strategy may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.
- (6) If an activity meeting the criteria in § 570.482(f)(3)(v) also meets the requirements of either paragraph (e)(4)(i) or (e)(5)(i) of this section, the unit of general local government may elect to qualify the activity either under the area benefit criteria at paragraph (b)(1)(iv) or (v) of this section or under the job aggregation criteria at paragraph (b)(4)(vi)(D) of this section, but not under both. Where an activity may meet the job aggregation criteria at both paragraphs (b)(4)(vi)(D) and (E) of this section, the unit of general local government may elect to qualify the activity under either criterion, but not both.
- (f) *Planning and administrative costs.* CDBG funds expended for eligible planning and administrative costs by units of general local government in conjunction with other CDBG assisted activities will be considered to address the national objectives.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1951, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 61 FR 54921, Oct. 22, 1996; 71 FR 30036, May 24, 2006]

§ 570.484 Overall benefit to low and moderate income persons

- (a) *General.* The State must certify that, in the aggregate, not less than 70 percent of the CDBG funds received by the state during a period specified by the state, not to exceed three years, will be used for activities that benefit persons of low and moderate income. The period selected and certified to by the state shall be designated by fiscal year of annual grants, and shall be for one, two or three consecutive annual grants. The period shall be in effect until all included funds are expended. No CDBG funds may be included in more than one period selected, and all CDBG funds received must be included in a selected period.
- (b) *Computation of 70 percent benefit.* Determination that a state has carried out its certification under paragraph (a) of this section requires evidence that not less than 70 percent of the aggregate of the designated annual grant(s), any funds reallocated by HUD to the state, any distributed program income and any guaranteed loan funds under the provisions of subpart M of this part covered in the method of distribution in the final statement or statements for the designated annual grant year or years have been expended for activities meeting criteria as provided in § 570.483(b) for activities benefiting low and moderate income persons. In calculating the percentage of funds expended for such activities:
 - (1) All CDBG funds included in the period selected and certified to by the state shall be accounted for, except for funds used by the State, or by the units of general local government, for program administration, or for planning activities other than those which must meet a national objective under § 570.483 (b)(5) or (c)(3).
 - (2) Any funds expended by a state for the purpose of repayment of loans guaranteed under the provisions of subpart M of this part shall be excepted from inclusion in this calculation.
 - (3) Except as provided in paragraph (b)(4) of this section, CDBG funds expended for an eligible activity meeting the criteria for activities benefiting low and moderate income persons shall count in their entirety towards meeting the 70 percent benefit to persons of low and moderate income requirement.
 - (4) Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under § 570.483(b)(3) shall be counted for this purpose, but shall be limited to an amount determined by multiplying the total cost (including CDBG and non-CDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons, except that the amount counted shall not exceed the amount of CDBG funds provided.

§ 570.485 Making of grants

- (a) *Required submissions.* In order to receive its annual CDBG grant under this subpart, a State must submit a consolidated plan in accordance with 24 CFR Part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.
- (b) *Failure to make submission.* The state's failure to make the submission required by paragraph (a) of this section within the prescribed deadline constitutes the state's election not to receive and distribute amounts allocated for its nonentitlement areas for the applicable fiscal year. Funds will be either:
 - (1) Administered by HUD pursuant to subpart F of this part if the state has not administered the program in any previous fiscal year; or
 - (2) Reallocated to all states in the succeeding fiscal year according to the formula of section 106(d) of the Act, if the state administered the program in any previous year.
- (c) *Approval of grant.* HUD will approve a grant if the State's submissions have been made and approved in accordance with 24 CFR Part 91, and the certifications required therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to § 570.493 that the State has not complied with the requirements of this subpart, or has determined that there is evidence, not directly involving the State's past performance under this program, that tends to challenge in a substantial manner the State's certification of future performance. If the Secretary makes any such determination, however, the State may be required to submit further assurances as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1916, Jan. 5, 1995; 61 FR 54922, Oct. 22, 1996]

§ 570.486 Local government requirements

- (a) *Citizen participation requirements of a unit of general local government.* Each unit of general local government shall meet the following requirements as required by the state at § 91.115(e) of this title.
 - (1) Provide for and encourage citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas and areas in which CDBG funds are proposed to be used;
 - (2) Ensure that citizens will be given reasonable and timely access to local meetings, information, and records relating to the unit of local government's proposed and actual use of CDBG funds;

- (3) Furnish citizens information, including but not limited to:
 - (i) The amount of CDBG funds expected to be made available for the current fiscal year (including the grant and anticipated program income);
 - (ii) The range of activities that may be undertaken with the CDBG funds;
 - (iii) The estimated amount of the CDBG funds proposed to be used for activities that will meet the national objective of benefit to low and moderate income persons; and
 - (iv) The proposed CDBG activities likely to result in displacement and the unit of general local government's anti-displacement and relocation plans required under § 570.488.
 - (4) Provide technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals in accordance with the procedures developed by the state. Such assistance need not include providing funds to such groups;
 - (5) Provide for a minimum of two public hearings, each at a different stage of the program, for the purpose of obtaining citizens' views and responding to proposals and questions. Together the hearings must cover community development and housing needs, development of proposed activities and a review of program performance. The public hearings to cover community development and housing needs must be held before submission of an application to the state. There must be reasonable notice of the hearings and they must be held at times and locations convenient to potential or actual beneficiaries, with accommodations for the handicapped. Public hearings shall be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate;
 - (6) Provide citizens with reasonable advance notice of, and opportunity to comment on, proposed activities in an application to the state and, for grants already made, activities which are proposed to be added, deleted or substantially changed from the unit of general local government's application to the state. Substantially changed means changes made in terms of purpose, scope, location or beneficiaries as defined by criteria established by the state.
 - (7) Provide citizens the address, phone number, and times for submitting complaints and grievances, and provide timely written answers to written complaints and grievances, within 15 working days where practicable.
- (b) *Activities serving beneficiaries outside the jurisdiction of the unit of general local government.* Any activity carried out by a recipient of State CDBG program funds must significantly benefit residents of the jurisdiction of the grant

recipient, and the unit of general local government must determine that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act. For an activity to significantly benefit residents of the recipient jurisdiction, the CDBG funds expended by the unit of general local government must not be unreasonably disproportionate to the benefits to its residents.

- (c) *Activities located in Entitlement jurisdictions.* Any activity carried out by a recipient of State CDBG program funds in entitlement jurisdictions must significantly benefit residents of the jurisdiction of the grant recipient, and the State CDBG recipient must determine that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act. For an activity to significantly benefit residents of the recipient jurisdiction, the CDBG funds expended by the unit of general local government must not be unreasonably disproportionate to the benefits to its residents. In addition, the grant cannot be used to provide a significant benefit to the entitlement jurisdiction unless the entitlement grantee provides a meaningful contribution to the project.

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 54922, Oct. 22, 1996; 77 FR 24143, Apr. 23, 2012]

§ 570.487 Other applicable laws and related program requirements

- (a) *General.* Certain statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. Certain statutes or executive orders that may be applicable to activities assisted under the Act by their own terms are administered or enforced by governmental officials, departments or agencies other than HUD. Paragraphs (d) and (c) of this section contain two of the requirements expressly made applicable to CDBG activities by the Act itself.
- (b) *Affirmatively furthering fair housing.* The Act requires the state to certify to the satisfaction of HUD that it will affirmatively further fair housing. The act also requires each unit of general local government to certify that it will affirmatively further fair housing. The certification that the State will affirmatively further fair housing shall specifically require the State to assume the responsibility of fair housing planning by:
 - (1) Conducting an analysis to identify impediments to fair housing choice within the State;
 - (2) Taking appropriate actions to overcome the effects of any impediments identified through that analysis;
 - (3) Maintaining records reflecting the analysis and actions in this regard; and
 - (4) Assuring that units of local government funded by the State comply with their certifications to affirmatively further fair housing.

- (c) *Lead-Based Paint Poisoning Prevention Act.* States shall devise, adopt and carry out procedures with respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.
- (d) States shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations in 24 CFR part 135. Section 3 requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.
- (e) *Architectural Barriers Act and the Americans with Disabilities Act.* The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally-funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this subpart after November 21, 1996 and that meets the definition of *residential structure* as defined in 24 CFR 40.2, or the definition of *building* as defined in 41 CFR 101-19.602(a), is subject to the requirements of the Architectural Barriers Act of 1968 and shall comply with the Uniform Federal Accessibility Standards. For general type buildings, these standards are in appendix A to 41 CFR Part 101-19.6. For residential structures, these standards are available from the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Disability Rights Division, Room 5240, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-2333 (voice) or (202) 708-1734 (TTY) (these are not toll-free numbers).

[57 FR 53397, Nov. 9, 1992, as amended at 59 FR 33894, June 30, 1994; 60 FR 1916, Jan. 5, 1995; 61 FR 54922, Oct. 22, 1996; 64 FR 50225, Sept. 15, 1999]

§ 570.488 Displacement, relocation, acquisition, and replacement of housing

The requirements for States and state recipients with regard to the displacement, relocation, acquisition, and replacement of housing are in § 570.606 and 24 CFR part 42.

[61 FR 11477, Mar. 20, 1996]

§ 570.489 Program administrative requirements.

- (a) *Administrative and planning costs* —(1) *State administrative and technical assistance costs.* (i) The state is responsible for the administration of all CDBG funds. The state shall pay from its own resources all administrative expenses

incurred by the state in carrying out its responsibilities under this subpart, except as provided in this paragraph (a)(1)(i) of this section, which is subject to the time limitations in paragraph (a)(1)(iv) of this section. To pay administrative expenses, the state may use CDBG funds not to exceed \$100,000, plus 50 percent of administrative expenses incurred in excess of \$100,000. Amounts of CDBG funds used to pay administrative expenses in excess of \$100,000 shall not, subject to paragraph (a)(1)(iii) of this section, exceed 3 percent of the sum of the state's annual grant, program income received by units of general local government during each program year, regardless of the fiscal year in which the state grant funds that generate the program income were appropriated (whether retained by units of general local government or paid to the state), and of funds reallocated by HUD to the state.

- (ii) To pay the costs of providing technical assistance to local governments and nonprofit program recipients, a state may, subject to paragraph (a)(1)(iii) of this section, use CDBG funds received on or after January 23, 2004, in an amount not to exceed 3 percent of the sum of its annual grant, program income received by units of general local government during each program year, regardless of the fiscal year in which the state grant funds that generate the program income were appropriated (whether retained by units of general local government or paid to the state), and funds reallocated by HUD to the state during each program year.
- (iii) The amount of CDBG funds used to pay the sum of administrative costs in excess of \$100,000 paid pursuant to paragraph (a)(1)(i) of this section and technical assistance costs paid pursuant to paragraph (a)(1)(ii) of this section must not exceed 3 percent of the sum of a state's annual grant, program income received by units of general local government during each program year, regardless of the fiscal year in which the state grant funds generate the program income were appropriated (whether retained by the unit of general local government or paid to the state), and funds reallocated by HUD to the state.
- (iv) In calculating the amount of CDBG funds that may be used to pay state administrative expenses prior to January 23, 2004, the state may include in the calculation the following elements only to the extent that they are within the following time limitations:
 - (A) \$100,000 per annual grant beginning with FY 1984 allocations;
 - (B) Two percent of the sum of a state's annual grant and funds reallocated by HUD to the state within a program year, without limitation based on when such amounts were received;
 - (C) Two percent of program income returned by units of general local government to states after August 21, 1985; and
 - (D) Two percent of program income received and retained by units of general local government after February 11, 1991.

- (v) In regard to its administrative costs, the state has the option of selecting its approach for demonstrating compliance with the requirements of this paragraph (a)(1) of this section. Any state whose matching cost contributions toward state administrative expense matching requirements are in arrears must bring matching cost contributions up to the level of CDBG funds expended for such costs. A state grant may not be closed out if the state's matching cost contribution is not at least equal to the amount of CDBG funds in excess of \$100,000 expended for administration. Funds from any year's grant may be used to pay administrative costs associated with any other year's grant. The two approaches for demonstrating compliance with this paragraph (a)(1) of this section are:
- (A) *Cumulative accounting of administrative costs incurred by the state since its assumption of the CDBG program.* Under this approach, the state will identify, for each grant it has received, the CDBG funds eligible to be used for state administrative expenses, as well as the minimum amount of matching funds that the state is required to contribute. The amounts will then be aggregated for all grants received. The state must keep records demonstrating the actual amount of CDBG funds from each grant received that were used for state administrative expenses, as well as matching amounts that were contributed by the state. The state will be considered to be in compliance with the applicable requirements if the aggregate of the actual amounts of CDBG funds spent on state administrative expenses does not exceed the aggregate maximum allowable amount and if the aggregate amount of matching funds that the state has expended is equal to or greater than the aggregate amount of CDBG funds in excess of \$100,000 (for each annual grant within the subject period) spent on administrative expenses during its 3- to 5-year Consolidated Planning period. If the state grant for any grant year within the 3- to 5-year period has been closed out, the aggregate amount of CDBG funds spent on state administrative expenses, the aggregate maximum allowable amount, the aggregate matching funds expended, and the aggregate amount of CDBG funds in excess of \$100,000 (for each annual grant within the subject period) will be reduced by amounts attributable to the grant year for which the state grant has been closed out.
- (B) *Year-to-year tracking and limitation on drawdown of funds.* For each grant year, the state will calculate the maximum allowable amount of CDBG funds that may be used for state administrative expenses, and will draw down amounts of those funds only upon its own expenditure of an equal or greater amount of matching funds from its own resources after the expenditure of the initial \$100,000 for state administrative expenses. The state will be considered to be in compliance with the applicable requirements if the actual amount of CDBG funds spent on state administrative expenses does not exceed the maximum allowable amount, and if the amount of matching funds that the state has expended for that

grant year is equal to or greater than the amount of CDBG funds in excess of \$100,000 spent during that same grant year. Under this approach, the state must demonstrate that it has paid from its own funds at least 50 percent of its administrative expenses in excess of \$100,000 by the end of each grant year.

- (2) The state may not charge fees of any entity for processing or considering any application for CDBG fund, or for carrying out its responsibilities under this subpart.
 - (3) The state and its funded units of general local government shall not expend for planning, management and administrative costs more than 20 percent of the aggregate amount of the annual grant, plus program income and funds reallocated by HUD to the State which are distributed during the time the final Statement for the annual grant is in effect. Administrative costs are those described at § 570.489(a)(1) for states, and for units of general local government those described at sections 105(a)(12) and (a)(13) of the Act.
- (b) *Reimbursement of pre-agreement costs.* The state may permit, in accordance with such procedures as the state may establish, a unit of general local government to incur costs for CDBG activities before the establishment of a formal grant relationship between the state and the unit of general local government and to charge these pre-agreement costs to the grant, provided that the activities are eligible and undertaken in accordance with the requirements of this part and 24 CFR part 58. A state may incur costs prior to entering into a grant agreement with HUD and charge those pre-agreement costs to the grant, provided that the activities are eligible and are undertaken in accordance with the requirements of this part, part 58 of this title, and the citizen participation requirements of part 91 of this title.
- (c) *Federal grant payments.* The state's requests for payment, and the Federal Government's payments upon such requests, must comply with 31 CFR part 205. The state must use procedures to minimize the time elapsing between the transfer of grant funds and disbursement of funds by the state to units of general local government. States must also have procedures in place, and units of general local government must use these procedures to minimize the time elapsing between the transfer of funds by the state and disbursement for CDBG activities.
- (d) *Fiscal controls and accounting procedures.* (1) A state shall have fiscal and administrative requirements for expending and accounting for all funds received under this subpart. These requirements must be available for Federal inspection and must:
- (i) Be sufficiently specific to ensure that funds received under this subpart are used in compliance with all applicable statutory and regulatory provisions:

- (ii) Ensure that funds received under this subpart are only spent for reasonable and necessary costs of operating programs under this subpart; and
 - (iii) Ensure that funds received under this subpart are not used for general expenses required to carry out other responsibilities of state and local governments.
- (2) A state may satisfy this requirement by:
 - (i) Using fiscal and administrative requirements applicable to the use of its own funds;
 - (ii) Adopting new fiscal and administrative requirements; or
 - (iii) Applying the provisions in 24 CFR part 85 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.”
 - (A) A state that opts to satisfy this requirement for fiscal controls and administrative procedures by applying the provisions of part 85 must comply with the requirements therein.
 - (B) A state that opts to satisfy this requirement for fiscal controls and administrative procedures by applying the provisions of part 85 of this title must also ensure that recipients of the state's CDBG funds comply with part 84 of this title, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” as applicable.
- (e) *Program income.* (1) For the purposes of this subpart, “program income” is defined as gross income received by a state, a unit of general local government, or a subgrantee of the unit of general local government that was generated from the use of CDBG funds, regardless of when the CDBG funds were appropriated and whether the activity has been closed out, except as provided in paragraph (e)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income must be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; or a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:
 - (i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds, except as provided in paragraph (e)(2)(v) of this section;
 - (ii) Proceeds from the disposition of equipment purchased with CDBG funds;
 - (iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or subgrantee of the unit of general local government with CDBG funds, less the costs incidental to the generation of the income;

- (iv) Gross income from the use or rental of real property, owned by the unit of general local government or other entity carrying out a CDBG activity that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;
 - (v) Payments of principal and interest on loans made using CDBG funds, except as provided in paragraph (e)(2)(iii) of this section;
 - (vi) Proceeds from the sale of loans made with CDBG funds, less reasonable legal and other costs incurred in the course of such sale that are not otherwise eligible costs under sections 105(a)(13) or 106(d)(3)(A) of the Act;
 - (vii) Proceeds from the sale of obligations secured by loans made with CDBG funds, less reasonable legal and other costs incurred in the course of such sale that are not otherwise eligible costs under sections 105(a)(13) or 106(d)(3)(A) of the Act;
 - (viii) Interest earned on funds held in a revolving fund account;
 - (ix) Interest earned on program income pending disposition of the income;
 - (x) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not of low and moderate income, if the special assessments are used to recover all or part of the CDBG portion of a public improvement; and
 - (xi) Gross income paid to a unit of general local government or subgrantee of the unit of general local government from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.
- (2) "Program income" does not include the following:
- (i) The total amount of funds, which does not exceed \$35,000 received in a single year from activities, other than revolving loan funds that is retained by a unit of general local government and its subgrantees (all funds received from revolving loan funds are considered program income, regardless of amount);
 - (ii) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act;
 - (iii) Payments of principal and interest made by a subgrantee carrying out a CDBG activity for a unit of general local government, toward a loan from the local government to the subgrantee, to the extent that program income received by the subgrantee is used for such payments;
 - (iv) The following classes of interest, which must be remitted to HUD for transmittal to the Department of the Treasury, and will not be reallocated under section 106(c) or (d) of the Act:

- (A) Interest income from loans or other forms of assistance provided with CDBG funds that are used for activities determined by HUD to be not eligible under § 570.482 or section 105(a) of the Act, to fail to meet a national objective in accordance with the requirements of § 570.483, or to fail substantially to meet any other requirement of this subpart or the Act;
 - (B) Interest income from deposits of amounts reimbursed to a state's CDBG program account prior to the state's disbursement of the reimbursed funds for eligible purposes; and
 - (C) Interest income received by units of general local government on deposits of grant funds before disbursement of the funds for activities, except that the unit of general local government may keep interest payments of up to \$100 per year for administrative expenses otherwise permitted to be paid with CDBG funds.
- (v) Proceeds from the sale of real property purchased or improved with CDBG funds, if the proceeds are received more than 5 years after expiration of the grant agreement between the state and the unit of general local government.
- (3) The state may permit the unit of general local government which receives or will receive program income to retain the program income, subject to the requirements of paragraph (e)(3)(ii) of this section, or the state may require the unit of general local government to pay the program income to the state. The state, however, must permit the unit of general local government to retain the program income if the program income will be used to continue the activity from which the program income was derived. The state will determine when an activity will be considered to be continued.
- (i) *Program income paid to the state.* Except as described in paragraph (e)(3)(ii)(A) of this section, the state may require the unit of general local government that receives or will receive program income to return the program income to the state. Program income that is paid to the state is treated as additional CDBG funds subject to the requirements of this subpart. Except for program income retained and used by the state for administrative costs or technical assistance under paragraph (a) of this section, program income paid to the state must be distributed to units of general local government in accordance with the method of distribution in the action plan under § 91.320(k)(1)(i) of this title that is in effect at the time the program income is distributed. To the maximum extent feasible, the state must distribute program income before it makes additional withdrawals from the Department of the Treasury, except as provided in paragraph (f) of this section.
 - (ii) *Program income retained by a unit of general local government.* A state may permit a unit of general local government that receives or will receive program income to retain the program income. Alternatively, subject to the exception in paragraph

(e)(3)(ii)(A) of this section, a state may require that the unit of general local government pay any such income to the state.

- (A) A state must permit the unit of general local government to retain the program income if the program income will be used to continue the activity from which it was derived. A state will determine when an activity will be considered to be continued, and HUD will give maximum feasible deference to a state's determination, in accordance with § 570.480(c). In making such a determination, a state may consider whether the unit of general local government is or will be unable to comply with the requirements of paragraph (e)(3)(ii)(B) of this section or other requirements of this part, and the extent to which the program income is unlikely to be applied to continue the activity within the reasonably near future. When a state determines that the program income will be applied to continue the activity from which it was derived, but that the amount of program income held by the unit of general local government exceeds projected cash needs for the reasonably near future, the state may require the local government to return all or part of the program income to the state until such time as the program income is needed by the unit of general local government. When a state determines that a unit of local government is not likely to apply any significant amount of program income to continue the activity within a reasonable amount of time, or that it will not likely apply the program income in accordance with applicable requirements, the state may require the unit of general local government to return all of the program income to the state for disbursement to other units of local government. A state that intends to require units of general local government to return program income in accordance with this paragraph (e)(3)(ii)(A) of this section must describe its approach in the state's action plan required under § 91.320 of this title or in a substantial amendment if the state intends to implement this option after the action plan is submitted to and approved by HUD.
- (B) Program income that is received and retained by the unit of general local government is treated as additional CDBG funds and is subject to all applicable requirements of this subpart, regardless of whether the activity that generated the program income has been closed out. If the grant that generated the program income is still open when the program income is generated, program income permitted to be retained will be considered part of the unit of general local government's grant that generated the program income. If the grant is closed, program income permitted to be retained will be considered to be part of the unit of general local government's most recently awarded open grant. If the unit of general local government has no open grants, the program income retained by the unit of general local government will be counted as part of the state's grant year in which the program income was generated. A state must employ one or more of the following methods to ensure that units of

general local government comply with applicable program income requirements:

- (1) Maintaining contractual relationships with units of general local government for the duration of the existence of the program income;
 - (2) Closing out the underlying activity, but requiring as a condition of closeout that the unit of general local government obtain advance state approval of either a unit of general local government's plan for the use of program income, or of each use of program income by grant recipients via regularly occurring reports and requests for approval;
 - (3) Closing out the underlying activity, but requiring as a condition of closeout that the unit of general local government notify the state when new program income is received; or
 - (4) With prior HUD approval, other approaches that demonstrate that the state will ensure compliance with the requirements of this subpart by units of general local government.
- (C) The state must require units of general local government, to the maximum extent feasible, to disburse program income that is subject to the requirements of this subpart before requesting additional funds from the state for activities, except as provided in paragraph (f) of this section.
- (iii) *Transfer of program income to Entitlement program.* A unit of general local government that becomes eligible to be an Entitlement grantee may request the state's approval to transfer State CDBG grant-generated program income to the unit of general local government's Entitlement program. A state may approve the transfer, provided that the unit of general local government:
- (A) Has officially elected to participate in the Entitlement grant program;
 - (B) Agrees to use such program income in accordance with Entitlement program requirements; and
 - (C) Has set up Integrated Disbursement Information System (IDIS) access and agrees to enter receipt of program income into IDIS.
- (iv) *Transfer of program income of grantees losing Entitlement status.* Upon entry into the State CDBG program, a unit of general local government that has lost or relinquished its Entitlement status must, with respect to program income that a unit of general local government would otherwise be permitted to retain, either:
- (A) Retain program income generated under Entitlement grants and continue to comply with Entitlement program requirements for program income; or
 - (B) Retain the program income and transfer it to the State CDBG program, in which case the unit of general local government must

comply with the state's rules for program income and the requirements of this paragraph (e).

- (4) The state must report on the receipt and use of all program income (whether retained by units of general local government or paid to the state) in its annual performance and evaluation report.
- (f) *Revolving funds.* (1) The state may permit units of general local government to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.
 - (2) The state may establish one or more state revolving funds to distribute grants to units of general local government throughout a state or a region of the state to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.
 - (3) A revolving fund established by either the State or unit of general local government shall not be directly funded or capitalized with grant funds.
- (g) *Procurement.* When procuring property or services to be paid for in whole or in part with CDBG funds, the state shall follow its procurement policies and procedures. The state shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the state. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by § 570.489(h).) The state shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, executive orders and implementing regulations.
- (h) *Conflict of interest* — (1) *Applicability.* (i) In the procurement of supplies, equipment, construction, and services by the States, units of local general governments, and subrecipients, the conflict of interest provisions in paragraph (g) of this section shall apply.

- (ii) In all cases not governed by paragraph (g) of this section, this paragraph (h) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with CDBG funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.
- (2) *Conflicts prohibited.* Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (h)(3) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this subpart or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- (3) *Persons covered.* The conflict of interest provisions for paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving CDBG funds.
- (4) *Exceptions: Thresholds requirements.* Upon written request by the State, an exception to the provisions of paragraph (h)(2) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the state may be granted by HUD on a case-by-case basis. In all other cases, the state may grant such an exception upon written request of the unit of general local government provided the state shall fully document its determination in compliance with all requirements of paragraph (h)(4) of this section including the state's position with respect to each factor at paragraph (h)(5) of this section and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the state or unit of general local government as appropriate. An exception may be considered only after the state or unit of general local government, as appropriate, has provided the following:
 - (i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
 - (ii) An opinion of the attorney for the state or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate state or local law.

(5) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the requirements of paragraph (h)(4) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

- (i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- (ii) Whether an opportunity was provided for open competitive bidding or negotiation;
- (iii) Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- (iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
- (v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (h)(3) of this section;
- (vi) Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (vii) Any other relevant considerations.

- (i) *Closeout of grants to units of general local government.* The State shall establish requirements for timely closeout of grants to units of general local government and shall take action to ensure the timely closeout of such grants.
 - (j) *Change of use of real property.* The standards described in this section apply to real property within the unit of general local government's control (including activities undertaken by subrecipients) which was acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement (24 CFR 85.36, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments"). These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of the unit of general local government's grant.
- (1) A unit of general local governments may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, unless the unit

of general local government provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:

- (i) The new use of the property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or
 - (ii) The requirements in paragraph (j)(2) of this section are met.
- (2) If the unit of general local government determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (j)(1) of this section, it may retain or dispose of the property for the changed use if the unit of general local government's CDBG program is reimbursed or the state's CDBG program is reimbursed, at the discretion of the state. The reimbursement shall be in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property, except that if the change in use occurs after grant closeout but within 5 years of such closeout, the unit of general local government shall make the reimbursement to the State's CDBG program account.
- (3) Following the reimbursement of the CDBG program in accordance with paragraph (j)(2) of this section, the property no longer will be subject to any CDBG requirements.
- (k) *Accountability for real and personal property.* The State shall establish and implement requirements, consistent with State law and the purposes and requirements of this subpart (including paragraph (j) of this section) governing the use, management, and disposition of real and personal property acquired with CDBG funds.
- (l) *Debarment and suspension.* The requirements in 2 CFR Part 2424 are applicable. CDBG funds may not be provided to excluded or disqualified persons.
- (m) *Audits.* Notwithstanding any other provision of this title, audits of a state and units of general local government shall be conducted in accordance with § 85.26 of this title, which implements the Single Audit Act (31 U.S.C. 7501-07) and incorporates OMB Circular A-133. States shall develop and administer an audits management system to ensure that audits of units of general local government are conducted in accordance with OMB Circular A-133, if applicable.
- (n) *Cost principles and prior approval.* (1) A state must ensure that costs incurred by the state and by its recipients are in conformance with the following cost principles, as applicable:
 - (i) "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," which is codified at 2 CFR Part 225;

- (ii) “Cost Principles for Non-Profit Organizations (OMB Circular A-122),” which is codified at 2 CFR Part 230; and
 - (iii) “Cost Principles for Educational Institutions (OMB Circular A-21),” which is codified at 2 CFR Part 220.
- (2) All cost items described in Appendix B of 2 CFR Part 225 that require federal agency approval are allowable without prior approval of HUD, to the extent that they otherwise comply with the requirements of 2 CFR Part 225 and are otherwise eligible under this subpart I, except for the following:
- (i) Depreciation methods for fixed assets shall not be changed without the express approval of HUD or, if charged through a cost allocation plan, of the cognizant federal agency.
 - (ii) Fines and penalties (including punitive damages) are unallowable costs to the CDBG program.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1952, Jan. 5, 1995; 61 FR 54922, Oct. 22, 1996; 67 FR 15112, Mar. 29, 2002; 72 FR 73496, Dec. 27, 2007; 77 FR 24143, Apr. 23, 2012]

§ 570.490 Recordkeeping requirements.

- (a) *State records.* (1) The state shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG funds under § 570.493. The content of records maintained by the state shall be as jointly agreed upon by HUD and the states and sufficient to enable HUD to make the determinations described at § 570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. The records shall also permit audit of the states in accordance with 24 CFR Part 85.
- (2) The state shall keep records to document its funding decisions reached under the method of distribution described in 24 CFR 91.320(j)(1), including all the criteria used to select applications from local governments for funding and the relative importance of the criteria (if applicable), regardless of the organizational level at which final funding decisions are made, so that they can be reviewed by HUD, the Inspector General, the Government Accountability Office, and citizens pursuant to the requirements of § 570.490(c).
- (3) *Integrated Disbursement and Information System (IDIS).* The state shall make entries into IDIS in a form prescribed by HUD to accurately capture the state's accomplishment and funding data, including program income, for each program year. It is recommended that the state enter IDIS data on a quarterly basis and it is required to be entered annually.

- (b) *Unit of general local government's record.* The State shall establish recordkeeping requirements for units of general local government receiving CDBG funds that are sufficient to facilitate reviews and audits of such units of general local government under §§ 570.492 and 570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.
- (c) *Access to records.* (1) Representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate such reviews and audits.
- (2) The State shall provide citizens with reasonable access to records regarding the past use of CDBG funds and ensure that units of general local government provide citizens with reasonable access to records regarding the past use of CDBG funds consistent with State or local requirements concerning the privacy of personal records.
- (d) *Record retention.* Records of the State and units of general local government, including supporting documentation, shall be retained for the greater of three years from closeout of the grant to the state, or the period required by other applicable laws and regulations as described in § 570.487 and § 570.488.

[57 FR 53397, Nov. 9, 1992, as amended at 71 FR 6971, Feb. 9, 2006; 77 FR 24146, Apr. 23, 2012]

§ 570.491 Performance and evaluation report.

The annual performance and evaluation report shall be submitted in accordance with 24 CFR Part 91.

(Approved by the Office of Management and Budget under control number 2506-0117)

[60 FR 1916, Jan. 5, 1995]

§ 570.492 State's reviews and audits.

- (a) The state shall make reviews and audits including on-site reviews, of units of general local government as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the Act.
- (b) In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences and prevent a recurrence. The state shall establish remedies for units of general local government noncompliance.

§ 570.493 HUD's reviews and audits.

- (a) *General.* At least on an annual basis, HUD shall make such reviews and audits as may be necessary or appropriate to determine:

- (1) Whether the state has distributed CDBG funds to units of general local government in a timely manner in conformance to the method of distribution described in its action plan under Part 91 of this title;
 - (2) Whether the state has carried out its certifications in compliance with the requirements of the Act and this subpart and other applicable laws; and
 - (3) Whether the state has made reviews and audits of the units of general local government required by § 570.492.
- (b) *Information considered.* In conducting performance reviews and audits, HUD will rely primarily on information obtained from the state's performance report, records maintained by the state, findings from on-site monitoring, audit reports, and the status of the state's unexpended grant funds. HUD may also consider relevant information on the state's performance gained from other sources, including litigation, citizens' comments, and other information provided by the state. A State's failure to maintain records in accordance with § 570.490 may result in a finding that the State has failed to meet the applicable requirement to which the record pertains.

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 54922, Oct. 22, 1996]

§ 570.494 Timely distribution of funds by states.

- (a) States are encouraged to adopt and achieve a goal of obligating and announcing 95 percent of funds to units of general local government within 12 months of the state signing its grant agreement with HUD.
- (b) HUD will review each state to determine if the state has distributed CDBG funds in a timely manner. The state's distribution of CDBG funds is timely if:
 - (1) All of the state's annual grant (excluding state administration) has been obligated and announced to units of general local government within 15 months of the state signing its grant agreement with HUD; and
 - (2) Recaptured funds and program income received by the state are expeditiously obligated and announced to units of general local government.
- (c) HUD may collect necessary information from states to determine whether CDBG funds have been distributed in a timely manner.

§ 570.495 Reviews and audits response.

- (a) If HUD's review and audit under § 570.493 results in a negative determination, or if HUD otherwise determines that a state or unit of general local government has failed to comply with any requirement of this subpart, the state will be given an opportunity to contest the finding and will be requested to submit a plan for corrective action. If the state is unsuccessful in contesting the validity of the finding to the satisfaction of HUD, or if the state's plan for corrective action is not satisfactory to HUD, HUD may take one or more of the following actions to prevent a continuation of the deficiency; mitigate, to the extent possible, the

adverse effects or consequence of the deficiency; or prevent a recurrence of the deficiency:

- (1) Issue a letter of warning that advises the State of the deficiency and puts the state on notice that additional action will be taken if the deficiency is not corrected or is repeated;
 - (2) Advise the state that additional information or assurances will be required before acceptance of one or more of the certifications required for the succeeding year grant;
 - (3) Advise the state to suspend or terminate disbursement of funds for a deficient activity or grant;
 - (4) Advise the state to reimburse its grant in any amounts improperly expended;
 - (5) Change the method of payment to the state from an advance basis to a reimbursement basis;
 - (6) Based on the state's current failure to comply with a requirement of this subpart which will affect the use of the succeeding year grant, condition the use of the succeeding fiscal years grant funds upon appropriate corrective action by the state. When the use of funds is conditioned, HUD shall specify the reasons for the conditions and the actions necessary to satisfy the conditions.
- (b) (1) Whenever HUD determines that a state or unit of general local government which is a recipient of CDBG funds has failed to comply with section 109 of the Act (nondiscrimination requirements), HUD shall notify the governor of the State or chief executive officer of the unit of general local government of the noncompliance and shall request the governor or the chief executive officer to secure compliance. If within a reasonable time, not to exceed sixty days, the governor or chief executive officer fails or refuses to secure compliance, HUD may take the following action:
- (i) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;
 - (ii) Exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-7);
 - (iii) Exercise the powers and functions provided for in § 570.496; or
 - (iv) Take such other action as may be provided by law.
- (2) When a matter is referred to the Attorney General pursuant to paragraph (b)(1)(i) of this section, or whenever HUD has reason to believe that a State or unit of general local government is engaged in a pattern or practice in violation of the provisions of section 109 of the Act, the Attorney General may bring a civil action in any appropriate

United States district court for such relief as may be appropriate, including injunctive relief.

§ 570.496 Remedies for noncompliance; opportunity for hearing.

- (a) *General.* Action pursuant to this section will be taken only after at least one of the corrective or remedial actions specified in § 570.495 has been taken, and only then if the State or unit of general local government has not made an appropriate or timely response.
- (b) *Remedies.* (1) If HUD finds after reasonable notice and opportunity for hearing that a State or unit of general local government has failed to comply with any provision of this subpart, until HUD is satisfied that there is no longer failure to comply, HUD shall:
 - (i) Terminate payments to the state;
 - (ii) Reduce payments for current or future grants to the state by an amount equal to the amount of CDBG funds distributed or used without compliance with the requirements of this subpart;
 - (iii) Limit the availability of payments to the state to activities not affected by the failure to comply or to activities designed to overcome the failure to comply;
 - (iv) Based on the state's failure to comply with a requirement of this subpart (other than the state's current failure to comply which will affect the use of the succeeding year grant), condition the use of the grant funds upon appropriate corrective action by the state specified by HUD; or
 - (v) With respect to a CDBG grant awarded by the state to a unit of general local government, withhold, reduce, or withdraw the grant, require the state to withhold, reduce, or withdraw the grant, or take other action as appropriate, except that CDBG funds expended on eligible activities shall not be recaptured or deducted from future CDBG grants to such unit of general local government.
- (2) HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (d) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to prevent a continuation of the noncompliance.
- (c) In lieu of, or in addition to, the action authorized by paragraph (b) of this section, if HUD has reason to believe that the state or unit of general local government has failed to comply substantially with any provision of this subpart, HUD may:
 - (1) Refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; and
 - (2) Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the CDBG funds

which was not expended in accordance with this subpart, or for mandatory or injunctive relief.

- (d) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the state. At the option of HUD, a unit of general local government may also be a respondent. These procedures are to be followed before imposition of a sanction described in paragraph (b)(1) of this section:
- (1) *Notice of opportunity for hearing.* HUD shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall be sent to the respondent by first class mail and shall provide notice:
 - (i) In a manner which is adequate to allow the respondent to prepare its response, the basis upon which HUD determined that the respondent failed to comply with a provision of this subpart;
 - (ii) That the hearing procedures are governed by these rules;
 - (iii) That the respondent has 14 days from receipt of the notice within which to provide a written request for a hearing to the Docket Clerk, Office of Administrative Law Judges, and the address and telephone number of the Docket Clerk;
 - (iv) Of the action which HUD proposes to take and that the authority for this action is § 570.496 of this subpart;
 - (v) That if the respondent fails to request a hearing within the time specified, HUD's determination that the respondent failed to comply with a provision of this subpart shall be final and HUD may proceed to take the proposed action.
 - (2) *Initiation of hearing.* The respondent shall be allowed 14 days from receipt of the notice within which to notify HUD in writing of its request for a hearing. If no request is received within the time specified, HUD's determination that the respondent failed to comply with a provision of this subpart shall be final and HUD may proceed to take the proposed action.
 - (3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105). The case shall be referred to the ALJ by HUD at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power:
 - (i) To administer oaths and affirmations;
 - (ii) To issue subpoenas as authorized by law;

- (iii) To rule upon offers of proof and receive relevant evidence;
 - (iv) To order or limit discovery before the hearing as the interests of justice may require;
 - (v) To regulate the course of the hearing and the conduct of the parties and their counsel;
 - (vi) To hold conferences for the settlement or simplification of the issues by consent of the parties;
 - (vii) To consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and
 - (viii) To make and file initial determinations.
- (4) *Ex parte communications.* An ex parte communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. Ex parte communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an ex parte communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.
- (5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. HUD has the burden of proof in showing by a preponderance of evidence that the respondent failed to comply with a provision of this subpart. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.
- (6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, shall obtain copies of the transcript.
- (7) *The ALJ's decisions.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Generally, within 60 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a Statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or

discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by first class mail and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

- (8) *Record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching the initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.
- (9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of HUD unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary for Community Planning and Development files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the bases of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a Statement of the rationale therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.
- (10) *Judicial review.* The respondent may seek judicial review of HUD's decision pursuant to section 111(c) of the Act.

[74 FR 4636, Jan. 26, 2009]

§ 570.497 Condition of State election to administer State CDBG Program.

Pursuant to section 106(d)(2)(A)(i) of the Act, a State has the right to elect, in such manner and at such time as the Secretary may prescribe, to administer funds allocated under subpart A of this part for use in nonentitlement areas of the State. After January 26, 1995, any State which elects to administer the allocation of CDBG funds for use in nonentitlement areas of the State in any year must, in addition to all other requirements of this subpart, submit a pledge by the State in accordance with section 108(d)(2) of the Act, and in a form acceptable to HUD, of any future CDBG grants it may receive under subpart A and this subpart. Such pledge shall be for the purpose of assuring repayment of any debt obligations (as defined in § 570.701), in accordance with their terms, that HUD may have guaranteed in the respective State on behalf of any nonentitlement public entity (as defined in § 570.701) or its designated public agency prior to the State's election.

[59 FR 66604, Dec. 27, 1994]

Appendix C: 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 economic development or one which could be carried out under that category but is instead carried out under the category of community economic development must meet the standards of Public Benefit set forth in 24 CFR 570.482(f). 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, Meeting a National Objective, 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 grant recipient 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 24 CFR 570.482(f). 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 *percentage* 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 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 grant recipient 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 grant recipient 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 grant recipient 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 grant recipient 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, grant recipients are to aggregate the dollars and resultant jobs or L/M income persons served (as applicable) based on the following:

A state shall apply the aggregate standards to all funds distributed for applicable activities from each annual grant. This includes the amount of the annual grant, any funds reallocated by HUD to the state, any program

income distributed by the state and any guaranteed loan funds made under the provisions of subpart M of this part covered in the method of distribution in the final statement for a given annual grant year.
(24 CFR 570.482(f)(3))

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 24 CFR 570.482(f)(3)(v). Such activities are those that 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 the Temporary Assistance to Needy Families (TANF) program (pursuant to the [Personal Responsibility and Work Opportunity Reconciliation Act](#) (PRWORA) of 1996, TANF replaced the Jobs Training Partnership Act (JTPA), Job Opportunities for Basic Skills (JOBS) and Aid to Families with Dependent Children (AFDC) programs as cited at 24CFR 570.482(f)(3)(v));
- 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 percent 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 percent of its residents who are in poverty;
- Stabilize or revitalize a neighborhood that has at least 70 percent 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 community development organization serving a neighborhood that has at least 70 percent 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 Community Revitalization Strategy approved by HUD (see Appendix E, Community Revitalization Strategy Areas); or

- Create or retain jobs through businesses assisted in an area pursuant to a Community Revitalization Strategy approved by HUD (see Appendix E, Community Revitalization Strategy Areas).

Note that the above-listed activity types may be excluded *at the grant recipient's option*. This means, of course, that they do not have to be excluded. While a grant recipient 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 grant recipient 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 grant recipient would want to include the activity in order to make the overall aggregate calculation more favorable. For example, if the grant recipient runs its economic development program in a way that stays very close to the aggregate standard (for example, \$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 grant recipient 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 grant recipient should generally only be held to the conditions that prevailed at the time it provided the assistance. Nevertheless, grant recipients 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 grant recipient consistently fall substantially below what it expected, the grant recipient 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 grant recipient 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 HCDA Section 105(a)(17), 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 state 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 state 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 states 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.

Appendix D: Special Assessments Under the CDBG Program

Introduction

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 Entitlement 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.

States are free to use this definition as interpretive guidance.

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 grant recipient 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: Section 104(b)(5) of the HCDA

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, Meeting a National Objective, 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: 24 CFR 570.483(b)(1)(ii)*

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.

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. Special assessments are not included in the listing of eligible activities in Section 105(a) of the HCDA. Therefore, the public improvement itself must be eligible under HCDA Sections 105(a)(2) or (a)(14).
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 that 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 state grant recipient is not required to pay assessments for L/M income persons who own, but do not occupy, the assessed properties. Furthermore, a state grant recipient is not required to pay assessments for *moderate* income owner/occupants if the state permits a state grant recipient to certify to the state 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 percent of the special assessments levied on properties owned and occupied by L/M income persons or could the state grant recipient 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 state grant recipient has not made a special certification to the state that it lacks sufficient CDBG funds to pay the assessments for moderate-income persons. If such a certification were made, the requirement for 100 percent grants would only be applicable to low-income persons; the state grant recipient could lend funds to moderate-income owner/occupants.

Appendix E: Community Revitalization Strategy Areas

Purpose (Originally published by HUD in Notice CPD-97-01, February 4, 1997)

This notice outlines the process for state implementation of the revitalization strategy area concept. [The October 22, 1996, State CDBG program interim rule amends 24 CFR 91.315(e)(2) of the Consolidated Plan regulations to allow Community Revitalization Strategies.] It describes the parameters within which states may design their implementation approach, the procedures for state submission of their process description statement, and the process for HUD's approval of states' process descriptions.

In recent years, HUD's Office of Community Planning and Development (CPD) has stressed a coordinated marshalling of resources to facilitate grant recipients' ability to engage in comprehensive community revitalization strategies. Comprehensive community revitalization strategies seek to create partnerships among federal and local governments, the private sector, community organizations and local residents. The Department seeks to create communities of opportunity in distressed areas by stimulating the reinvestment of human and economic capital and by economically empowering low-income residents. On their own, a number of states have adopted "holistic" approaches to community development in administering the State CDBG program.

The Department recognizes the fundamental necessity of partnering in problem-solving in order to achieve much greater success in community 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 many communities and the spill-over effects in surrounding areas point to a need for a different approach to rebuilding communities. HUD believes that no effort will succeed without the support of all of the community actors. Successful revitalization strategies are those that bring together the community's stakeholders to forge partnerships that:

The continuing decline and widespread disinvestment in many communities and the spill-over effects in surrounding areas point to a need for a different approach to rebuilding communities. HUD believes that no effort will succeed without the support of all of the community actors. Successful revitalization strategies are those that bring together the community's stakeholders to forge partnerships that:

- obtain commitments to community building;
- make communities attractive for investments, thereby creating a market for profits;
- generate community participation to ensure that the benefits of economic activity are reinvested in the community for long-term development;
- support the use of nonprofit intermediary institutions (for example, 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;

- foster the growth of resident-based initiatives to identify and address their housing, economic, and human services needs;
- coordinate the delivery of various local, state and federal resources; and
- support initiatives to move unemployed people from public assistance into jobs.

The participation of all of the stakeholders, particularly residents, in the development of a comprehensive 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 community decline requires a multipronged 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/Enterprise Community applications.

Regulatory Framework and Incentives HUD encourages states to adopt a comprehensive revitalization strategy approach to the use of State Community Development Block Grant (CDBG) resources by units of general local government. The Department seeks to stimulate the development of Community Revitalization Strategies by offering certain incentives for units of local government receiving state CDBG funding. These incentives are described in amendments to the CDBG regulations at 24 CFR 570, which were published in the Federal Register on October 22, 1996. They are as follows:

- (1) **Job Creation/Retention as Low/Moderate Income Area Benefit:** Job creation/retention activities undertaken pursuant to a revitalization 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 570.483(b)(i)(v) and (e)(5)(i)];
- (2) **Aggregation of Housing Units:** Housing units assisted pursuant to a revitalization 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 community [24 CFR 570.483(b)(3) and (e)(5)(ii)];
- (3) **Aggregate Public Benefit Standard Exemption:** Economic development activities carried out under a strategy may, at the grant recipients option, be exempt from the aggregate Public Benefit standards, thus increasing flexibility for program design as well as reducing record-keeping requirements [24 CFR 570.482(f)(3)(v)(L) and (M)]; and
- (4) **Public Service Cap Exemption:** Public services carried out pursuant to the strategy by a nonprofit entity pursuant to Section 105(x)(15) of the Housing and

Community Development Act (as amended) will be exempt from the public service cap [24 CFR 570.482(d)(3)].

Further guidance on these incentives is provided at the end of Appendix E. Page 12 includes excerpts from the October 22, 1996 interim rule which pertain to these benefits. Page 15 provides illustrative examples of situations in which these new provisions might be used.

State Actions to Implement the Revitalization Strategy Approach

24 CFR 91.315(e) of the Consolidated Plan regulations (as amended on October 22, 1996) authorizes states to allow units of general local government to adopt and implement Community Revitalization Strategies. If a state elects to implement the revitalization strategy approach, the state must design its specific implementation approach and develop a process for approving local governments' strategies. States have substantial flexibility in designing an approach that fits the needs of its communities, and will be responsible for approving local strategies. A state's process for implementing Community Revitalization Strategies must be submitted to and approved by HUD before it can be implemented. The parameters within which HUD expects states to design their approach, and HUD's approval process, are described elsewhere in this notice.

To the extent that a state's revitalization strategy review and approval process will be established as part of the method of distributing funds to local governments, the Action Plan contained in the state's Consolidated Plan must reflect this process. For example, the method of distribution must describe the selection criteria which will be used if a state: establishes a separate funding category for revitalization strategy projects; awards "bonus points" within its present funding system for projects which would implement a revitalization strategy; or requires submission of an acceptable strategy as a threshold requirement which applications must meet in order to be considered for funding.

On the other hand, a state might establish the submission of a strategy as a purely voluntary action on the part of localities, or a state might incorporate the development of a strategy as an application content or citizen participation requirement. The development of a strategy might thus have no bearing on the category of funding which can be applied for by the community or on the rating score the application receives. Under such scenarios, the state may need to make only minor revisions to its present method of distribution. It is difficult to imagine a situation in which the development of a strategy is so totally unrelated to the award of CDBG funds for specific activities that no mention of Community Revitalization Strategies is needed in the method of distribution.

A state must still submit a description of its specific approach and process for approving local revitalization strategies, even if no changes are required to the existing method of distribution. This is because HUD's approval of the state's process will be separate from approval of the Consolidated Plan.

In designing its process for implementing the revitalization strategy concept, the state must consult with affected units of local government in nonentitlement areas of the state, to the same extent that it must presently do in developing its method of distribution. In

addition, the state must ensure that local governments' strategies are implemented in accordance with the civil rights-related program requirements stated in the Consolidated Plan rule at 24 CFR Part 91.

Design Parameters for Community Revitalization Strategies in the State CDBG Program

Local government revitalization strategies should be designed to achieve substantial improvements in the target area and create meaningful levels of economic opportunities for residents within a reasonable period of time. States have the flexibility to define or negotiate appropriate time periods for achieving local goals, within the state's overall approach. HUD recognizes that it is unrealistic to expect that an area could be fully revitalized within some foreseeable time period; in developing their approach, states should consider what level of improvement is realistically achievable.

HUD promotes the development of local strategies that not only will successfully revitalize the target areas but will also economically empower its residents. HUD encourages innovative and creative state approaches to promote the active and meaningful participation of the stakeholders throughout the development and implementation of the plan. A state's design for implementing the revitalization strategy approach (and its process description statement) must adequately address each of the following parameters.

- (1) **Boundaries:** A local strategy should identify the boundaries of the area for which the strategy applies. In the CDBG Entitlement program, this concept is referred to as "Neighborhood Revitalization Strategies." The Department avoids referring to "neighborhood" strategies in the State CDBG program; the concept of what is a "neighborhood" in small communities is nebulous or incongruous in many areas of the country. The nature of the areas in which states work varies greatly; states fund cities and towns which range in size from a few dozen to nearly 50,000. Some western counties may be larger than entire eastern states, but contain no incorporated communities. How residents of an area define the boundaries of their community varies greatly among regions of the country.

The Strategy Area concept represents a targeted approach to community development, requiring some critical mass of population density in order to be effective. HUD does not mandate a minimum or maximum population size or density for an area; a reasonable minimum population density would be very different in southern New England than in the northern Great Plains. There are areas in each state where the revitalization strategy concept is probably not practical. HUD expects states' designs to embody this principle of critical mass.

In designing their approach, states have flexibility to define size limits to fit the needs of their program and their communities. States should think carefully about the appropriate size (in area and population) for strategy areas, weighing available financial resources against the need for demonstrable improvement in the target area. In developing their approach, states should consider how they will handle strategy areas which cross jurisdictional boundaries. Large, multi-county regions

are likely to be too large to effectively treat, unless a state is prepared to commit a major share of its available resources to the region. (See also a separate discussion of Federal Empowerment Zones and Enterprise Communities.)

- (2) **Demographic Criteria:** The intent of the revitalization strategy area concept is to improve the lives of low-income residents of an area. HUD expects approved strategy areas to meet one of the following criteria:

- The area is primarily residential in character, and contains at least 70 percent low- and moderate-income persons.
- The area is in a federally-designated Empowerment Zone or Enterprise Community;
- All of the census tracts/block numbering areas in the area have at least a 20 percent poverty rate, and at least 90 percent of them have at least a 25 percent poverty rate; and the area is primarily residential.

For individual strategy areas, a state may request an exception to the 70 percent low/moderate income threshold or the 25 percent poverty rate threshold; approval must be gained from HUD before the state grants final approval to such a strategy. In no case, however, will HUD grant an exception for a revitalization strategy where fewer than 51 percent of the residents are low and moderate income and the poverty rate for the area as a whole is less than 20 percent.

HUD field offices will review and approve such exception requests on a case-by-case basis. Such cases are the only situations in which HUD would be actively involved in the approval of individual strategies. Exceptions are envisioned to be granted only for unusual circumstances, where strong targeting of benefits to low- and moderate-income residents can still be shown. (For example, a state may have income characteristics data which is more current than Census data, or data showing extremely high unemployment rates resulting from a major economic downturn.) HUD will not entertain requests for "blanket" exceptions covering all proposed strategy areas in a state.

- (3) **Ongoing Support and Delivery of Resources:** States' contractual relationships with local governments are usually for a finite and relatively short (one to three year) time period. Success in revitalizing a defined area may require a longer time period and more resources than can be provided by a single CDBG grant to the locality. Given the common limitations imposed by highly competitive funding processes, states should consider carefully how they can ensure the provision of adequate resources to accomplish local revitalization strategies. (Multi-year funding commitments may be one such means to ensure longer-term funding of activities.) States should also consider how they will ensure long-term local attention to carrying out approved strategies, particularly once grants to units of local government have been closed out.

HUD believes that the provision of economic opportunities to residents of revitalization strategy areas is an essential component of the concept. A number of

states presently have funding categories wherein localities may apply for a combination of activities to be carried out in a defined target area. States' methods of distribution often refer to these as "comprehensive" applications. The revitalization strategy concept, as envisioned by HUD, may be more narrowly focused geographically, and encompass a wider variety of activities (particularly concerning economic empowerment of low- and moderate-income area residents) than is presently provided for in typical "comprehensive" funding categories. States tying the revitalization strategy approach to their existing "comprehensive" funding category should closely examine their method of distribution criteria for such funding categories, and make changes as appropriate.

- (4) **Integration of other Funding Resources and Initiatives:** States have considerable flexibility--and are encouraged--to integrate the delivery of other state funding resources into their revitalization strategy approach. States have already proven themselves adept at using State CDBG funds to leverage other federal and state resources. Given that substantial treatment of an approved strategy area is likely to require a commitment of resources beyond those available through the CDBG program, states are encouraged to consider additional ways in which their Revitalization Strategy process can be a vehicle for directing other state controlled resources into the target areas.

States are also encouraged to link the Revitalization Strategy concept to compatible state targeting or planning initiatives. In doing so, states are free to capitalize on existing locally-prepared documents or state review/approval and fund allocation processes, to avoid duplication of effort at the local or state level. The following is an illustrative list of common state programs and initiatives to which Community Revitalization Strategies might be linked:

- State requirements for development of local strategic or comprehensive plans,
- "Certified economic development readiness" designations,
- State Enterprise Zone designations,
- Military base closure or defense industry adjustment planning processes,
- State welfare reform and welfare-to-work programs,
- Economic diversification initiatives in areas dominated by declining industries,
- Main Street programs,
- State-funded housing rehabilitation or housing development programs, and
- State energy programs.

The Community Revitalization Strategy approach also offers states the opportunity to link other HUD funding resources with CDBG to holistically improve communities. The HOME program provides states with significant resources to address housing needs identified in local strategies-particularly for needs such as rental subsidies and new housing construction, which may be undertaken with CDBG funds in only limited circumstances. Similarly, the Section 108 Loan Guarantee program can provide additional resources to revitalization strategy areas, particularly for economic empowerment activities and large public works

projects. States which do not presently participate in the Section 108 program should seriously consider the role this program can play in "stretching" scarce CDBG dollars to accomplish comprehensive revitalization efforts.

Any "piggy-backing" of other federal-or state initiatives or funding programs should be explained in the state's process description and (as necessary) in the method of distribution.

- (5) **Consultation:** HUD believes that local revitalization strategies will be most successfully achieved when there is community ownership in and support for the strategy; involvement of area stakeholders (including residents, owners/operators of businesses and financial institutions, non-profit organizations and community groups serving the area) is crucial. In developing its implementation approach, a state should carefully consider what expectations it will place on local governments regarding community involvement in the development of local strategies. At the least, a state's process must ensure that the citizen participation requirements for units of local government [at 24 CFR 91.115 and 24 CFR 570.486(a)] are complied with in the development of local strategies.
- (6) **Assessment:** A state's process must ensure that local strategies include an assessment of the economic conditions of the area; an examination of the opportunities for economic development improvement; and an assessment of the problems likely to be encountered.
- (7) **Economic Empowerment:** A state's process must ensure that local strategies contain 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 as well as activities to promote the substantial revitalization of the area.
- (8) **Performance Measurements:** A state's process must include a mechanism which identifies the results (for example, physical improvements, social initiatives and economic empowerment) expected to be achieved, and a mechanism by which localities report measurable accomplishments. States are free to determine whether reporting on revitalization strategy accomplishments is best handled within a state's existing CDBG; grant recipient reporting process, or by an alternative mechanism. The Integrated Disbursement and Information System (IDIS), once implemented for states, may provide an avenue for reporting accomplishments.

States are expected to evaluate localities' progress and accomplishments against the strategy. HUD does not expect that all locally-identified goals must be met, but states should clearly define their performance expectations for communities. HUD encourages states who have adopted outcome-oriented evaluation processes to integrate their revitalization strategy approach into such initiatives. Within the context of the process by which a state will approve local strategies and evaluate performance, a state should carefully consider what steps it should take in situations where it determines that a locality is not adequately implementing its

strategy or achieving its goals. (Welfare reform is an issue of great importance both nationally and to states. Various changes have been made to the CDBG program in the last several years, specifically positioning the program as a valuable funding resource for job creation, job training and employment support services. HUD encourages states to consider as one possible performance measure the number of public assistance recipients who are employed or who receive employment training or support services as a result of CDBG assistance.)

HUD evaluation of a state's Revitalization Strategy concept implementation will occur primarily through existing processes, such as the Consolidated Plan report and monitoring for conformance with the Method of Distribution. As with other aspects of state administration of the CDBG program, states which encounter problems in implementing their Revitalization Strategy concept (at the local or state level) should take steps to modify their approach.

HUD Partnership Approval Process

HUD expects to approve a state's revitalization strategy approach, if it addresses each of the design considerations outlined in the "Design Parameters" section above. Since the state's HUD CPD Field Office representative will review the process description, the state should consult with its HUD representative to discuss its proposed approach and to discuss whether changes to the existing method of distributing CDBG funds will be required.

In the event HUD believes that a state's submission does not satisfactorily address each of the design parameters HUD will provide necessary technical assistance to the state to try to arrive at a consensus of what would constitute an acceptable process design. If, after such technical assistance, HUD and the state remain apart in their assessment of what is a realistic process, HUD has the option of not approving the process description statement.

The process description may be submitted as part of the state's Consolidated Plan or may be submitted as an amendment to it. When applicable, HUD's approval of the state's Consolidated Plan will also indicate its approval of the revitalization strategy process. Approval of a state's Consolidated Plan, without such express approval of the state's revitalization strategy process description shall not constitute approval of such strategy approach.

Empowerment Zones and Enterprise Communities

The revitalization strategy concept is rooted in the Empowerment Zone/Enterprise Community (EZ/EC) initiative. Many of the ingredients HUD sees as essential to a revitalization strategy have their counterparts in the strategies and benchmarks developed for the EZ/EC competition: active consultation with, and involvement of, the full range of community players; development of a comprehensive needs assessment; an action plan to guide the implementation of activities; economic empowerment of lower-income residents as an integral component of revitalization;

and the establishment of performance measures by which the community and HUD can gauge successful implementation.

HUD applauds states for their support of the EZ/EC initiative. Many of the states in which federally-designated EZ or EC are located have committed additional state resources to the implementation of EZ/EC strategies, or have given such areas priority consideration in State CDBG funding competitions. HUD encourages states to use the EZ/EC process as a model for the design of their own approach to implement the revitalization strategy concept.

In the Entitlement program counterpart to this Notice (CPD Notice 96-01), HUD indicated that it will presume that any federally-designated EZ or EC located in an entitlement community meets the criteria for HUD approval; reports required under the EZ/EC program will be considered to meet the neighborhood revitalization strategy reporting requirements. HUD encourages states to take a similar position regarding designated EZs and ECs in nonentitlement areas, for two reasons: successful applicants have already demonstrated the strengths of their plan through a highly competitive selection process; and by accepting existing assessments, action plans and benchmarks and federally-required performance reports, states can save those communities the burden of recreating already-extensive documentation in a slightly different format.

Elsewhere, this notice discusses HUD's concerns about designating revitalization strategy areas which are too large. This concern, however, does not extend to federally-designated EZs and ECs, even though a number of these span multiple substantial federal funding as a part of their designation. The CDBG regulations which allow economic development activities in revitalization strategy areas to use the low/moderate income Area Benefit criterion are written to presume that designated EZs and ECs meet that criterion. For these reasons, HUD strongly encourages states to accept federally-designated EZ or EC areas as qualifying for state Community Revitalization Strategies, even if the size of those areas is larger than a state would otherwise allow.

Communities which submitted qualifying applications under the EZ/EC initiative, but which did not receive federal designation, have similarly invested substantial time and effort in community consultation, needs assessment and strategy development. HUD believes those communities should generally be able to demonstrate that they meet a state's criteria for revitalization strategy approval. HUD encourages states to consider documents already prepared for the EZ/EC competition from such communities, and, where appropriate, to accept their documentation as evidence of meeting the state's revitalization strategy requirements.

Excerpt from the Regulations Regarding Community Revitalization Strategies

Consolidated Plan regulations:

- (1) 24 CFR 91.315(e)(1): **Nonhousing community development plan.** If the state seeks assistance under the Community Development Block Grant program, the consolidated plan must describe the state's priority nonhousing community

development needs that affect more than one unit of general local government and involve activities typically funded by the state under the CDBG program. These priority needs must be described by CDBG eligibility category, reflecting the needs of persons or families for each type of activity. This community development component of the plan must state the state's specific long-term and short-term community development objectives (including economic development activities that create jobs), which must be developed in accordance with the statutory goals described in 24 CFR 91.1 and the primary objective of the CDBG program to develop viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for low-income and moderate-income persons.

- (2) A state may elect to allow units of general local government to carry out a community revitalization strategy that includes the economic empowerment of low income residents, in order to obtain the additional flexibility available as provided in 24 CFR Part 570, subpart I. A state must approve a local government's revitalization strategy before it may be implemented. If a state elects to allow revitalization strategies in its program, the method of distribution contained in a state's action plan pursuant to 24 CFR 91.320(g)(1) must reflect the state's process and criteria for approving local governments' revitalization strategies. The state's process and criteria are subject to HUD approval.

24 CFR 91.320(g): **Program-specific requirements:** In addition, the plan must include the following specific information:

- (1) The method of distribution shall contain a description of all criteria used to select applications from local governments for funding, including the relative importance of the criteria -- if the relative importance has been developed. The action plan must include a description of how all CDBG resources will be allocated among all funding categories and the threshold factors and grant size limits that are to be applied. If the state intends to aid nonentitlement units of general local government in applying for guaranteed loan funds under 24 CFR Part 570, subpart M, it must describe available guarantee amounts and how applications will be selected for assistance. If a state elects to allow units of general local government to carry out community revitalization strategies, the method of distribution shall reflect the state's process and criteria for approving local governments' revitalization strategies. (The statement of the method of distribution must provide sufficient information so that units of general local government will be able to understand and comment on it and be able to prepare responsive applications.)

State CDBG Regulations

24 CFR 570.482(d): **Provision of Public Services.** The following activities shall not be subject to the restrictions on public services under Section 105(a)(8) of the Housing and Community Development Act of 1974, as amended:

- (3) Services of any type carried out under the provisions of Section 105(a)(15) of the Act, pursuant to a strategy approved by a state under the provisions of 24 CFR 91.315(e)(2) of this title.

24 CFR 570.482(f)(3): **Applying the aggregate standards.**

- (v) Any activity subject to these standards which meets one or more of the following criteria may, at the grant recipient's option, be excluded from the aggregate standards described in paragraph (f)(2) of this section:
- (L) Provides services to the residents of an area pursuant to a strategy approved by the state under the provisions of 24 CFR 91.315 (e) (2) of this title;
- (M) Creates or retains jobs through businesses assisted in an area pursuant to a strategy approved by the state under the provisions of 24 CFR 91.315(e)(2) of this title.

24 CFR 570.483 (b)(1): **Area benefit activities.**

- (3) Services of any type carried out under the provisions of Section 105(a)(15) of the Act, pursuant to a strategy approved by a state under the provisions of 24 CFR 91.315(e)(2) of this title.
- (iv) Activities meeting the requirements of paragraph (e)(4)(i) of this section may be considered to qualify under paragraph (b)(1) of this section.
- (v) HUD will consider activities meeting the requirements of paragraph (e)(5)(i) of this section to qualify under paragraph (b)(1) of this section, provided that the area covered by the strategy meets one of the following criteria:
- (A) The area is in a federally-designated Empowerment Zone or Enterprise Community;
- (B) The area is primarily residential and contains a percentage of low- and moderate-income residents that is no less than 70 percent;
- (C) All of the census tracts (or block numbering areas) in the area have poverty rates of at least 20 percent, at least 90 percent of the census tracts (or block numbering areas) in the area have poverty rates of at least 25 percent, and the area is primarily residential. (If only part of a census tract or block numbering area is included in a strategy area, the poverty rate shall be computed for those block groups (or any parts thereof) that are included in the strategy area.)
- (D) Upon request by the state, HUD may grant exceptions to the 70 percent low and moderate income or 25 percent poverty minimum thresholds on a case-by-case basis. In no case, however, may a strategy area have both a percentage of low- and moderate-income residents less than 51 percent and a poverty rate less than 20 percent.

- (3) 24 CFR 570.483(b)(3): **Housing activities.** An eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by low- and moderate-income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the unit of general local government, a subrecipient, an entity eligible to receive assistance under Section 105(a)(15) of the Act, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. If two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. If housing activities being assisted meet the requirements of paragraphs (e)(4)(ii) or (e)(5)(ii) of this section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low- and moderate-income households must be at affordable rents to qualify under this criterion. The unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose.

24 CFR 570.483(e): Additional criteria.

- (5) If the unit of general local government has elected to prepare a community revitalization strategy pursuant to the authority of 24 CFR 91.315(e)(2) of this title, and the state has approved the strategy, the unit of general local government may also elect the following options:
- (i) Activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grant recipient, be considered to meet the requirements of paragraph (b) of this section under the criteria at 24 CFR 570.483(b)(1)(v) instead of the criteria at 24 CFR 570.483(b)(4); and
 - (ii) All housing activities in the area undertaken pursuant to the strategy may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.
- (6) If an activity meeting the criteria in 24 CFR 570.482(f)(3)(v) also meets the requirements of either paragraph (e)(4)(i) or (e)(5)(i) of this section, the unit of general local government may elect to qualify the activity either under the Area Benefit criteria at paragraph (b)(1)(iv) or (v) of this section or under the job aggregation criteria at paragraph (b)(4)(vi)(D) of this section, but not under both. Where an activity may meet the job aggregation criteria at both paragraphs (b)(4)(vi)(D) and (E) of this section, the unit of general local government may elect to qualify the activity under either criterion, but not both.

Examples of Situations in which New Regulatory Flexibilities can be Used in Revitalization Areas

The Town of Amberwave submits a Community Revitalization Strategy to its state, which the state approves. Amberwave is a town of 1879 people. The strategy area covers about 2/3 of the town. This portion of the town contains 1155 people, 71.4 percent of whom are low and moderate income. There are 352 single-family housing units in the strategy area, 105 of which are substandard, and 98 multi-family housing units, of which 51 are substandard.

- (1) **Job creation/Retention as Low/Moderate income area Benefit:** (24 CFR 570.483(b)(1)(v) and (e)(5)(i)): The Majestic County Economic Development Corporation will administer a CDBG-funded loan program for small businesses in the strategy area. Several such businesses have expressed an interest in expanding, but are reluctant to commit to creating a specific number of new jobs. Under the normal low/moderate income benefit national objective criteria for job creation activities, each business must be tracked separately for job creation/retention; 51 percent of the jobs created or retained by each individual business must be held by (or made available to) low/moderate income persons.

HUD will presume that any activity undertaken to create or retain jobs pursuant to a Community Revitalization Strategy benefits the entire strategy area. The business loan program can be classified as an Area Benefit activity (71.4 percent low/moderate income benefit). No information need be collected regarding the income of employees filling the new jobs; the Town and the businesses need not show that first consideration was given to hiring low-and moderate-income persons. (However, the Town must still demonstrate that jobs are created, and so should obtain information from each business on the number of new jobs created as a result of the CDBG assistance.)

- (2) **Aggregation of Housing Units:** (24 CFR 570.483(b)(3) and (e)(5)(ii)): Amberwave will implement a housing rehabilitation program for both single-family and multi-family properties in the strategy area. Several dilapidated structures will be acquired and demolished; the Town will transfer the lots to a local nonprofit housing developer, Housing Opportunities Unlimited in the Southeast, (HOUSE, Inc.). HOUSE, Inc. will use CDBG funds to construct new single-family housing units on the vacant lots. To increase the percentage of homeownership in the target area, HOUSE, Inc. will offer first-time homebuyer assistance, using CDBG funds, to purchasers of houses in the target area.

Under the normal low/moderate income benefit national objective criteria for housing, each single-family housing unit built or rehabilitated must be occupied by a low and moderate income household. In essence, this means that single-family housing activities must achieve 100 percent low/moderate income benefit. But because Amberwave's housing rehabilitation program will be undertaken pursuant to its revitalization strategy, the Town can lump together the single- and multi-family housing rehabilitation and new construction activities in demonstrating

national objective compliance; 51 percent of the assisted housing units must be occupied by low/moderate income households.

Section 105(a)(24) of the Housing and Community Development Act requires that CDBG-funded homeownership assistance activities be limited to low-and moderate-income persons. Therefore, if the state classifies the activity as eligible under Section 105(a)(24) of the Act, 100 percent of the households assisted through the first-time homebuyer program must be of low and moderate incomes. Any household which uses CDBG first-time homebuyer assistance to purchase one of HOUSE, Inc.'s newly-constructed homes must be low-and moderate income.

There is an exception to this rule, however. Prior to the permanent addition of homeownership assistance as an eligible activity in the Act, downpayment assistance could be undertaken as a public service, pursuant to Section 105(a)(8) of the Act. The addition of Section 105(a)(24) does not eliminate the option of classifying downpayment assistance as a public service. If the state classifies HOUSE, Inc.'s homeownership assistance program as a Section 105(a)(8) public service, all assisted units may be treated as a single structure; only 51 percent of the assisted housing units would then need to be occupied by low/moderate income households.

- (3) **Aggregate Public Benefit Standard Exemption:** (24 CFR 570.482 (f)(3)(v)(L) and (M)): The Majestic County Economic Development Corporation has convinced a small, homegrown, high tech start-up firm to stay and expand in Amberwave, rather than move to the Silicon Valley. CDBG funds will be lent to the firm to build a new facility. The nature of the business entails very high capital equipment acquisition costs; because the firm is still young, it cannot commit to create a large number of jobs.

Under the normal Public Benefit standards requirements, the aggregate average cost per job for all economic development activities funded by a state from a given year's allocation cannot exceed \$35,000. Given the high CDBG cost per job (\$48,795 per job) for this project, the state is worried that its statewide aggregate public benefit figure might be exceeded. Because this project is being undertaken pursuant to a Community Revitalization Strategy, it may be exempted from the aggregate Public Benefit standard; it only needs to meet the individual activity Public Benefit standard (\$50,000 CDBG per job).

- (4) **Public Service Cap Exemption: (24 CFR 570.482(d)(3)):**

Amberwave's Community Revitalization Strategy identified affordable day care as a major need, especially among lower-income households where the lack of day care forces a parent to stay home (and out of the workforce). In putting together its strategy, the Town learned that the one existing day care provider, run by the Fruited Plains Community Action Agency, is in danger of shutting down because of funding cutbacks. The Town has agreed to provide CDBG funds to the Community Action Agency to keep the day care center open, and to expand service once it returns to fiscal stability. Because this public service activity is

being undertaken under Section 105(a)(15) of the HCDA and pursuant to a Revitalization Strategy, it can be exempted from the usual restrictions on public services (the 15 percent statewide cap on funding and the new/increased level-of-service requirement).

Appendix F: Making the Most of Your CDBG Resources

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

Under appropriate circumstances, existing CDBG dollars can be stretched 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 2, Categories of Eligible Activities, under the section entitled Rehabilitation.) Careful underwriting of the assistance provided to landlords and businesses can ensure that funding is limited to the amount needed to achieve the expected results. States and state grant recipients should set community development goals and objectives with measurable benchmarks so that they may evaluate whether reasonable progress is being made and whether any changes in direction are called for. Finally, financial assistance can be provided in the form of loans or loan guarantees instead of grants, whenever feasible.

There are three other avenues that states and state grant recipients 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:

1. CDBG Floats,
2. Section 108 Loans, and
3. Selling or Securitizing CDBG Loan Portfolios.

Float-Funded Activities

Most activities carried out by state grant recipients do not require immediate expenditure of the full amount of funds awarded for the activity. There might be a lag of several months between grant award and the first expenditure/draw of funds from the state's line of credit. Activities involving construction (especially public facilities and housing rehabilitation) may occur in stages over a period of one or two years, with funds being drawn down at intervals as work is completed. Multiply this effect by 20, 50 or 80 grants awarded by a state; the result is that a state can have millions of dollars which are under contract, but which will remain for months, underutilized, in the state's line of credit. Such funds are sometimes referred to as the "float" since they seem to be just floating there, waiting to be used. The CDBG program provides states with a way to make use of this

“float” during the period that they will not otherwise be needed for the activities for which they were awarded.

Float-funded activities are referred to in the Entitlement CDBG program as “float loans”; however, in the context of the State CDBG program, the term “float loan” is a misnomer. States cannot make loans, either to a local government or directly to businesses, with CDBG funds. States can only make grants to units of general local government. While there is a loan involved, the state itself is usually not directly a party to it. The loan is between the state grant recipient and the entity to which it provides CDBG funds. In nearly all cases, the loan is to a business for an economic development activity. “Float loans” are not an activity in and of themselves; they are a technique for financing CDBG-eligible activities.

Even though a state’s CDBG funds are already under contract to grant recipients, the state can award the same funds to another grant recipient, **providing that the state is repaid before the initial grant recipients need the funds** to meet their obligations for their CDBG-funded activities. A float-funded activity is, in essence, simply a speeded-up version of the process by which states normally reuse program income that is returned to the state. The rationale is to make maximum use of funds in a state’s line of credit, while taking advantage of financing opportunities and projects that might arise on short notice (and quite possibly after the state has already awarded its funds for the year.) Thus, the state’s program design must require program income generated from certain types of grants or activities to be returned to the state, rather than to be retained and reused by the unit of local government.

The following conditions must be met in order for a state to take advantage of float funding:

- The method of distribution contained in a state’s annual Action Plan must spell out the situations in which the state will allow float-funded activities, how much, what terms and conditions must be met, etc.
- The state’s program design must require that program income from float-funded activities be returned to the state (either repaid from the business through the local government to the state, or directly from the business to the state).
- Section 104(j) of the HCDA requires that, in certain situations, a state cannot require locally-earned program income to be returned to the state, if the locality uses it to continue the same activity that generated the program income. To get around this, the state must define very narrowly what “continuing the same activity” means. (Some states define this to mean provision of another loan to the same business for the exact same project.)
- Each activity carried out using the float must meet all of the same requirements that apply to CDBG-assisted activities generally.
- Any float-funded activity must be expected to produce program income to the state in an amount at least equal to the amount of the float so used.
- The state must actually receive the program income in time to honor requests for funds from the original grant recipient(s). States are strongly encouraged to obtain additional security to ensure that it will receive the repayments on time. (This could take the form of an irrevocable line of credit from a lender, an

unconditional commitment from the state grant recipient to repay the state out of local resources, or some other mechanism.)

Here's an illustration of how float funding might work in a State CDBG program:

1. State Z awards all of its FY2010 funds on July 1, 2010.
2. One of its grants is to City A for \$500,000, for infrastructure activities that will not commence until April 1, 2011.
3. In the meantime, a "hot deal" arises in Town Q: a business expansion project has permanent financing, but needs \$500,000 of construction financing for six months.
4. State Z makes a grant of \$500,000 to Town Q on September 1, 2010. The state specifies in its contract that Town Q will loan the money to the business for construction financing; state specifies that Town Q (or the business) must repay \$500,000 plus interest to the state by March 1, 2011.
5. On March 1, 2011 Town Q receives \$525,000 (principal + interest payments) from the business & returns this program income to the state.
6. On April 1, 2011, City A signs a construction contract for its \$500,000 infra-structure project; the state now has the funds on hand to honor funds requests from City A.
7. The \$525,000 of program income to the state is eventually used to make more grant awards to other local governments.

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 non-entitlement unit of general local government 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: Section 105(a)(15) nonprofit development organizations may only carry out a community economic development project; and the proceeds may not be used for activities under the Planning and Capacity Building, Program Administration, and Public Services categories of basic eligibility. See 24 CFR 570 subpart M for further details.);
- The state 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 non-entitlement unit of general local government may borrow up to \$7,000,000. However, the maximum amount of outstanding guaranteed loans for all non-entitlement borrowers in a state cannot exceed five times the amount of the state's most recent annual CDBG allocation. (If a state's most recent CDBG allocation was \$20,000,000, there could not be more than \$100,000,000 worth of outstanding Section 108 debt obligations among all the non-entitlement communities in that state.)
- 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 does 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.
- It is up to each state, in developing its method of distributing CDBG funds, to decide whether it will allow units of general local government to participate in the Section 108 program.

Attachment A to Appendix H, Selling or Securitizing CDBG-funded Loans Using the Section 108 Program, 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

Some state grant recipients may have a substantial number of outstanding loans made using CDBG funds and from which a stream of program income can be expected. The value of all the outstanding loans may be large, but the stream of repayments may be small enough that program income must be held over an extended time until sufficient funds have accumulated to make a new loan. A similar situation can exist with states that require that program income from loan repayments must be returned to the state. It may take an extended time period for the state to accumulate enough program income to be able to award another grant to a community.

Some states and local governments 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 state grant recipient 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 state that is interested in doing so should contact the local HUD field office for guidance on how to proceed. But a state or state grant recipient 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 to securitize its portfolio is

through the Section 108 Loan Guarantee program. A state grant recipient can receive a Section 108 loan for which the repayment is expected to come from the payback of the CDBG loans in their portfolio. See the discussion about 108 loans, above, for more details about this option. Also see Appendix H 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 state's control is the use of "float loans." 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 through selective sales or securitizing.

Appendix G: Use of Funds for Program Administration and Technical Assistance

Introduction

The one percent technical assistance (TA) set-aside was made available to State CDBG grantees in 1992 by its inclusion in Section 811 of the Housing and Community Development Act of 1992. The set-aside is codified at Section 106(d)(5) of the Housing and Community Development Act of 1974. The one percent set-aside of the state's grant amount was to pay for technical assistance to local governments and nonprofit program recipients.

The amount of the TA set-aside increased when the 2004 Consolidated Appropriations Act amended Section 106(d) of the Act to allow states to use up to three percent of their allocations (from that year and all subsequent years) for administrative expenses, technical assistance, or a combination thereof ("Mix and Match" provision). This is in addition to the base amount of \$100,000 that states may use for these purposes. All amounts used to pay administrative expenses, in excess of the \$100,000 base amount, must be matched, on a one-for-one basis, with the state's own funds. Amounts used for the provision of technical assistance expenses are not subject to the match requirement and are presumed to have met a national objective.

The 2004 statutory change and subsequent regulatory revisions provide increased flexibility for state grantees in utilizing funds for both administrative and technical assistance activities. For example, a state grantee could choose to increase the amount of CDBG grant funds used to pay administrative expenses to \$100,000 plus 2.5 percent of its total allocation, in which case the state would have only 0.5 percent available for technical assistance activities. On the other hand, a state grantee could choose to spend two percent of its allocation on technical assistance activities, leaving only \$100,000 plus one percent for administrative expenses.

The total spent on both administrative and technical assistance activities may not exceed \$100,000 plus three percent of the grant amount. The amounts expended for administrative expenses and technical assistance expenses are presumed to have met a national objective and thus are not subject to the requirement to meet a specific national objective.

Consistent with this statutory change, the proposed rule, published October 17, 2008, included a revision to the regulations at Section 570.489(a)(1). On April 23, 2012, HUD issued the final rule, "State CDBG Program: Administrative Rule Changes" which responded to comments and made the interim rule final. This change provides states with increased flexibility to allocate up to three percent of CDBG funds between administrative expenses and technical assistance, according to the individual state's preference.

The text of the following notice provides guidance to states and HUD field staff on the use of what was *previously* a one-percent set-aside for technical assistance. Although the amount of the set-aside has been revised, as described above, the text is provided here in order to provide specific guidance on the distribution and use of technical assistance funds by state grantees.

Purpose

This notice provides guidance to states and HUD field staff on the use of the one percent Technical Assistance Set-Aside that has been available for use by State Community

Development Block Grant (CDBG) grant recipients since its inclusion in Section 811 of Housing and Community Development Act of 1992. The set-aside is codified at Section 106(d)(5) of the Housing and Community Development Act of 1974 as amended (the Act). The provision does not appear in the State CDBG regulations. This Notice replaces CPD Notice 96-08, dated December 12, 1996, entitled “Use of the 1% Set-Aside for Technical Assistance in the State Community Development Block Grant program.”

Background

The State CDBG Operating Instructions for FY 1993 (CPD Notice 93-07) included some guidance on how to calculate the one percent amount for assistance. That notice stated that states can devote up to one percent of each CDBG grant for technical assistance activities and that technical assistance activities do not count against the state’s administrative cap, and do not require a match. The State CDBG Operating Instructions for FY 1994 (CPD Notice 94-07) clarified that the one percent Technical Assistance Set-Aside did not count against the 20 percent planning and administration cap.

Due to a continuing interest by states in utilizing this provision of the Act, CPD Notice 96-08 was issued to provide additional guidance. In the reissuance of this notice, we have added examples of ways states can assist Public Housing Authorities (PHA’s) in fulfilling their PHA plan obligations under the Quality Housing and Work Responsibility Act and ways states can fulfill their obligations to provide assistance to troubled PHA’s.

Guidance

Section 106(d)(5) of the HCDA provides, “From the amounts received under paragraph (1) for distribution in non-entitlement areas, the state may deduct an amount, not to exceed one percent of the amount so received, to provide technical assistance to local governments and nonprofit program recipients. 24 CFR 570.480 (c) of the State CDBG regulations provides that the Secretary will give maximum feasible deference to the state’s interpretation of the statutory requirements and the requirements of this regulation, provided that these interpretations are not plainly inconsistent with the HCDA and the Secretary’s obligation to enforce compliance with the intent of Congress contained in the Act.” In accordance with these provisions, the Department has taken an expansive view of the one percent technical assistance provision and has permitted states to use it for any activity that does not clearly violate the Act. The state is required to include the proposed use of one percent technical assistance funds in its method of distribution that is contained in the state’s consolidated plan.

A. Distribution of the Technical Assistance Set-Aside

States may distribute the Technical Assistance Set-Aside as follows.

1. Provide the technical assistance directly with state staff.
2. Hire a contractor to provide the assistance.
3. Use sub recipients such as Regional Planning Organizations as providers or securers of the assistance.

4. Directly allocate the funds to nonprofits and units of general local governments (UGLG's) to secure/contract for technical assistance. If a Public Housing Authority (PHA) is an official arm of a unit of general local government, or is a nonprofit, a state can provide TA funds directly to a PHA. If a PHA is a quasi-governmental entity or a special-purpose governmental entity separate from the UGLG, the state cannot provide funds directly to the PHA. Assistance can be provided indirectly by passing such funds through a UGLG or a nonprofit organization.
5. Pay for tuition, training and/or travel fees for specific trainees from UGLG's and nonprofits.
6. Transfer funds to another state agency for the provision of technical assistance.
7. Contract with institutions of higher education (IHE's) such as Historically Black Colleges and Universities to provide the assistance.

B. Ineligible Uses of the Technical Assistance Set-Aside

The one percent Technical Assistance Set-Aside may not be used by states for the following activities.

1. Local administrative expenses not related to community development.
2. Any activity that cannot be documented as meeting a technical assistance need.
3. General administrative activities of the state not relating to technical assistance, such as monitoring state grant recipients, rating and ranking state applications for CDBG assistance, and drawing funds from the Department.
4. Activities that are meant to train state staff to perform state administrative functions, rather than to train UGLG's and nonprofits.

C. Eligible Uses of the Technical Assistance Set-Aside

The one percent Technical Assistance Set-Aside may be used by states for the following activities.

1. Providing UGLG's with the capability of using the Integrated Disbursement and Information System (IDIS). The purchase of appropriate materials and equipment including computers and computer software for UGLG's is eligible to aid in developing and sustaining increased capacity at the local level.
2. Compiling the infrastructure needs of the non-entitlement jurisdictions in the state so that UGLG's will know specifically what their needs are in developing CDBG applications. This is not a specific plan on how to improve an area or community, and does not count against the 20 percent planning and administration cap as a planning activity.
3. Writing technical assistance handbooks or developing technical assistance in other media (film, slides, and computer programs) for potential applicants and program participants.

4. Giving workshops (including satellite conferences) on applying for and implementing CDBG programs.
5. Funding peer-to-peer technical assistance.
6. Funding attendance by UGLG and nonprofit personnel at regularly scheduled workshops and academic courses that will enable the attendees to improve their capacity to implement a CDBG program.
7. State staff time that is spent on technical assistance provided onsite during a monitoring visit is eligible under the set-aside. Likewise, technical assistance sessions to help potential applicants for State CDBG funds learn the application process are an eligible technical assistance expenditure.
8. Training state staff to provide technical assistance to UGLG's and nonprofits on specific aspects of program administration or application preparation (for example, economic development loan underwriting, procurement rules, Davis-Bacon requirements).
9. Entitlement grant recipients may be invited to state-sponsored training using the one percent set-aside provided that their participation does not increase the cost of training, and does not prevent UGLG's and nonprofits eligible to participate in the State CDBG program from attending the sessions due to space limitations. If permitting entitlement grant recipients to attend increases costs, the entitlement grant recipients should be charged an amount to make up for the increased costs caused by their inclusion.
10. Development and implementation of a community development certified practitioner certification for UGLG personnel.
11. Assistance provided to UGLG's in affirmatively furthering fair housing. This can include assistance in preparing an analysis of impediments to fair housing (AI). This can also include assisting PHA's in developing the AI component of their PHA plans and ensuring consistency between PHA and state AI's.
12. Providing assistance to UGLG's to help plan and implement community revitalization strategies.
13. Providing TA to troubled PHA's to help them improve their operations.
14. Providing support for interagency coordinating committees or "one stop shops," at which local governments and various funding agencies review community needs or proposed projects, and identify the most appropriate funding resources to address the need or project.

D. Documentation

In order for an activity to be eligible as technical assistance, the state must be able to document that the activity is providing technical assistance to a local government(s) and/or a nonprofit program recipient(s). This documentation may be reviewed by HUD staff when the State CDBG program is monitored.

Conclusion

This is not meant to be an all-inclusive list, but rather to provide examples of eligible technical assistance activities. It is noted that the one percent technical assistance category is not subject to the national objective requirements, whereas the technical assistance that is permitted under Sections 105(a)(19) and (22) of the HCDA must meet a national objective.

Appendix H: 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. 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 grant recipients 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 grant recipient 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, grant recipients 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 grant recipient would have received in principal and interest, if the loan were not sold. In either case, the grant recipient 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 grant recipient 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 grant recipient, 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. (See 24 CFR 570.489(e) of the State CDBG regulations and Notice CPD-04-11 for state grantees.)

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 Attachment A to this Appendix, and HUD field office staff is 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 (for example, 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 grant recipient. 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 support 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, thus 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 570.483(b)) 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: Grant recipients 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 grant recipient 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, grant recipients 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 grant recipient 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 state, state grant 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 570.489(e)). If a state grant recipient 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 state grant recipient and its subrecipients during a single year totals no more than \$35,000, such income would not be program income (24 CFR 570.489(e)(2)(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 grant recipient'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 grant recipients 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.

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.
- **A non-entitlement unit of general local government may borrow up to \$7,000,000:** However, the maximum amount of outstanding guaranteed loans for all non-entitlement borrowers in a state cannot exceed five times the amount of the state's most recent annual CDBG allocation.
- **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.

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 are 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 as a result of a claim by a holder of the guaranteed obligation. 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: Nonentitlement communities wishing to apply for Section 108 loan guarantee assistance are advised to contact HUD and their state, 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 (TTY/TDD) may call the Federal Information Relay Service at 1-800-877-8339 (TTY/TDD).*

Program Trends and Accomplishments

The Section 108 program has undergone several major changes since its implementation in 1978. In 1987, HUD was directed by Congress to use 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. Section 222 of the Omnibus Appropriations Act, 2009, authorized HUD to provide community development loan guarantees, under section 108, to states borrowing on behalf of local governments in nonentitlement areas. For the first time, states can participate in the program as issuers of obligations. The table indicates the program's usage:

Fiscal Year	Number of Commitments	Amount of Commitments (\$000)
1978	1	476
1979	9	30,810
1980	23	156,933
1981	48	156,487
1982	52	179,377
1983	22	60,627
1984	29	86,952
1985	63	133,475
1986	25	113,290
1987	13	30,007
1988	43	143,578
1989	48	122,970
1990	44	119,260
1991	26	84,466
1992	46	163,780
1993	43	229,300
1994	88	350,520
1995	218	1,847,005
1996	89	433,775
1997	118	277,683
1998	96	381,970
1999	96	431,815
2000	88	412,364
2001	69	263,589
2002	74	310,974
2003	65	333,683
2004	66	289,082
2005	51	336,592

Fiscal Year	Number of Commitments	Amount of Commitments (\$000)
2006	36	220,321
2007	37	200,719
2008	28	160,686
2009	27	236,031
2010	35	165,880
2011	34	277,558
2012	26	206,391
TOTALS	1,876	8,948,426

Appendix I: Model Record-Keeping Requirements

Preface

24 CFR 570.490 of the State CDBG regulations states that the specific record-keeping requirements for the program “shall be as jointly agreed upon by HUD and the states.” At the time these rules became effective (December 1992), HUD and states agreed upon the record-keeping requirements, as follows in this appendix. The State CDBG regulations have been revised several times in the intervening years. At the time of publication of this Guide, HUD anticipates issuing further changes to the State CDBG regulations. Therefore, the record-keeping requirements spelled out in this appendix do not fully address all aspects of the regulations that affect record-keeping requirements. The Financial Management section, for example, contains out-of-date references to OMB and Treasury Circulars that have since been replaced; the language in that section should not be relied on as reflecting current requirements. Where regulatory citations have been superseded, editorial notes indicate the current regulatory citation for that requirement. At some future point, HUD and the states will update the record-keeping requirements.

Another particularly noteworthy area of record keeping not addressed in the following is *compliance with the public benefit standards*. Regulations regarding public benefit standards requirements were issued in the January 5, 1995 CDBG Economic Development rule. 24 CFR 570.482(f)(6) and (g) spell out documentation requirements for demonstrating compliance with the public benefit standards.

Introduction

Based on Section 104(e) of the Act, 24 CFR 570.491 <NOTE: current citation is 24 CFR 570.490> requires that the state maintain records which are adequate to allow the Secretary to determine whether or not the program is being carried out in accordance with the state's certification, the requirements of the HCDA, and other applicable laws. As required by the Act, the following Model Record-Keeping Requirements were developed for state and local governments in consultation with national associations representing state and local governments. The following are the generic state record-keeping requirements:

State Requirements for All Compliance Areas

The state is required to conduct reviews of recipients to ensure compliance with applicable laws and Title I requirements. Records must be maintained at the state level that demonstrate that the state has conducted such reviews and that the reviews were sufficient for the state to determine whether recipients are in compliance with the provisions of Title I and other applicable laws.

Such records should include:

1. A demonstrable state process for review of recipients for each specific compliance area which has been communicated to recipients.
2. A method to select recipients for review.

3. Evidence that the frequency of review is adequate.
4. Evidence that the review by the state examined all necessary items. Evidence should include an identification of items reviewed at the local level, and the methodologies employed to reach the conclusions.
5. Evidence to support the conclusions reached
6. Evidence that the results of reviews, particularly negative findings, were communicated to recipients.
7. Evidence that negative findings were tracked and successfully resolved.

Eligibility of Activities

State Record-Keeping

1. Evidence that each activity funded meets the provisions of Section 105(a) of the act.
2. Evidence that for activities eligible under the provisions of Section 105(a)(17), the state has determined that such assistance was necessary or appropriate to carry out economic development activities.

Evidence that during any on-site review, the state reviewed to ensure that:

- a. The activity being carried out is the same as the activity in the application.
- b. If location is involved, evidence that location is the same as approved.

Local Record-Keeping

1. A full description of each activity being carried out in whole or in part with CDBG funds.
2. A description of the nature and purpose of the activity.
3. The location of the activity (if the activity has a location focus).
4. The amount budgeted for each activity.
5. The amount obligated and expended for each activity.
6. Records that demonstrate that the recipient has made the determinations required as a condition for eligibility of certain activities.
7. Records which demonstrate compliance with 24 CFR 570.505 (NOTE: current citation is 24 CFR 570.489(j) regarding change of use of property acquired or improved with CDBG assistance.)

National Objectives

These requirements are modeled on the rule published September 6, 1988, at 24 CFR 570.506. However, if the provisions of Subpart I, as published in a final rule, differ from those enunciated here, these requirements will be revised. (NOTE: Subpart I of the State CDBG regulations as published in 1992 do not contain specific record-keeping requirements.)

State Record-Keeping

- A. State records must contain evidence that demonstrates that each activity meets one of the national objectives. At a minimum, the records must include the following information:
 1. For each activity determined to benefit low- and moderate-income persons based on the area served by the activity:
 - a. The boundaries of the service area.
 - b. A summary of the income characteristics of persons in the service area.
 2. For each direct benefit activity determined to directly benefit low- and moderate-income persons based on the household income of those directly benefiting and where the activity involves the submission of an application or the completion of a personal record, sufficient evidence to ensure such benefits would accrue to low- and moderate-income persons, the income limits applied and the point in time when the benefit was determined.
 3. For each activity determined to benefit low- and moderate-income persons because the activity involves a facility or service designed for use predominantly by low- and moderate-income persons, sufficient evidence to ensure that the predominant users would be low- and moderate-income persons.
 4. For each multi-family rehabilitation activity determined to benefit low- and moderate-income persons, the state should have evidence to ensure the local recipients have:
 - a. Established a local definition of "affordable to low- and moderate-income households" consistent with state standards.
 - b. A system to monitor the rent charged (or to be charged) after rehabilitation, for each dwelling unit in each structure rehabilitated.
 - c. An estimate of the total number of dwelling units rehabilitated in each structure and the percent of units in each structure which are to be occupied by low- and moderate-income households.

5. For single family rehabilitation:
 - a. An estimate of the number of units to be rehabilitated.
 - b. Income characteristics of the area in which the rehabilitation is to be carried out.
 - c. Number of units to be rehabilitated for low- and moderate-income households.
 - d. Amount to be spent on each unit to be rehabilitated for low- and moderate-income households.
6. For job creation:
 - a. When demonstrating that at least 51 percent of the jobs created will be available to low- and moderate-persons, documentation for each assisted business must include:
 - (1) A written commitment by the business that it will make at least 51 percent of the jobs on a full time equivalent basis available to low- and moderate-persons and will provide training for any of those jobs requiring special skills or education.
 - (2) A listing by job title of employees at the time the application for assistance is submitted.
 - (3) A listing, by job title, of the total permanent jobs to be created, indicating which jobs will be available to low and moderate persons, which jobs require special skills or education, and which jobs are part-time.
 - (4) Evidence supporting the estimate of the total number of jobs.
 - (5) A description of actions to be taken by the recipient and business to ensure that low- and moderate-income persons will receive first consideration for these jobs.
 - (6) A listing, by job title, race, ethnicity, gender and handicapped status of the permanent jobs created, and which jobs were made available to low- and moderate-income persons, and a description of how first consideration was given to such persons for those jobs. That description should include the hiring process used; the number of low- and moderate-income persons considered for each job; and the number of low- and moderate-income persons actually hired.

- (7) A description of how the low- and moderate-income status of those given first consideration was determined.
 - (8) A description of how, the total number of jobs was determined.
 - b. When demonstrating that at least 51 percent of the jobs will be taken by low- and moderate-income persons, documentation for each assisted business must include:
 - (1) A written commitment by the business that at least 51 percent of the jobs on a full-time equivalent basis, will be held by low- and moderate-income persons.
 - (2) A listing, by job title, of employees at the time the application for assistance is submitted.
 - (3) A listing, by job title, of the permanent jobs to be created.
 - (4) Evidence supporting the estimated total number of jobs to be created.
 - (5) A listing, by job title, race, ethnicity, gender and handicapped status of the permanent jobs actually created and those initially taken by low- and moderate-income persons.
 - (6) A description of how the low- and moderate-income status of those hired was determined by the state during the review of the recipient.
 - (7) A description of how the total number of jobs was determined.
- 7. For job retention:
 - a. Clear and objective evidence that in the absence of the CDBG assistance the jobs will be lost.
 - b. A written commitment by the business to meet the standard for retained jobs involving the employment of low- and moderate-income persons.
 - c. A listing by job title, race, ethnicity, gender and handicapped status of the employees at the time the assistance is provided.
 - d. Clear and objective evidence that in the absence of the CDBG assistance the jobs will be lost.
 - e. A written commitment by the business to meet the standard for retained jobs involving the employment of low- and moderate-income persons.
 - f. A listing by job title, race, ethnicity, gender and handicapped status of the employees at the time the assistance is provided.

- (1) A listing of each job which has turned over to date, indicating which of those jobs were either taken by, or made available to, low- and moderate-income persons.
 - (2) A description of how first consideration was given to persons for whom the job was made available (consistent with the "available to" standard).
 - (3) A description covering the items identified above as necessary in demonstrating the "taken by" standard.
 - (4) A description of how the state determined jobs were held by, made available to, or taken by low- and moderate-income persons.
8. For each activity determined to benefit low- and moderate-income persons based on jobs to be created for or retained by low- and moderate-income persons:
 - a. The number of jobs to be created and the number of additional jobs expected to be created, if any.
 - b. The nature of the jobs created to date (number skilled, semiskilled, and unskilled, and for semi-skilled jobs, any special education or experience required) and the nature of additional jobs expected to be created.
 - c. Any other evidence to support the conclusion that a majority of jobs will be filled by low- and moderate-income persons, such as:
 - (1) Evidence to assure accessibility of the jobs to areas where substantial numbers of low- and moderate-income persons reside.
 - (2) Evidence to support any special outreach and/or training to be directed toward low- and moderate-income persons.
9. For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:
 - a. The boundaries of the area.
 - b. 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 requirements in 24 CFR 570.208(b)(1).
10. For a residential rehabilitation activity determined to aid in the prevention or elimination of slums or blight in a slum or blighted area:

Assurance that the recipients will adopt a local definition of "substandard."

11. For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

- a. The boundaries of the area.
- b. A description of the condition which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the requirements in 24 CFR 570.208.

12. For each activity determined to aid in the prevention or elimination of slums or blight based on the elimination of specific conditions of blight or physical decay not located in a slum or blighted area:

For rehabilitation to be carried out under this category, a description of how the threats to public health and safety are to be corrected.

13. For each activity determined to meet a community development need having a particular urgency:

- a. The nature and degree of seriousness of the conditions requiring assistance.
- b. Evidence that the recipient certified that the CDBG activity was designed to address the urgent need.
- c. Information on the timing of the development of the serious condition.
- d. Evidence confirming that other financial resources to alleviate the need were not available.

B. Review of localities. The records of state on-site reviews should demonstrate that:

- 1. Each activity being undertaken is consistent with the activities proposed by the recipient.
- 2. The locality is carrying out the activities in a timely manner.
- 3. The information on which the claim to qualify the activity under one of the national objectives is consistent with the information submitted.
- 4. The level of benefit is consistent with the claim(s) in the application.
- 5. The information on which to base a determination that the actual results are consistent with those claimed in the application.

Local Record-Keeping

Recipients shall ensure that the following records are maintained and kept up-to-date:

1. A full description of each activity carried out (or being carried out) in whole or in part with CDBG funds, including the nature and purpose of the activity, its location (if the activity has a geographical location) and the amount of CDBG funds budgeted, obligated and expended for the activity.
2. Records demonstrating that each activity undertaken meets one of the national objectives. At a minimum, such records shall include sufficient information to satisfy the state requirements described in a above, including actual results.

Financial Management

State Record-Keeping

1. Records must demonstrate that the state is following:
 - a. Guidelines specified in Treasury Circular 1075. <NOTE: Treasury Circular 1075 has since been subsumed by 31 CFR Section 205.>
 - b. Procedures and standards that are equivalent to those contained in OMB circular A-102, attachments B, C, E, G, H, I, J, L, N, and O. <NOTE: Current citation is 24 CFR Part 85.>
 - c. Cost principles that are equivalent to those contained in OMB circular A-87, attachments A and B.
 - d. Audit standards specified in OMB circular A-128. <NOTE: Current citation is OMB Circular A-133.>
2. To document compliance with financial management and record-keeping, records must include:
 - a. Descriptions of the financial management and record-keeping procedures used in administering the CDBG program.
 - b. Description of procedures for retention and custody of financial management records and reports.
 - c. Data on actual financial transactions.
 - d. Evidence that the state has reviewed its recipients' financial management and record-keeping procedures.

3. To document compliance with the cost allowability requirements, records must include:
 - a. Descriptions of the state's cost principles.
 - b. Evidence that the state's allocation of direct and indirect costs is consistent with the cost principles established by that state.
 - c. Evidence that the state has reviewed its recipients' allocated direct and indirect costs.
4. To document compliance with the bonding and insurance requirements, records must include:
 - a. Descriptions of the state's requirements for bonding and insurance that ensure the completion of CDBG-funded construction contracts and other necessary safeguards.
 - b. Evidence that the state has reviewed its recipients' compliance with bonding and insurance requirements.
5. To document compliance with the program income requirements, records must include:
 - a. Descriptions of state policies concerning disbursement of recaptured income.
 - b. Data on actual receipt of program, including:
 - (1) Sources of program income
 - (2) Amounts of program income
 - c. Evidence that the state has reviewed its recipients' records on the receipt and disbursement of program income.
6. To document compliance with grant payment procedures, records must include:
 - a. Copies of agreements between the state and its recipients, stating that the recipients will follow Treasury Department drawdown requirements.
 - b. Copies of Letter of Credit documents, such as:
 - (1) Signature cards which also indicate depository selected
 - (2) Requests for payment on the Letter of Credit
 - (3) Requests for payments by recipients

- c. Data on drawdowns transaction (for example, from CDBG Federal Cash Register), such as:
 - (1) Grant funds received
 - (2) Disbursements made to recipients
 - (3) Daily cash balances
- d. Evidence that the state has reviewed its recipients' records for compliance with grant payment procedures specified in Treasury Circular 1075. <NOTE: Treasury Circular 1075 has since been subsumed by 31 CFR Section 205.>
- 7. To document compliance with grant closeout requirements, state records must include:
 - a. Descriptions of procedures used to close out grants.
 - b. Copies of required financial and performance reports.
 - c. An accounting of the final cost determinations and copies of final audit reports in accordance with current audit requirements.
 - d. Written notification to recipients when grant closeout results from noncompliance.
 - e. A description of procedures used to resolve audit findings.
- 8. To document compliance with the property management standards, records must include:
 - a. A description of the standards and procedures used for CDBG property management.
 - b. Inventories listing property acquired in whole or in part with CDBG funds.
 - c. Evidence that the state has reviewed its recipients' records for compliance with the property standards.
- 9. To document compliance with the procurement requirements, records must include:
 - a. A description of the procurement policies and procedures used in the CDBG program.
 - b. Data on contracts awarded, such as:
 - (1) Names of contractors
 - (2) Types of contractors (for example, Small business, minority-owned business, women-owned business, etc.)
 - (3) Amounts of contracts awarded.

- c. Documentation of contract work, including:
 - (1) Copies of award letters
 - (2) Inspection reports
 - (3) Contract amendments
 - (4) Payment log
- d. Evidence that the state has reviewed its recipients' procurement records.

Local Record-Keeping

1. To document compliance with the state's financial management requirements, recipients' records must:
 - a. Provide data on actual financial transactions.
 - b. Provide data on the allocation of direct and indirect costs.
 - c. Present evidence that state-established bonding and insurance requirements have been followed.
 - d. Provide data on the receipt and disbursement of program income, including:
 - (1) Source of program income, and
 - (2) Amounts of program income
2. Present evidence that state policies and procedures for CDBG procurement have been followed. Documentation may include:
 - a. The procurement process used (for example, small purchase, and competitive bids).
 - b. Contractor data (for example, small business, minority-owned business, and women-owned business).
 - c. Contractor file (for example, Inspection reports, contract amendments, payment logs, labor standards information, closeout information, and the contract itself to ensure it includes governmental requirements, time payments and conditions).

Civil Rights

State Record-Keeping

1. Data on employment in each of the state's operating units carrying out activities funded in whole or part with CDBG funds. The data must be maintained in the categories prescribed on the equal employment opportunity commission's EEO-4 form.
2. Records that show that the state has reviewed the civil rights performance of its recipients. These records, in addition to the requirements of state record-keeping for all compliance areas, would include:
 - a. Information on the procedures and systems that the state uses for determining the adequacy of civil rights performance. Records describing the state's review process must be in sufficient detail to assure HUD that the states have made such reviews as may be necessary and appropriate in each civil rights area. The methodology shall consist of either one of the following: (1) a summary of the factual basis upon which each determination rests; or (2) the quantitative or other appropriate standard used to make such determination.
 - b. For each recipient, summary data, by activity, on benefit by race, ethnicity, gender of head of household and, where applicable, benefits by handicapped persons.
3. Records demonstrating the manner in which the state has handled complaints of discrimination involving the State CDBG program including: a record of each complaint received; how and when it was referred to HUD; and, the state's response to any civil rights complaint investigations conducted by HUD in connection with the state's CDBG program.
4. Records showing the state's actions to affirmatively further fair housing, including funds allocated, if any, for these actions.
5. On a voluntary basis, states may choose to keep records that demonstrate state efforts to increase the use of minority and women-owned businesses and a summary of the results of such efforts.

Local Record-Keeping

1. Documentation of the action(s) the recipient has carried out (or is carrying out) to affirmatively further fair housing, including records on funds provided, if any, for such actions.
2. For direct benefit activities, data on the extent to which persons have participated in or benefited from any program or activity funded in whole or in part with CDBG funds. *Records must* be kept by race, ethnicity, handicapped status and gender of heads of households. For area-wide activities, documentation on: the area and the services being provided to the area; and, the race and ethnicity of the service area.

3. Data on employment in each of the local government's operating units carrying out an activity funded in whole or in part with CDBG funds. The data must be maintained in the categories prescribed on the equal employment opportunity commission's EEO-4 form.
4. Data indicating the race and ethnicity of households, and handicapped status of persons displaced as a result of CDBG activities, including the address to which each displaced household relocated. Where activities cause a significant level of displacement of businesses, data indicating the impact on businesses owned by minorities and women.
5. Documentation of actions undertaken to meet the requirements of Section 3 of the Housing and Urban Development Act of 1968. <NOTE: HUD has published Section 3 regulations – see 24 CFR Part 135.>
6. Data indicating the racial/ethnic character of each business entity that receives a contract or subcontract of \$10,000 or more paid, or to be paid, with CDBG funds. Data indicating which of those entities are women's business enterprises as defined in Executive Order 12138 and the amount of the contract or subcontract.
7. Documentation of the affirmative actions the local government has taken to overcome the effects of prior discrimination as determined through a formal compliance review or court proceeding, where the recipient has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.

Labor Standards

State Record-Keeping

In addition to the requirements in state record-keeping for all compliance areas, records must demonstrate that:

1. The state obtains current wage decisions from DOL and distributes them to recipients.
2. The state obtains wage rates for additional job classifications.

Local Record-Keeping

1. Contract documents that contain actual wage rates used and which were included in the solicitation and award documents.
2. Contracts containing proper and applicable labor standards provisions. File may also include certification from contractor.
3. Evidence that the recipient inquired and was informed that the prime contractor was not on a list of ineligible contractors.

4. Actual payrolls submitted and evidence that payrolls were reviewed in a timely manner.
5. Evidence that worker interviews were conducted.
6. Evidence that an enforcement report was submitted to the state and HUD where restitution of \$1,000 or more was required.
7. Evidence of preconstruction conference.

Relocation, Replacement Housing, and Real Property Acquisition

State Record-Keeping

1. Evidence demonstrating that prior to approval of a grant the state received a certification from each recipient funded that it would comply with the URA and the federal implementing regulations and was following a residential anti-displacement and relocation assistance plan in accordance with Section 104(d) of the HCDA and implementing regulations at 24 CFR 570.496a(b). <NOTE: Current citations are 24 CFR 570.488 and 570.606.>
2. Evidence demonstrating that applicable regulations contained in 24 CFR 570.496a <NOTE: Current citations are 24 CFR 570.488 and 570.606>, policies (including policies implementing the URA, Sections 104(d) and (k) and 105(a)(11) of the HCDA) and record-keeping requirements that would demonstrate compliance with applicable statutes and regulations were communicated to recipients (for example, training, technical guides, information booklets, claim forms, designation of state person to contact for advice).
3. Evidence demonstrating that state approval of a grant is based on consideration of an identified acquisition and displacement workload and a reasonable estimate of related costs (usually in the application).
4. Evidence demonstrating that monitoring reviews were sufficient to determine compliance with applicable statutes and regulations. This includes evidence that reviews:
 - a. Were of appropriate depth and frequency. (All recipients should be reviewed in a timely manner).
 - b. Reflected representative samples as to number and type of cases examined.
 - c. Included interviews with displaced persons/former owners and inspection of replacement housing, as appropriate.
 - d. Assessed timeliness and completeness of each required notice (for example, the general information notice, notice of eligibility, 90-day notice, vacate notice).

- e. Ensured that the recipient made accurate determinations of person's eligibility for assistance.
 - f. Determined adequacy of referrals to comparable replacement housing and suitable business locations and other advisory services.
 - g. Determined timeliness and accuracy of relocation payments. (The records should include a worksheet or copy of claim form for cases examined. If payment was limited by the cost of a comparable replacement dwelling, the records should identify the location of, cost of, and the date of referral to such housing).
 - h. Assessed recipient selection of appraisers and the acceptability of the recipient's appraisal reviews.
 - i. Determined that the recipient acquisition process met applicable laws and regulations (for example, Invited owner to accompany appraiser, promptly offered just compensation for property and paid all incidental expenses).
 - j. Verified receipt of relocation and acquisition payments.
 - k. Determined that recipient determinations on appeals/complaints were accurate and persons were informed of their right to appeal to state.
5. Statement of policies on the scope of appeals by displaced persons/property owners to state and evidence of appropriate state responses to appeals/complaints.

Local Record-Keeping

Recipients shall maintain records of relocation, replacement housing and acquisition activities in sufficient detail to demonstrate compliance with applicable statutes and regulations. The relocation and acquisition records shall be retained for at least three years after each owner of a property and each person displaced from the property has received the final payment to which he or she is entitled. The basic documentation requirements are:

- 1. Replacement of low/moderate income housing
 - a. The location and number of dwelling units by size (number of bedrooms) that have been or will be demolished or converted to a use other than as low and moderate-income dwelling units as a direct result of an assisted activity.
 - b. A time schedule for the commencement and completion of the demolition or conversion.
 - c. The location and number of dwelling units by size (number of bedrooms) that have been or will be provided as replacement dwelling units.

- d. The source of funding and a time schedule for the provision of replacement dwelling units.
- e. The basis for concluding that each replacement dwelling unit will remain a low- and moderate-income dwelling unit for at least 10 years from the date of initial occupancy.

2. Displacement

Evidence of steps taken to minimize the displacement of persons from their homes.

3. Relocation

- a. Identification of person, displacement property, racial/ethnic group classification, age and sex of all household members, monthly rent and utility costs for displacement and replacement housing, type of enterprise, relocation needs and preferences.
- b. Evidence that the person received a timely statement describing available relocation payments and basic eligibility conditions, available advisory services, and the right to comparable replacement housing (or suitable replacement housing under Section 104(k) policies).
- c. Evidence that the person received timely written notice informing him or her of entitlement to relocation assistance under the URA or Sections 104(d) or (k) and the location and cost of the comparable replacement dwelling used to establish the upper limit of the replacement housing payment.
- d. Evidence and dates of personal contacts and a description of services provided.
- e. Identification of actual replacement property, sale price or rent/utility cost (if dwelling), date of relocation.
- f. Copy of 90-day notice and vacate notice, if issued.
- g. Identification of referrals to replacement properties, date of referral, sale price or rent/utility costs (if dwelling), date of availability, and reasons) for declining referral.
- h. Replacement dwelling inspection report and the date of inspection.
- i. Copy of each approved claim form and related documentation; evidence that the person received payment.
- j. Copy of any appeal or complaint filed and recipient's response.

4. Acquisition

- a. Identification of property and property owner(s).
- b. Evidence that the owner was informed on a timely basis about the acquisition and his or her rights.
- c. Copy of each appraisal report, including the review appraiser's report, and evidence that owner was invited to accompany each appraiser on the appraiser's inspection of property.
- d. Copy of the written purchase offer and summary statement of the basis for the determination of just compensation; date of delivery to owner.
- e. Copy of purchase contract and documents conveying property.
- f. Copy of settlement statement identifying incidental expenses and evidence that the owner received net proceeds due from sale.
- g. Copy of any appeal or complaint filed and the recipient's response.

Environment

State Record-Keeping

In addition to the requirements of state record-keeping for all compliance areas, the state records must include:

1. Evidence that at least 15 days elapsed from the time of RROF receipt to the release of funds (24 CFR 58.18(a)(2) and 58.73).
2. Record of any objections received (24 CFR 58.18(b), 58.73, and 58.75).
3. Record of approval or disapproval (24 CFR 58.18(b), 58.73, and 58.77).
4. Evidence that it has monitored recipients for project compliance with 24 CFR Part 58, NEPA, and related laws (24 CFR 58.18(a)(1)(i) and 58.77(c))

Local Record-Keeping

1. For every project, the recipient must maintain an environmental review record (ERR) that includes:
 - a. Description of project and activities.
 - b. All environmental reviews including their findings and documents.
 - c. Public notices.

- d. Written determinations.
 - e. State's approval of environmental certification and request for release for funds.
2. Project consisting solely of exempt activities (24 CFR 58.34):
- (Note: project is defined as one or more activities described in Section 105 of the Housing and Community Development Act.)
- Written documentation signed by certifying officer that project meets qualifications for exemption. (24 CFR 58.34(b)). See also 3c below.
3. Project Consisting of Categorical Exclusions (24 CFR 58.35):
- a. Written documentation signed by certifying officer that project activities meet the requirements for categorical exclusion (24 CFR 58.35(a)) or exemption (24 CFR 58.34) from NEPA requirements (24 CFR 58.35(a)).
 - b. Written documentation of compliance with environmental requirements of other related laws at 24 CFR Part 58.5 determined to be applicable to the project; documentation showing completion of procedures and actions required under applicable laws and authorities (24 CFR 58.35(b)).
 - c. Where designated laws and authorities do not apply to the project, a written determination signed by certifying officer that project is exempt (24 CFR 58.34(a)(10)). See item 2 above and omit "d" and "e" below (24 CFR 58.34(b)).
 - d. Evidence that Notice of Intent to Request Release of Funds (NOI/RROF) was published at least 7 calendar days before submitting RROF to state, using the HUD format or an equivalent. Record of comments and how they have been taken into account (24 CFR 58.70).
 - e. Evidence that RROF and environmental certification were submitted to state (24 CFR 58.71).
4. Environmental Assessment for Projects Not Classified as Exempt or Categorically Excluded:
- a. Consultation with Other Agencies
- Evidence of completion of actions required under other applicable laws and authorities (24 CFR 58.40(f)).
- b. For projects requiring an environmental assessment (EA), evidence that EA has been completed using HUD format or equivalent (24 CFR 58.40).

- c. If FONSI determination was made, evidence that a separate FONSI Notice and a separate NOI/RROF or combined notice of both, (using HUD format(s) or equivalent) were prepared and sent to:
 - (1) EPA headquarters and appropriate regional offices.
 - (2) Interested individuals and groups.
 - (3) Appropriate local, state, federal agencies.
 - (4) State CDBG agency (24 CFR 58.43).
 - d. Evidence that notices were published at least once in a local area-wide newspaper. (For exceptions, see 24 CFR 58.43.)
 - e. Evidence that the 15-day comment period provided for combined FONSI Notice and NOI/RROF or for separate FONSI Notice. Record of comments received and how they have been taken into account (24 CFR 58.43(c) and 58.45). Records of any determination extending comment period or providing for 30-day FONSI Notice instead of the normal 15-day comment period (24 CFR 58.46).
 - f. Where separate notices are issued, evidence that 7 calendar days between publication and the end of the comment period were provided for NOI/RROF before submitting the RROF to the state, including a record of all 24 CFR 58.70 comments received and how they have been taken into account (24 CFR 58.45).
 - g. Evidence that RROF and certifications were submitted to the state (24 CFR 58.71).
 - h. If there is a finding of significant impact, a copy of the finding signed by the certifying officer and a copy of Notice of Intent to Prepare an EIS (24 CFR 58.55).
5. Environmental Impact Statement:
- a. Evidence that NOI/EIS was published and distributed, using HUD format or equivalent (24 CFR 58.55 and 58.43). Where applicable, documentation of a determination to adopt other federal agency EIS (24 CFR 58.52) or to reuse prior EIS (24 CFR 58.53).
 - b. Record of the scoping process and determination to hold scoping meeting (NEPA regulation 1501.7 and 24 CFR 58.56).
 - c. Draft EIS prepared according to HUD format and Section 1502.10 of NEPA regulations (24 CFR 58.60).

- d. Record of any decision to hold public hearings. If hearing held, a record of the proceedings, any comments received and how these were taken into account (24 CFR 58.59).
 - e. Evidence that DEIS filed with EPA headquarters and regional offices (24 CFR 58.60). Documentation of the distribution of DEIS or summary (24 CFR 58.60).
 - f. Record of preparation of the final EIS according to 40 CFR 1502, using HUD format or equivalent. Evidence that it was filed with EPA and distributed to HUD and other parties who have commented on DEIS or requested copies (24 CFR 58.60). Record in FEIS of any response to comments received during the comment period and public hearing if any was held (NEPA regulations, Parts 1502 and 1505).
 - g. Record of Supplemental DEIS and FEIS prepared, if any.
 - h. "Record of Decision" which includes: lead agency decisions whether to proceed with project; alternative considered; and mitigation, monitoring and enforcement measures to be undertaken, using HUD format or equivalent (NEPA regulations, Parts 1505.2 and 24 CFR 58.60(e)).
 - i. Evidence of compliance with related laws and authorities applicable to the project in the DEIS and FEIS (24 CFR 58.60).
 - j. Record of the date that FEIS was filed with EPA and the final list for distribution to agencies and public.
 - k. Evidence that at least seven calendar days before submitting RROF and certification to the state, the recipient published and disseminated NOI/RROF in the same manner as a FONSI. See III C-E (24 CFR 58.70, 58.43, and 58.45).
6. Release of Fund and Certification Approval:
- a. Date of ROF and certification submitted to the state.
 - b. Record of objections received from agencies or the public, if any received during the state ROF process, and their disposition (24 CFR 58.76 and 58.77(a)(b)).
 - c. Copy of the state notification of the release of funds and approval of certification.
 - d. Record of the implementation of environmental review decisions.

System for Ensuring Fundability of Activities

The purpose of this system is to ensure that each activity funded and carried out is eligible under Sections 105(a) and (c) and meets a national objective under Section 104(b)(3). This standard must also be met for planning only grants also.

1. Pre-Approval: Does the state's system include a:
 - a. Means of determining if an activity is eligible.
 - b. Means of determining eligibility when the assistance is to for-profit entities under Section 105(a)(17) by making the necessary or appropriate determination.
 - c. Means of identifying which national objective is being addressed by each activity.
 - d. Method of communicating standards to applicants.
 - e. Process for checking applications to ensure sufficient data are available to support claims.
 - f. Means to verify claims made, when appropriate.
 - g. Method to ensure that claims are reviewed consistently by staff.
 - h. Oversight by higher level management.
 - i. Method to maintain a count on total amount of funds benefiting low- and moderate-income persons for the period selected.
2. Post Approval: Does the state's system include a:
 - a. Method to determine whether or not activities carried out are the same as those approved.
 - b. Method to review and approve amendments which includes standards for determining when it is an amendment.

System for States' Review of Their Recipients

The HCDA requires states to conduct such reviews and audits as may be necessary or appropriate to determine whether recipient units of general local governments:

1. Have carried out activities in a timely manner.
2. Have carried out activities in accordance with the primary objectives of the HCDA and other applicable laws.
3. Have a continuing capacity to carry out activities in a timely manner.

Experience indicates that for the CDBG program on-site reviews are an essential part of such a system. Too often, however, we forget that on-site reviews are not the only way, or we believe that merely visiting communities is sufficient. The following description of a system is intended to direct attention to the critical elements, and the factors to be considered in setting up a system sufficient to enable a state to meet its Section 104(d) responsibilities.

Such a system would generate data on the total inventory of grants as well as each specific grant. The nature and extent of this information would be sufficient to enable the state to make determinations, consistent with its statutory responsibilities, and to ensure that those responsibilities are fully met.

4. What is monitoring? Why do it?

a. Principal means to carry out Section 104(d) responsibilities:

(1) Section 104(d) requires states to conduct reviews of their recipients.

(2) Monitoring is a system to see if recipients are carrying out programs in compliance with Title I and other applicable laws.

b. Assist recipients in improving performance, developing self-reliance and increasing management capacity.

(1) Can develop constructive working relationships – opens the door to being the service provider.

(2) An ongoing process to make judgments over a period of time to determine where improvements are needed.

(3) Must encourage management improvements if the review effort is to be successful.

(4) Need to focus on major issues and systemic problems – are there adequate systems in place?

c. Ensures funds are being used in a way to avoid fraud, waste and mismanagement:

(1) This is not a different agenda than compliance monitoring.

(2) Emphasis should be on prevention – rather than detection and correction (Get out there before someone else does and embarrasses you – puts the state in the funny papers or wins a "Golden Fleece" award).

- d. Keeps well informed about effectiveness of local programs:
 - (1) What is going on? What is the program achieving?
 - (2) It is important to know what is happening overall in a community – what are they really trying to achieve? Are they?
- 5. Developing a Monitoring Strategy – the first step
 - a. Why do it?
 - (1) Save resources.
 - (2) Target to cities where potential problems exist.
 - (3) Look at the right things during the review.
 - b. What is it? It is a system which decides:
 - (1) who to visit
 - (2) what to look at
 - (3) when to visit.
 - c. It is a combination of:
 - (1) On site reviews.
 - (2) Reporting requirements.
 - (3) Desk or off-site reviews.
 - (4) Other management tools, such as training, handbooks, etc.
 - d. Factors to consider:
 - (1) Number of grant recipients.
 - (2) Staff available.
 - (3) Kinds of programs.
 - (4) Other available information.

6. Selection of Recipients for Review

- a. Assumption
- b. All recipients probably cannot be reviewed on-site each year because of limited staff and travel resources.
- c. Criteria for Selecting Recipients for On-Site Reviews:
 - (1) Localities experiencing serious problems. Consider recent audit findings, investigations, monitoring findings, complaints, issues retraining from a performance review or any other indication of failure to meet program requirements.
 - (2) Recipients with no previous CDBG experience.
 - (3) Recipients with no monitoring visits during the previous year.
 - (4) Complexity and size of programs and grants.
 - (5) Extensive use of subcontractors in carrying out activities.
 - (6) An allocation of a high percentage of grant funds for rehabilitation loans.
 - (7) An allocation of a high percentage of grant funds for job creation/retention activities or other aid to for-profit entities for economic development.
 - (8) Significant amounts of program income.
- d. Choosing an approach: (other options are possible)
 - (1) Option one: List applicants and then check which criteria each meets. Those that address the most criteria can be selected for monitoring, within the staff available.
 - (2) Option two: Weight each of the criteria. List the cities and check which criteria each meets. Those scoring highest can be selected for monitoring within the staff available.

7. Determining Number of Recipients for Review

- a. The extent to which compliance can be assured through a system that includes the items listed below will influence the extent to which on-site reviews are required. However, some on-site visits are necessary, even with the best system, to ensure data obtained through other means are adequate and accurate. Each city must be visited at least once on-site before close out (except possibly planning only grants). The content of a system would include:

- (1) Contract – a written, legally binding contract or other agreement, executed by the state and the recipient. The extent to which specific requirements and responsibilities are spelled out or referenced affects what can normally be expected of a recipient.
 - (2) A method to issue additional requirements, policies or procedures to recipients and ensure such requirements are satisfied.
 - (3) A system, such as training, to ensure recipients are fully acquainted with all statutory provisions.
 - (4) A system to require adequate records which can demonstrate compliance with all requirements.
 - (5) A system to ensure records are, in fact, being maintained.
 - (6) A periodic reporting system which contains information which can be used to demonstrate compliance.
 - (7) A system to disburse funds which includes information that can be used to demonstrate progress or demonstrate compliance with other requirements.
 - (8) A system that provides for frequent contact and technical assistance, other than through on-site visits. Issues raised and resolved are documented.
 - (9) An audit system which includes selection of who to review, when, what is to be covered and a method of follow-up. A written record demonstrating results, issues and problem resolution should be available.
- b. The number of recipients to be monitored on-site is a function of the overall management system described above.
 - c. The state program design impacts the review function.
 - (1) Determines types of cities to be funded.
 - (2) Determines kinds of activities to be funded.
8. When to visit
- a. Timing of monitoring visits is also a part of the strategy. The monitoring visits should be made at a time when enough activities have been initiated so a valid judgment can be made, yet sufficiently early to avoid major problems.
 - b. Early visits – an on-site technical assistance visit is encouraged for all new recipients.
 - c. Some form of training is encouraged for all recipients receiving a new grant.

9. What Activities to Review (selection of types of activities)

Selection of types of activities – a method must be devised to select among the activities that, by their nature, have a higher risk potential. The review of the activities, once selected, would focus on the regulatory and statutory requirements.

- (1) Rehabilitation activities (particularly those with lump sum).
- (2) Activities involving subcontractors.
- (3) Economic development activities, with emphasis on those assisting private for-profit businesses or having job creation/job retention features.
- (4) Activities with outstanding audit findings.
- (5) Activities generating significant amounts of program income.
- (6) Activities about which the state has received complaints, including objections to the release of funds from environmental conditions or possible civil rights problems.
- (7) Activities using the most Block Grant dollars.
- (8) Activities not previously monitored.
- (9) Activities which are dependent upon partial funding from other federal or state programs or other sources.
- (10) Activities involving relocation.

10. Documentation of On-Site Review

- a. Records that demonstrate the state has reviewed all items necessary to determine whether or not recipients are in compliance. (Identify each compliance area reviewed).
- b. Evidence to demonstrate the adequacy of review:
 - (1) Identification of items reviewed at the local level for each compliance area.
 - (2) Methodology employed to reach a conclusion in each compliance area.

11. Other Components of the Management System

- a. A system to ensure a standardized approach to monitoring which includes the scope of review for each compliance area.
- b. Defined areas of responsibility (geographically and functionally).

- c. A system to ensure conclusions are properly documented.
- d. A system to track findings and secure successful resolution (without this, the whole effort is meaningless).
- e. Adequate oversight of the whole system by higher level management.

12. Techniques for Pre-Visit Preparation

- a. Review data available in house to:
 - (1) Ensure effective use of time on-site.
 - (2) Focus on the right issue(s).
 - (3) Know what is supposed to be happening (what was approved), for example, Have contracts been let?
 - (4) Be aware of potential problems.
- b. Sources of information:
 - (1) Application (most useful) – what activities, national objectives, schedules, etc.
 - (2) Recipient files – correspondence, results of previous reviews, etc.
 - (3) Grant Agreements – any special terms or conditions?
 - (4) Performance and Evaluation Reports.
 - (5) Requests for Payments – should reflect status of activities and should trigger certain compliance areas for review.
 - (6) Audits.
 - (7) Citizens' complaints.
 - (8) Newspapers.

13. Conclusion

- a. Monitoring is a major responsibility placed on states by the HCDA.
- b. Ensures program is doing what the state expects it to do.
- c. Audits may become less and less useful – need to rely on monitoring.
- d. Finding problems should be expected. They can be corrected. The problems not found are the ones that can really hurt.
- e. Monitoring is complex and needs to be approached systematically.

Appendix J: Code of Federal Regulations, Title 24 570.200 – .208, Regulations for Entitlement CDBG Program*

Introduction

Appendix J consists of Title 24 of the Code of Federal Regulations, Section 570.200 – .208, regulations for the Entitlement CDBG program. The Federal Regulations for the State CDBG program (Appendix B) are minimal compared with those for the Entitlement CDBG program. In addition, the application of the HCDA (Appendix A) to the Entitlement program is very similar to its application to the State program. Therefore, the following Entitlement regulations are provided for state officials as guidance to interpret the HCDA as they apply to the State program. These regulations are current as of October 25, 2012.

Subpart C—Eligible Activities

SOURCE: 53 FR 34439, Sept. 6, 1988, unless otherwise noted.

§ 570.200 General policies.

- (a) *Determination of eligibility.* An activity may be assisted in whole or in part with CDBG funds only if all of the following requirements are met:
- (1) *Compliance with section 105 of the Act.* Each activity must meet the eligibility requirements of section 105 of the Act as further defined in this subpart.
 - (2) *Compliance with national objectives.* Grant recipients under the Entitlement and HUD-administered Small Cities programs and recipients of insular area funds under section 106 of the Act must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the national objectives of benefit to low- and moderate-income families or aid in the prevention or elimination of slums or blight. The projected use of funds may also include activities that the recipient 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. Consistent with the foregoing, each recipient under the Entitlement or HUD-administered Small Cities programs, and each recipient of insular area funds under section 106 of the Act must ensure and maintain evidence that each of its activities assisted with CDBG funds meets one of the three national objectives, as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are found in § 570.208.
 - (3) *Compliance with the primary objective.* The primary objective of the Act is described in section 101(c) of the Act. Consistent with this objective, entitlement recipients, nonentitlement CDBG grantees in Hawaii, and recipients of insular area funds under section 106 of the Act must ensure that, over a period of time specified in their certification not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the

criteria under § 570.208(a) or under § 570.208(d)(5) or (6) for benefiting low- and moderate-income persons. For grants under section 107 of the Act, insular area recipients must meet this requirement for each separate grant. See § 570.420(d)(3) for additional discussion of the primary objective requirement for insular areas funded under section 106 of the Act. The requirements for the HUD-administered Small Cities program in New York are at § 570.420(d)(2). In determining the percentage of funds expended for such activities:

- (i) Cost of administration and planning eligible under § 570.205 and § 570.206 will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the CDBG funds and, accordingly shall be excluded from the calculation;
 - (ii) Funds deducted by HUD for repayment of urban renewal temporary loans pursuant to § 570.802(b) shall be excluded;
 - (iii) Funds expended for the repayment of loans guaranteed under the provisions of subpart M shall also be excluded;
 - (iv) Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under § 570.208(a)(3) shall be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including CDBG and non-CDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons.
 - (v) Funds expended for any other activities qualifying under § 570.208(a) shall be counted for this purpose in their entirety.
- (4) *Compliance with environmental review procedures.* The environmental review procedures set forth at 24 CFR part 58 must be completed for each activity (or project as defined in 24 CFR part 58), as applicable.
- (5) *Cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with OMB Circulars A-87, "Cost Principles for State, Local and Indian Tribal Governments"; A-122, "Cost Principles for Non-profit Organizations"; or A-21, "Cost Principles for Educational Institutions," as applicable. ¹All items of cost listed in Attachment B of these Circulars that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under this subpart C, except for the following:
- (i) Depreciation methods for fixed assets shall not be changed without HUD's specific approval or, if charged through a cost allocation plan, the Federal cognizant agency.

¹ These circulars are available from the American Communities Center by calling the following toll-free numbers: (800) 998-9999 or (800) 483-2209 (TDD).

- (ii) Fines and penalties (including punitive damages) are unallowable costs to the CDBG program.
- (iii) Pre-award costs are limited to those authorized under paragraph (h) of this section.

(b) *Special policies governing facilities.* The following special policies apply to:

- (1) *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the CDBG program may be provided with CDBG funds even if it is part of a multiple use building containing ineligible uses, if:
 - (i) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and
 - (ii) The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

- (2) *Fees for use of facilities.* 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 low and moderate income persons from using the facilities, are not permitted.

(c) *Special assessments under the CDBG program.* The following policies relate to special assessments under the CDBG program:

- (1) *Definition of special assessment.* 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 a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, 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.
- (2) *Special assessments to recover capital costs.* Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:
 - (i) Special assessments to recover the CDBG funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

- (ii) Special assessments to recover the non-CDBG portion may be made provided that CDBG funds are used to pay the special assessment in behalf of all properties owned and occupied by low and moderate income persons; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate income persons if the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.
- (3) *Public improvements not initially assisted with CDBG funds.* The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments provided:
 - (i) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this part including environmental, citizen participation and Davis-Bacon requirements;
 - (ii) The installation of the public improvement meets a criterion for national objectives in § 570.208(a)(1), (b), or (c); and
 - (iii) The requirements of § 570.200(c)(2)(ii) are met.
- (d) *Consultant activities.* Consulting services are eligible for assistance under this part for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:
 - (1) *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with CDBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule. Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation.
 - (2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36, and are not subject to the compensation limitation of Level IV of the Executive Schedule.
- (e) *Recipient determinations required as a condition of eligibility.* In several instances under this subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.

- (f) *Means of carrying out eligible activities.* (1) Activities eligible under this subpart, other than those authorized under § 570.204(a), may be undertaken, subject to local law:
- (i) By the recipient through:
 - (A) Its employees, or
 - (B) Procurement contracts governed by the requirements of 24 CFR 85.36; or
 - (ii) Through loans or grants under agreements with subrecipients, as defined at § 570.500(c); or
 - (iii) By one or more public agencies, including existing local public agencies, that are designated by the chief executive officer of the recipient.
- (2) Activities made eligible under § 570.204(a) may only be undertaken by entities specified in that section.
- (g) *Limitation on planning and administrative costs.* No more than 20 percent of the sum of any grant, plus program income, shall be expended for planning and program administrative costs, as defined in §§ 570.205 and 507.206, respectively. Recipients of entitlement grants under subpart D of this part shall conform with this requirement by limiting the amount of CDBG funds obligated for planning plus administration during each program year to an amount no greater than 20 percent of the sum of its entitlement grant made for that program year (if any) plus the program income received by the recipient and its subrecipients (if any) during that program year.
- (h) *Reimbursement for pre-award costs.* The effective date of the grant agreement is the program year start date or the date that the consolidated plan is received by HUD, whichever is later. For a Section 108 loan guarantee, the effective date of the grant agreement is the date of HUD execution of the grant agreement amendment for the particular loan guarantee commitment.
- (1) Prior to the effective date of the grant agreement, a recipient may incur costs or may authorize a subrecipient to incur costs, and then after the effective date of the grant agreement pay for those costs using its CDBG funds, provided that:
- (i) The activity for which the costs are being incurred is included, prior to the costs being incurred, in a consolidated plan action plan, an amended consolidated plan action plan, or an application under subpart M of this part, except that a new entitlement grantee preparing to receive its first allocation of CDBG funds may incur costs necessary to develop its consolidated plan and undertake other administrative actions necessary to receive its first grant, prior to the costs being included in its consolidated plan;
 - (ii) Citizens are advised of the extent to which these pre-award costs will affect future grants;

- (iii) The costs and activities funded are in compliance with the requirements of this part and with the Environmental Review Procedures stated in 24 CFR Part 58;
 - (iv) The activity for which payment is being made complies with the statutory and regulatory provisions in effect at the time the costs are paid for with CDBG funds;
 - (v) CDBG payment will be made during a time no longer than the next two program years following the effective date of the grant agreement or amendment in which the activity is first included; and
 - (vi) The total amount of pre-award costs to be paid during any program year pursuant to this provision is no more than the greater of 25 percent of the amount of the grant made for that year or \$300,000.
- (2) Upon the written request of the recipient, HUD may authorize payment of pre-award costs for activities that do not meet the criteria at paragraph (h)(1)(v) or (h)(1)(vi) of this section, if HUD determines, in writing, that there is good cause for granting an exception upon consideration of the following factors, as applicable:
- (i) Whether granting the authority would result in a significant contribution to the goals and purposes of the CDBG program;
 - (ii) Whether failure to grant the authority would result in undue hardship to the recipient or beneficiaries of the activity;
 - (iii) Whether granting the authority would not result in a violation of a statutory provision or any other regulatory provision;
 - (iv) Whether circumstances are clearly beyond the recipient's control; or
 - (v) Any other relevant considerations.
- (i) *Urban Development Action Grant.* Grant assistance may be provided with Urban Development Action Grant funds, subject to the provisions of subpart G, for:
- (1) Activities eligible for assistance under this subpart; and
 - (2) Notwithstanding the provisions of § 570.207, such other activities as the Secretary may determine to be consistent with the purposes of the Urban Development Action Grant program.
- (j) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the CDBG program. Neither the Federal government nor a State or local government receiving funds under CDBG programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

- (2) Organizations that are directly funded under the CDBG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.
- (3) A religious organization that participates in the CDBG program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct CDBG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide CDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a CDBG-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.
- (4) An organization that participates in the CDBG program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- (5) CDBG funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds in this part. Sanctuaries, chapels, or other rooms that a CDBG-funded religious congregation uses as its principal place of worship, however, are ineligible for CDBG-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).
- (6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

[53 FR 34439, Sept. 6, 1988, as amended at 54 FR 47031, Nov. 8, 1989; 57 FR 27119, June 17, 1992; 60 FR 1943, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 60 FR 56910, Nov. 9, 1995; 61 FR 11476, Mar. 20, 1996; 61 FR 18674, Apr. 29, 1996; 65 FR 70215, Nov. 21, 2000; 68 FR 56404, Sept. 30, 2003; 69 FR 32778, June 10, 2004; 70 FR 76369, Dec. 23, 2005; 72 FR 46370, Aug. 17, 2007]

§ 570.201 Basic eligible activities.

CDBG funds may be used for the following activities:

- (a) *Acquisition.* Acquisition in whole or in part by the recipient, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 570.207.
- (b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 570.504.
- (c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in § 570.207(a), carried out by the recipient or other public or private nonprofit entities. (However, activities under this paragraph may be directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to public facilities and improvements, including those provided for in § 570.207(a)(1).) In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving CDBG assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in § 570.207(b)(3). Such facilities include shelters for the homeless; convalescent homes; hospitals, nursing homes; battered spouse shelters; halfway houses for run-away children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in § 570.204 may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph are subject to the policies in § 570.200(b).
- (d) *Clearance and remediation activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites and remediation of known or suspected environmental contamination. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD. Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205.
- (e) *Public services.* Provision of public services (including labor, supplies, and materials) including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare (but excluding the provision of income payments identified under § 570.207(b)(4)), homebuyer downpayment assistance, or recreational needs.

To be eligible for CDBG assistance, a public service must be either a new service or a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the unit of general local government (through funds raised by the unit or received by the unit from the State in which it is located) in the 12 calendar months before the submission of the action plan. (An exception to this requirement may be made if HUD determines that any decrease in the level of a service was the result of events not within the control of the unit of general local government.) The amount of CDBG funds used for public services shall not exceed paragraphs (e) (1) or (2) of this section, as applicable:

- (1) The amount of CDBG funds used for public services shall not exceed 15 percent of each grant, except that for entitlement grants made under subpart D of this part, the amount shall not exceed 15 percent of the grant plus 15 percent of program income, as defined in § 570.500(a). For entitlement grants under subpart D of this part, compliance is based on limiting the amount of CDBG funds obligated for public service activities in each program year to an amount no greater than 15 percent of the entitlement grant made for that program year plus 15 percent of the program income received during the grantee's immediately preceding program year.
 - (2) A recipient which obligated more CDBG funds for public services than 15 percent of its grant funded from Federal fiscal year 1982 or 1983 appropriations (excluding program income and any assistance received under Public Law 98-8), may obligate more CDBG funds than allowable under paragraph (e)(1) of this section, so long as the total amount obligated in any program year does not exceed:
 - (i) For an entitlement grantee, 15% of the program income it received during the preceding program year; plus
 - (ii) A portion of the grant received for the program year which is the highest of the following amounts:
 - (A) The amount determined by applying the percentage of the grant it obligated for public services in the 1982 program year against the grant for its current program year;
 - (B) The amount determined by applying the percentage of the grant it obligated for public services in the 1983 program year against the grant for its current program year;
 - (C) The amount of funds it obligated for public services in the 1982 program year; or,
 - (D) The amount of funds it obligated for public services in the 1983 program year.
- (f) *Interim assistance.* (1) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the recipient has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable:

- (i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings; and
 - (ii) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.
- (2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the recipient determines that such an emergency condition exists and requires immediate resolution, CDBG funds may be used for:
 - (i) The activities specified in paragraph (f)(1) of this section, except for the repair of parks and playgrounds;
 - (ii) The clearance of streets, including snow removal and similar activities, and
 - (iii) The improvement of private properties.
- (3) All activities authorized under paragraph (f)(2) of this section are limited to the extent necessary to alleviate emergency conditions.
- (g) *Payment of non-Federal share.* Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of CDBG activities, provided, that such payment shall be limited to activities otherwise eligible and in compliance with applicable requirements under this subpart.
- (h) *Urban renewal completion.* Payment of the cost of completing an urban renewal project funded under title I of the Housing Act of 1949 as amended. Further information regarding the eligibility of such costs is set forth in § 570.801.
- (i) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals families, businesses, nonprofit organizations, and farm operations where the assistance is (1) required under the provisions of § 570.606 (b) or (c); or (2) determined by the grantee to be appropriate under the provisions of § 570.606(d).
- (j) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by program activities assisted under this part.
- (k) *Housing services.* Housing services, as provided in section 105(a)(21) of the Act (42 U.S.C. 5305(a)(21)).
- (l) *Privately owned utilities.* CDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

- (m) *Construction of housing.* CDBG funds may be used for the construction of housing assisted under section 17 of the United States Housing Act of 1937.
- (n) *Homeownership assistance.* CDBG funds may be used to provide direct homeownership assistance to low- or moderate-income households in accordance with section 105(a) of the Act.
- (o) (1) The provision of assistance either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients) to facilitate economic development by:
- (i) Providing credit, including, but not limited to, grants, loans, loan guarantees, and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;
 - (ii) Providing technical assistance, advice, and business support services to owners of microenterprises and persons developing microenterprises; and
 - (iii) Providing general support, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, to owners of microenterprises and persons developing microenterprises.
- (2) Services provided this paragraph (o) shall not be subject to the restrictions on public services contained in paragraph (e) of this section.
- (3) For purposes of this paragraph (o), “persons developing microenterprises” means such persons who have expressed interest and who are, or after an initial screening process are expected to be, actively working toward developing businesses, each of which is expected to be a microenterprise at the time it is formed.
- (4) Assistance under this paragraph (o) may also include training, technical assistance, or other support services to increase the capacity of the recipient or subrecipient to carry out the activities under this paragraph (o).
- (p) *Technical assistance.* Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities. (The recipient must determine, prior to the provision of the assistance, that the activity for which it is attempting to build capacity would be eligible for assistance under this subpart C, and that the national objective claimed by the grantee for this assistance can reasonably be expected to be met once the entity has received the technical assistance and undertakes the activity.) Capacity building for private or public entities (including grantees) for other purposes may be eligible under § 570.205.
- (q) *Assistance to institutions of higher education.* Provision of assistance by the recipient to institutions of higher education when the grantee determines that such an institution has demonstrated a capacity to carry out eligible activities under this subpart C.

[53 FR 34439, Sept. 6, 1988, as amended at 53 FR 31239, Aug. 17, 1988; 55 FR 29308, July 18, 1990; 57 FR 27119, June 17, 1992; 60 FR 1943, Jan. 5, 1995; 60 FR 56911, Nov. 9, 1995; 61 FR 18674, Apr. 29, 1996; 65 FR 70215, Nov. 21, 2000; 67 FR 47213, July 17, 2002; 71 FR 30034, May 24, 2006]

§ 570.202 Eligible rehabilitation and preservation activities.

(a) *Types of buildings and improvements eligible for rehabilitation assistance.* CDBG funds may be used to finance the rehabilitation of:

- (1) Privately owned buildings and improvements for residential purposes; improvements to a single-family residential property which is also used as a place of business, which are required in order to operate the business, need not be considered to be rehabilitation of a commercial or industrial building, if the improvements also provide general benefit to the residential occupants of the building;
- (2) Low-income public housing and other publicly owned residential buildings and improvements;
- (3) Publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvement to the exterior of the building, abatement of asbestos hazards, lead-based paint hazard evaluation and reduction, and the correction of code violations;
- (4) Nonprofit-owned nonresidential buildings and improvements not eligible under § 570.201(c); and
- (5) Manufactured housing when such housing constitutes part of the community's permanent housing stock.

(b) *Types of assistance.* CDBG funds may be used to finance the following types of rehabilitation activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (a) of this section, except that rehabilitation of commercial or industrial buildings is limited as described in paragraph (a)(3) of this section.

- (1) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes;
- (2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures and improvements, abatement of asbestos hazards (and other contaminants) in buildings and improvements that may be undertaken singly, or in combination;

- (3) Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds if such financing is determined by the recipient to be necessary or appropriate to achieve the locality's community development objectives;
 - (4) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;
 - (5) Improvements to increase the efficient use of water through such means as water savings faucets and shower heads and repair of water leaks;
 - (6) Connection of residential structures to water distribution lines or local sewer collection lines;
 - (7) For rehabilitation carried out with CDBG funds, costs of:
 - (i) Initial homeowner warranty premiums;
 - (ii) Hazard insurance premiums, except where assistance is provided in the form of a grant; and
 - (iii) Flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, pursuant to § 570.605.
 - (8) Costs of acquiring tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation;
 - (9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section, under 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;
 - (10) Assistance for the rehabilitation of housing under section 17 of the United States Housing Act of 1937; and
 - (11) Improvements designed to remove material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to buildings and improvements eligible for assistance under paragraph (a) of this section.
- (c) *Code enforcement.* Costs incurred for inspection for code violations and enforcement of codes (e.g., salaries and related expenses of code enforcement inspectors and legal proceedings, but not including the cost of correcting the violations) in deteriorating or deteriorated areas when such enforcement together with public or

private improvements, rehabilitation, or services to be provided may be expected to arrest the decline of the area.

- (d) *Historic preservation.* CDBG funds may be used for the rehabilitation, preservation or restoration of historic properties, whether publicly or privately owned. 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. Historic preservation, however, is not authorized for buildings for the general conduct of government.
- (e) *Renovation of closed buildings.* CDBG funds may be used to renovate closed buildings, such as closed school buildings, for use as an eligible public facility or to rehabilitate such buildings for housing.
- (f) *Lead-based paint activities.* Lead-based paint activities pursuant to § 570.608.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1944, Jan. 5, 1995; 60 FR 56911, Nov. 9, 1995; 64 FR 50225, Sept. 15, 1999; 71 FR 30035, May 24, 2006]

§ 570.203 Special economic development activities.

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart that may be carried out as part of an economic development project. Guidelines for selecting activities to assist under this paragraph are provided at § 570.209. The recipient must ensure that the appropriate level of public benefit will be derived pursuant to those guidelines before obligating funds under this authority. Special activities authorized under this section do not include assistance for the construction of new housing. Activities eligible under this section may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination. Special economic development activities include:

- (a) The acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the recipient or public or private nonprofit subrecipients.
- (b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is appropriate to carry out an economic development project, excluding those described as ineligible in § 570.207(a). In selecting businesses to assist under this authority, the recipient shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods.
- (c) Economic development services in connection with activities eligible under this section, including, but not limited to, outreach efforts to market available forms of assistance; screening of applicants; reviewing and underwriting applications for

assistance; preparation of all necessary agreements; management of assisted activities; and the screening, referral, and placement of applicants for employment opportunities generated by CDBG-eligible economic development activities, including the costs of providing necessary training for persons filling those positions.

[53 FR 34439, Sept. 6, 1988, as amended at 60 FR 1944, Jan. 5, 1995; 71 FR 30035, May 24, 2006]

§ 570.204 Special activities by Community-Based Development Organizations (CBDOs).

- (a) *Eligible activities.* The recipient may provide CDBG funds as grants or loans to any CBDO qualified under this section to carry out a neighborhood revitalization, community economic development, or energy conservation project. The funded project activities may include those listed as eligible under this subpart, and, except as described in paragraph (b) of this section, activities not otherwise listed as eligible under this subpart. For purposes of qualifying as a project under paragraphs (a)(1), (a)(2), and (a)(3) of this section, the funded activity or activities may be considered either alone or in concert with other project activities either being carried out or for which funding has been committed. For purposes of this section:
- (1) Neighborhood revitalization project includes activities of sufficient size and scope to have an impact on the decline of a geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or the entire jurisdiction of a unit of general local government which is under 25,000 population;
 - (2) Community economic development project includes activities that increase economic opportunity, principally for persons of low- and moderate-income, or that stimulate or retain businesses or permanent jobs, including projects that include one or more such activities that are clearly needed to address a lack of affordable housing accessible to existing or planned jobs and those activities specified at 24 CFR 91.1(a)(1)(iii); activities under this paragraph may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination;
 - (3) Energy conservation project includes activities that address energy conservation, principally for the benefit of the residents of the recipient's jurisdiction; and
 - (4) To carry out a project means that the CBDO undertakes the funded activities directly or through contract with an entity other than the grantee, or through the provision of financial assistance for activities in which it retains a direct and controlling involvement and responsibilities.
- (b) *Ineligible activities.* Notwithstanding that CBDOs may carry out activities that are not otherwise eligible under this subpart, this section does not authorize:

- (1) Carrying out an activity described as ineligible in § 570.207(a);
 - (2) Carrying out public services that do not meet the requirements of § 570.201(e), except that:
 - (i) Services carried out under this section that are specifically designed to increase economic opportunities through job training and placement and other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services; and
 - (ii) Services of any type carried out under this section pursuant to a strategy approved by HUD under the provisions of 24 CFR 91.215(e) shall not be subject to the limitations in § 570.201(e)(1) or (2), as applicable;
 - (3) Providing assistance to activities that would otherwise be eligible under § 570.203 that do not meet the requirements of § 570.209; or
 - (4) Carrying out an activity that would otherwise be eligible under § 570.205 or § 570.206, but that would result in the recipient's exceeding the spending limitation in § 570.200(g).
- (c) *Eligible CBDOs.* (1) A CBDO qualifying under this section is an organization which has the following characteristics:
- (i) Is an association or corporation organized under State or local law to engage in community development activities (which may include housing and economic development activities) primarily within an identified geographic area of operation within the jurisdiction of the recipient, or in the case of an urban county, the jurisdiction of the county; and
 - (ii) Has as its primary purpose the improvement of the physical, economic or social environment of its geographic area of operation by addressing one or more critical problems of the area, with particular attention to the needs of persons of low and moderate income; and
 - (iii) May be either non-profit or for-profit, provided any monetary profits to its shareholders or members must be only incidental to its operations; and
 - (iv) Maintains at least 51 percent of its governing body's membership for low- and moderate-income residents of its geographic 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; and
 - (v) Is not an agency or instrumentality of the recipient and does not permit more than one-third of the membership of its governing body to be appointed by, or to consist of, elected or other public officials or employees

or officials of an ineligible entity (even though such persons may be otherwise qualified under paragraph (c)(1)(iv) of this section); and

- (vi) Except as otherwise authorized in paragraph (c)(1)(v) of this section, requires the members of its governing body to be nominated and approved by the general membership of the organization, or by its permanent governing body; and
 - (vii) Is not subject to requirements under which its assets revert to the recipient upon dissolution; and
 - (viii) Is free to contract for goods and services from vendors of its own choosing.
- (2) A CBDO that does not meet the criteria in paragraph (c)(1) of this section may also qualify as an eligible entity under this section if it meets one of the following requirements:
- (i) Is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; or
 - (ii) Is an SBA approved Section 501 State Development Company or Section 502 Local Development Company, or an SBA Certified Section 503 Company under the Small Business Investment Act of 1958, as amended; or
 - (iii) Is a Community Housing Development Organization (CHDO) under 24 CFR 92.2, designated as a CHDO by the HOME Investment Partnerships program participating jurisdiction, with a geographic area of operation of no more than one neighborhood, and has received HOME funds under 24 CFR 92.300 or is expected to receive HOME funds as described in and documented in accordance with 24 CFR 92.300(e).
- (3) A CBDO that does not qualify under paragraph (c)(1) or (2) of this section may also be determined to qualify as an eligible entity under this section if the recipient demonstrates to the satisfaction of HUD, through the provision of information regarding the organization's charter and by-laws, that the organization is sufficiently similar in purpose, function, and scope to those entities qualifying under paragraph (c)(1) or (2) of this section.

[60 FR 1944, Jan. 5, 1995, as amended at 71 FR 30035, May 24, 2006]

§ 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

- (a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to:

- (1) Comprehensive plans;
- (2) Community development plans;
- (3) Functional plans, in areas such as:
 - (i) Housing, including the development of a consolidated plan;
 - (ii) Land use and urban environmental design;
 - (iii) Economic development;
 - (iv) Open space and recreation;
 - (v) Energy use and conservation;
 - (vi) Floodplain and wetlands management in accordance with the requirements of Executive Orders 11988 and 11990;
 - (vii) Transportation;
 - (viii) Utilities; and
 - (ix) Historic preservation.
- (4) Other plans and studies such as:
 - (i) Small area and neighborhood plans;
 - (ii) Capital improvements programs;
 - (iii) Individual project plans (but excluding engineering and design costs related to a specific activity which are eligible as part of the cost of such activity under §§ 570.201-570.204);
 - (iv) The reasonable costs of general environmental, urban environmental design and historic preservation studies; and general environmental assessment- and remediation-oriented planning related to properties with known or suspected environmental contamination. However, costs necessary to comply with 24 CFR part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this part, are eligible as part of the cost of such activities under §§ 570.201-570.204. Costs for such specific assessments and clearances may also be incurred under this paragraph but would then be considered planning costs for the purposes of § 570.200(g);
 - (v) Strategies and action programs to implement plans, including the development of codes, ordinances and regulations;

- (vi) Support of clearinghouse functions, such as those specified in Executive Order 12372; and
 - (vii) Analysis of impediments to fair housing choice.
 - (viii) Developing an inventory of properties with known or suspected environmental contamination.
- (5) [Reserved]
- (6) Policy—planning—management—capacity building activities which will enable the recipient to:
- (i) Determine its needs;
 - (ii) Set long-term goals and short-term objectives, including those related to urban environmental design;
 - (iii) Devise programs and activities to meet these goals and objectives;
 - (iv) Evaluate the progress of such programs and activities in accomplishing these goals and objectives; and
 - (v) Carry out management, coordination and monitoring of activities necessary for effective planning implementation, but excluding the costs necessary to implement such plans.

[53 FR 34439, Sept. 6, 1988, as amended at 56 FR 56127, Oct. 31, 1991; 60 FR 1915, Jan. 5, 1995; 71 FR 30035, May 24, 2006]

§ 570.206 Program administrative costs.

Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under this part and, where applicable, housing activities (described in paragraph (g) of this section) covered in the recipient's housing assistance plan. This does not include staff and overhead costs directly related to carrying out activities eligible under § 570.201 through § 570.204, since those costs are eligible as part of such activities.

- (a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not necessarily limited to, necessary expenditures for the following:

- (1) Salaries, wages, and related costs of the recipient's staff, the staff of local public agencies, or other staff engaged in program administration. In charging costs to this category the recipient may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The recipient may use only one of these methods during the program year (or the grant period for grants under subpart F). Program administration includes the following types of assignments:
 - (i) Providing local officials and citizens with information about the program;
 - (ii) Preparing program budgets and schedules, and amendments thereto;
 - (iii) Developing systems for assuring compliance with program requirements;
 - (iv) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;
 - (v) Monitoring program activities for progress and compliance with program requirements;
 - (vi) Preparing reports and other documents related to the program for submission to HUD;
 - (vii) Coordinating the resolution of audit and monitoring findings;
 - (viii) Evaluating program results against stated objectives; and
 - (ix) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i) through (viii) of this section.
 - (2) Travel costs incurred for official business in carrying out the program;
 - (3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and
 - (4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.
- (b) *Public information.* The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of activities being assisted with CDBG funds.

- (c) *Fair housing activities.* Provision of fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601-20) by making all persons, without regard to race, color, religion, sex, national origin, familial status or handicap, aware of the range of housing opportunities available to them; other fair housing enforcement, education, and outreach activities; and other activities designed to further the housing objective of avoiding undue concentrations of assisted persons in areas containing a high proportion of low and moderate income persons.
- (d) [Reserved]
- (e) *Indirect costs.* Indirect costs may be charged to the CDBG program under a cost allocation plan prepared in accordance with OMB Circular A-21, A-87, or A-122 as applicable.
- (f) *Submission of applications for federal programs.* Preparation of documents required for submission to HUD to receive funds under the CDBG and UDAG programs. In addition, CDBG funds may be used to prepare applications for other Federal programs where the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.
- (g) *Administrative expenses to facilitate housing.* CDBG funds may be used for necessary administrative expenses in planning or obtaining financing for housing as follows: for entitlement recipients, assistance authorized by this paragraph is limited to units which are identified in the recipient's HUD approved housing assistance plan; for HUD-administered small cities recipients, assistance authorized by the paragraph is limited to facilitating the purchase or occupancy of existing units which are to be occupied by low and moderate income households, or the construction of rental or owner units where at least 20 percent of the units in each project will be occupied at affordable rents/costs by low and moderate income persons. Examples of eligible actions are as follows:
- (1) The cost of conducting preliminary surveys and analysis of market needs;
 - (2) Site and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation, and "sketch drawings," but excluding architectural, engineering, and other details ordinarily required for construction purposes, such as structural, electrical, plumbing, and mechanical details;
 - (3) Reasonable costs associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 Housing Assistance Payments Program pursuant to 24 CFR parts 880-883;
 - (4) Fees associated with processing of applications for mortgage or insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA);

- (5) The cost of issuance and administration of mortgage revenue bonds used to finance the acquisition, rehabilitation or construction of housing, but excluding costs associated with the payment or guarantee of the principal or interest on such bonds; and
- (6) Special outreach activities which result in greater landlord participation in Section 8 Housing Assistance Payments Program-Existing Housing or similar programs for low and moderate income persons.
- (h) *Section 17 of the United States Housing Act of 1937.* Reasonable costs equivalent to those described in paragraphs (a), (b), (e) and (f) of this section for overall program management of the Rental Rehabilitation and Housing Development programs authorized under section 17 of the United States Housing Act of 1937, whether or not such activities are otherwise assisted with funds provided under this part.
- (i) Whether or not such activities are otherwise assisted by funds provided under this part, reasonable costs equivalent to those described in paragraphs (a), (b), (e), and (f) of this section for overall program management of:
 - (1) A Federally designated Empowerment Zone or Enterprise Community; and
 - (2) The HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 note).

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 54 FR 37411, Sept. 8, 1989; 60 FR 56912, Nov. 9, 1995; 69 FR 32778, June 10, 2004]

§ 570.207 Ineligible activities.

The general rule is that any activity that is not authorized under the provisions of §§ 570.201-570.206 is ineligible to be assisted with CDBG funds. This section identifies specific activities that are ineligible and provides guidance in determining the eligibility of other activities frequently associated with housing and community development.

- (a) The following activities may not be assisted with CDBG funds:
 - (1) *Buildings or portions thereof, used for the general conduct of government* as defined at § 570.3(d) cannot be assisted with CDBG funds. This does not include, however, the removal of architectural barriers under § 570.201(c) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be used in the provision of a building for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible, provided such acquisition meets a national objective described in § 570.208.
 - (2) *General government expenses.* Except as otherwise specifically authorized in this subpart 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.

- (3) *Political activities.* CDBG funds shall 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.
- (b) The following activities may not be assisted with CDBG funds unless authorized under provisions of § 570.203 or as otherwise specifically noted herein or when carried out by an entity under the provisions of § 570.204.
- (1) *Purchase of equipment.* The purchase of equipment with CDBG funds is generally ineligible.
- (i) *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 § 570.201(c).
- (ii) *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under § 570.201(c).
- (iii) *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 Circular 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 firefighting equipment, or when such items constitute all or part of a public service pursuant to § 570.201(e).
- (2) *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, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDBG funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under § 570.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:
- (i) Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with a 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 recreational areas, and the replacement of expended street light bulbs; and

- (ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.
- (3) *New housing construction.* For the purpose of this paragraph, activities in support of the development of low or moderate income housing including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing pre-construction costs set forth in § 570.206(g), are not considered as activities to subsidize or assist new residential construction. CDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, except:
- (i) As provided under the last resort housing provisions set forth in 24 CFR Part 42;
 - (ii) As authorized under § 570.201(m) or (n);
 - (iii) When carried out by an entity pursuant to § 570.204(a);
- (4) *Income payments.* The general rule is that CDBG funds may not be used for income payments. For purposes of the CDBG program, “income payments” means 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 to the provider of such items or services on behalf of an individual or family.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1945, Jan. 5, 1995; 60 FR 56912, Nov. 9, 1995; 65 FR 70215, Nov. 21, 2000]

Appendix K: Survey Method

Notice CPD 14-013



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

Special Attention of:

- CPD Field Office Directors
- Entitlement CDBG Grantees
- State CDBG Grantees

Notice: CPD 14-013

Issued: September 23, 2014

This Notice is effective until amended, superseded, or rescinded

Cross References: 24 CFR 570

Subject: Guidelines for Conducting Income Surveys to Determine the Percentage of Low- and Moderate-Income (LMI) Persons in the Service Area of a Community Development Block Grant (CDBG)-Funded Activity

I. Purpose

This Notice describes guidelines (methodologies) for conducting income surveys to ascertain whether or not a Community Development Block Grant (CDBG)-funded activity designed to benefit an area generally qualifies as primarily benefiting LMI persons. Section 105(c)(2)(A)(i) of the Housing and Community Development Act (HCDA) of 1974 (as amended) stipulates that an activity designed to address the needs of LMI persons of an area shall be considered to principally benefit LMI persons if "...not less than 51 percent of the residents of such area are persons of low and moderate income." HUD's regulatory requirements for conducting a survey to determine the percentage of LMI persons in the service area of a CDBG-funded activity are located at 24 CFR 570.208(a)(1)(vi) for the Entitlement program and 24 CFR 570.483(b)(1)(i) for the State program.

HUD provides the LMI Summary Data (LMISD) for grantees to use in determining compliance with the CDBG National Objective of providing benefit to LMI persons on an area basis.¹ The LMISD must be used "to the fullest extent feasible" unless a grantee believes that the data are not current or do not provide enough information regarding income levels in the entire service area.²

¹ Policy guidance regarding the 2014 LMISD for Entitlement Grantees and nonentitlement Hawaiian Grantees is located at: <http://portal.hud.gov/hudportal/documents/huddoc?id=14-11cpdn.pdf>; Policy guidance for the State CDBG program is located at:

<http://portal.hud.gov/hudportal/documents/huddoc?id=14-10cpdn.pdf>

² Information on how the LMISD is calculated is located at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/systems/census

The procedures described in this Notice are basic survey methodologies that will yield acceptable levels of accuracy. It is recommended that CDBG grantees use these methodologies or other comparable methods to ascertain that at least 51 percent of the residents of the service area of a CDBG-funded activity are LMI persons. If an Entitlement grantee chooses another survey method, the grantee is required to demonstrate that the method meets standards of statistical reliability that are comparable to the *American Community Survey* (ACS) [which has replaced the decennial census (24 CFR 570.208(a)(1)(vi))]. Prior to conducting a survey, Entitlement grantees are required to have their survey instruments and methodology reviewed and approved by their local HUD Community Planning and Development (CPD) Office. State CDBG regulations at 24 CFR 570.483(b)(1)(a) require that the survey be methodologically sound.

Confidentiality:

If a grantee chooses to conduct a survey, the answers provided by respondents must be kept confidential. People are more likely to provide honest answers if the answers are to remain anonymous. It is recommended that the respondent's name, address, and telephone number appear only on the cover sheet of the questionnaire. After the survey is completed, the cover sheet may be numbered and separated from the actual interview sheet. If the cover sheets and the questionnaires are both numbered, they can be matched if necessary. It is suggested that the grantee make reasonable efforts to protect the privacy of the respondents and follow applicable State and local laws regarding privacy and obligations of confidentiality.

II. Definition of Terminologies

CDBG Regulatory Definitions of *Family*, *Household*, and *Income*:

States are subject to the definitions of income (low, moderate, etc.) at 24 CFR Part 5 however, they may establish their own definitions of income pursuant to 24 CFR 570.481(c), provided that such definitions are explicit, reasonable, and not plainly inconsistent with the HCDA of 1974 (as amended). Definitions of income established by the State for the purpose of complying with the area benefit National Objective must be included in the State's CDBG Implementation Manual. Entitlement grantees must follow the definitions at 24 CFR Part 5 and 24 CFR 570.3

1. Pursuant to 24 CFR 5.403, family includes but not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:
 - A single person, who may be an elderly person, displaced person, nearly-elderly person, or any other single person; or
 - A group of persons residing together, and such group includes, but not limited to:
 - i. A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size).

- ii. An elderly family—a family whose head (co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living with one or more live-in aides. (A live-in aide is a person who resides with one or more elderly persons or near elderly persons, or persons with disabilities).
 - iii. A near-elderly family—a family whose head (co-head), spouse, or sole member is a person who is at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.
 - iv. Disabled family—a family whose head (including co-head), spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.
 - v. A displaced family—a family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.
 - vi. The remaining member of a tenant family. vii. A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.
- 2. Pursuant to 24 CFR 570.3, household means all persons who occupy a housing unit. A household may consist of persons living together or any other group of related or unrelated persons who share living arrangements, regardless of actual or perceived sexual orientation, gender identity, or marital status.
- 3. Entitlement grantees may select any one of the two definitions of income:
 - i. Annual income as defined at 24 CFR 5.609 (except that if the CDBG assistance being provided is homeowner rehabilitation under 24 CFR 570.202, the value of the homeowner's primary residence may be excluded from any calculation of net family assets); or
 - ii. Adjusted gross income as defined for the purpose of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.
- 4. Pursuant to 24 CFR Part 5 and 24 CFR 570.3, low-income person refers to member of a family that has an income equal to or less than the Section 8 very low-income limit established by HUD. Unrelated individuals shall be considered as one-person families for this purpose. (The Section 8 very low-income limit is income that does not exceed 50 percent of the median income for the area, as adjusted by HUD.) Unrelated individuals shall be considered as one-person families for this purpose.
- 5. Moderate-income person means a member of a family that has an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Terms Used in Survey Research:

1. Respondent refers to the person who is responding to the questionnaire or interview.
2. Rate of response is expressed as a percent; it is the number of households participating in a survey (number of responses) divided by the number of households in the sample.
3. Population refers to the group whose characteristics you seek to estimate.
4. Sample refers to a portion of the population under study. Samples are used to draw inferences about the population.
5. Sampling is the process of selecting a group of respondents from the population.
6. Simple random sampling is a type of probability selection process in which the units composing a population are assigned numbers and a set of random numbers is then generated, and the units having those numbers are selected to make up the sample.
7. Representativeness refers to the quality of a sample having the same distribution of characteristics as the population from which it is selected.

III. Determining the Service Area of a CDBG-Funded Activity

The service area is the entire area to be served by the CDBG-funded activity. One of the crucial aspects of qualifying an activity as principally benefiting LMI persons on an area basis is the proper identification of the (boundaries of the) service area. The boundaries of the service area must be defined before deciding which data to use to determine the percentage of LMI persons and not vice versa. The principal responsibility for determining the area served by the activity rests with each CDBG grantee.

HUD will generally accept the service area determined by CDBG grantees unless there is substantial evidence to the contrary. In assessing such evidence, the full range of direct effects of the assisted activity will be considered. (The activities when taken as a whole must not benefit moderate income persons to the exclusion of low income persons.) Also, the area to be served by a CDBG-funded activity does not need to be coterminous with census tracts or other officially recognized boundaries, but it is critical that the service area be the entire area served by the activity [see 24 CFR 570.208(a)(1)(i) for the Entitlement program and 24CFR 570.483(b)(1)(i) for the State program].

Entitlement Program:

Once it has been determined that the benefits of the activity will be available to all residents of a particular service area, the activity may meet the LMI Area Benefit national objective if the boundaries of the service area are clearly defined and at least 51 percent of the residents are LMI persons. Factors to be considered in defining the service area include:

1. Nature of the activity: In determining the boundaries of the area served by a facility, one must consider whether the facility is adequately equipped to meet the needs of the residents. For example, a park that is expected to serve an entire neighborhood cannot be too small or have so little equipment (number of swings, slides, etc.) that it would only be able to serve a handful of persons at a time. Conversely, a park that contains three ball fields or a ball field with grandstands that can accommodate hundreds of spectators cannot 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 commuting.
2. Location of the activity: Where an activity is located may affect its capacity to serve particular areas, especially when the location of a comparable activity is considered. For example, a library cannot reasonably 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 neighborhoods as well as the one in which it is located. The grantee may even carry out activities that are outside its jurisdiction if this is done in accordance with 24 CFR 570.309.
3. Accessibility issues: If a geographic barrier such as a river or an interstate highway 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 the service area. Language barriers might also constitute an accessibility issue in some circumstances.

For certain entitlement grantees, the percentage of LMI persons in the service area can be lower than 51 percent and the area can still qualify under the *exception criteria* provision (or *upper quartile criterion*).³ The general rule requires that area benefit activities serve areas where the concentration of LMI persons is at least 51 percent. Section 105(c)(2)(A)(ii) of the HCDA provides an *exception* to the general rule for determining whether CDBG-assisted area benefit activities principally benefit LMI persons. The *exception criteria* allows certain grantees to undertake the same types of activities in areas where the proportion of LMI persons in the area is within the highest quartile of all areas in the grantee's jurisdiction in terms of the degree of concentration of LMI persons. Grantees qualify for this exception when less than one-quarter of the populated census tracts in its jurisdiction contain at least 51 percent LMI persons. Data at the block group level are to be used to determine qualification under the exception criteria. The *exception criteria* do not apply to the State CDBG program.

³ The exception criteria—24 CFR 570.208(a)(1)(ii)—is located at: http://www.ecfr.gov/cgi-bin/textidx?c=ecfr&sid=d60d662bd91f849ee36d0e524aac0781&rgn=div5&view=text&node=24:3.1.1.3.4&idno=24%20-%2024:3.1.1.3.4.3.1.9#se24.3.570_1208

State Program:

One aspect of service areas in non-entitlement areas is that a census tract may cover an entire city or there may be only two or three census tracts in an entire county. Therefore, scenarios which states and state grant recipients commonly face include the following:

1. The service area comprises only a small portion of the unit of general local government, or of a census tract. In such situations, information on the unit of government or the census tract is not useful because the residents of the service area make up only a small fraction of the total, and their characteristics may not mirror those of the larger area. A survey of the residents of the service area may be the most appropriate way to determine whether the service area qualifies under the LMI criterion. Examples of activities in which this may be encountered include: extending water lines to serve rural settlements in a county; construction of a neighborhood tot lot serving one subdivision in a city where the entire city is one census tract.
2. The service area includes all or part of several units of general local government and may contain both incorporated and unincorporated areas. HUD's LMISD may be usable for only a portion of the service area; therefore, the State and its grant recipients may need supplementary survey data for the other portions of the service area. It may be necessary to survey a large area to determine the percentage of service area residents who are LMI. Examples of activities include: (1) construction of a rural water system which serves more than one incorporated city plus portions of the surrounding unincorporated area of two counties in which the cities are located; (2) construction of a new fire station in a city where the municipal fire department provides, through contract, fire protection service for two adjoining townships (one of which is in a different county). The service area may be a sparsely populated rural area.
3. For such an area, a census of the entire population may be undertaken and the percentage of LMI persons calculated from the entire population of the service area, and not from the proportion of participants who responded to the survey. For example, if a small rural town with a population of 640 conducts a census of the entire population to determine the percentage of LMI persons and gets an 80 percent response rate. Fifty-one percent of 640 is 326, and 80 percent of 640 is 512. Of the 512 respondents, 326 of them should be LMI persons. It is inaccurate to use 51 percent of 512 which is 261.

IV. Performing LMI Qualification

Once the boundaries of the service area of the CDBG-funded activity have been defined, the next step is to determine the required percentage of residents that are LMI persons. To determine the percentage of LMI persons in the service area, grantees may use HUD's LMISD.

For the Entitlement program, CDBG Regulations at 24 CFR 570.208(a)(1)(vi) require that the results of the survey meet standards of statistical reliability comparable to that of the ACS for areas of similar size to determine the percentage of LMI persons in the service area of a CDBG-funded activity. A statistically reliable survey entails the following:

1. The grantee must clearly document the survey method used: mail questionnaire, face-to-face or telephone interviews, etc. (Each method has advantages and disadvantages.)
2. Participants for the survey must be selected through a random sampling process, and replacements for non-respondents must also be selected through the same random sampling process.

For the State program, CDBG regulations at 24 CFR 570.483(b)(1)(i) require that grantees conduct surveys that are methodologically sound to determine the percentage of LMI persons in the service area of a CDBG-funded activity. Seasonal (or part-time) residents (e.g., migrant farmers who reside in manufactured homes) may not participate in an income survey if their benefit of a service or an activity is incidental. For example, the use of a library or senior center by seasonal residents would be considered an incidental benefit. Seasonal residents may participate in income surveys for CDBG-funded activities such as installation of sewer lines and sewage treatment plants, etc.

Seasonal (or part-time) residents (e.g., migrant farmers who reside in manufactured homes) may not participate in an income survey if their benefit of a service or an activity is incidental. For example, the use of a library or senior center by seasonal residents would be considered an incidental benefit. Seasonal residents may participate in income surveys for CDBG-funded activities such as installation of sewer lines and sewage treatment plants, etc.

The ACS defines residency in terms of “current residence” – a unit is defined as the current residence of a household if the household is living in the unit for at least two months upon receipt of the survey, even if the household lives somewhere else for most of the year. In contrast, the long form uses a “usual residence” rule, i.e., the place where a person lives and sleeps most of the time. The differences in the definition of residence have consequences for vacancy and homeownership estimates.

V. A Summary of Steps in Conducting LMI Surveys

When HUD’s LMISD data are not used in documenting LMI benefit on an area basis, CDBG grantees must comply with the standards for conducting surveys located at 24 CFR 570.208(a)(1)(vi) for the Entitlement program and 24 CFR 570.483(b)(1)(i) for the State CDBG program. Anybody who has not conducted a survey can still do so by following a systematic approach. This guide describes procedures that may be used to determine whether the requisite percentage of the residents of a service area (51% or the exception percentage, as applicable) of a CDBG-funded activity are LMI persons. This guide does not restrict the CDBG grantee to any one type of survey methodology.

The choice of the type of survey method depends on the demographic composition of the service area. If the grantee chooses an electronic (i.e., web-based) survey, the assumption is that residents of the service area all have access to the Internet. If people do not have internet service at home, an additional burden is placed on them on how to respond to the survey. The rate of response is likely to decrease when respondent burden increases. Regardless of the type of survey method, consideration must be given to the needs of residents with limited English proficiency as well as residents with visual/hearing/speech impairments. The steps in conducting surveys are as follows:

Step 1: Select the Type of Survey:

Decide which survey method to use (i.e. telephone, door-to-door, mail, or web-based questionnaire,) and base your decision on available staff, size of the sample you need, and the means you have available for identifying samples for the survey.

Step 2: Develop the Questionnaire:

If you choose to conduct a mail questionnaire, use standard 12-point print and do not include too many questions on one sheet of paper. Generally, follow these guidelines:

- The questions in the questionnaire should be short, simple and efficient. Keep the language as simple as possible. Avoid bias. Do not induce particular answers. Include other questions, if you like, but make sure that the survey does not take too long.
- Use the correct income limits (correct amount, correct year, and correct service area) for the survey instrument. (Contact your local HUD CPD Office when in doubt).
- Avoid burdensome questions—i.e., questions with no correct answers. Such questions increase respondent burden.

Step 3: Select the Sample:

The grantee should:

- Define the service area: The definition must include the boundaries of the service area and the size of the population for which the percentage of LMI persons is to be determined.
- Identify the sample: Select a procedure for identifying the sample in the service area and identify a procedure for randomly selecting the sample. Obtain a complete list of residents, addresses, and telephone numbers in the service area.
- Determine the sample size: Determine the sample size needed in order to achieve an acceptable level of accuracy.
- Randomly select the sample: Make sure you add families to replace refusals and that the entire service area is covered—that is, be certain that you have not excluded certain areas or groups of people. Commercial (retail and industrial) sites, vacant lots and abandoned and vacant homes should be excluded from the sample because they do not have any effect on the outcome of the survey. Use an acceptable random selection method and decide the number of attempts to obtain responses before selecting replacements.
- Ascertain that the selection of subjects to be included in the sample and replacement procedures are structured to avoid bias; for example, daytime or weekday attempts may skew response rates in favor of unemployed, retired, or single income families.

Step 4: Conduct the Survey:

If you choose to conduct an interview survey, it is strongly recommended that you select and train your interviewers. The quality of the survey results depends on how well the survey is conducted. Even in small studies involving a single researcher-interviewer, it is important to organize the interviewing process before beginning the formal process. Make sure the interviewers are comfortable with the questions. The training process includes the following major topics:

- Describing the entire survey
- Identifying the sponsor of the survey
- Providing the interviewer with a working knowledge of survey research
- Explaining the survey sampling logic and process
- Explaining interview bias
- ‘Walking through’ the interview process
- Explaining respondent selection process
- Explaining scheduling and supervision
- Explaining follow-up for non-response

Make contact with the residents of the service area; consider writing or telephoning to let people know in advance that you are coming. Make multiple attempts to establish contact and reschedule another interview if the initial contact has not resulted in an interview. Replace the families you have written off as “unreachable.”

Step 5: Analyze the Results:

Complete the LMI Worksheet and record the calculated percentage of LMI persons.

Step 6: Document and Save Your Results:

- Save the completed questionnaires—preferably in a confidential manner. Use code numbers to conceal the identity of respondents
- Save the list of respondents—preferably in a form that does not identify their responses
- Save the description of the service area, the list of your sampling procedures (original sample, interview sheets or completed questionnaires, tabulations and a list or memo describing how other survey elements were handled, including replacements and replacement methods). Save your data.

VI. Procedures for Conducting a Methodologically-Sound Survey

Step 1: Selecting the Survey Type:

The most commonly used surveys for this application are: (a) mail survey (or self-administered questionnaire), (b) face-to-face (or door-to-door) interviews, (c) web-based surveys, and (d) telephone interviews (see Table A). For telephone and door-to-door surveys, it might be useful for the survey team to notify people by mail in advance to let them know that they will be contacted for a survey. This can overcome resistance due to ‘telemarketing fatigue.’

(a) Mail (or Self-Administered) Questionnaires:

A questionnaire is a set of questions sent by mail accompanied by a letter of explanation and a self-addressed stamped envelope for returning the questionnaire. The respondent is expected to complete the questionnaire, put it in the envelope and return it. To overcome people thinking a questionnaire is too burdensome, researchers often send a self-mailing questionnaire that can be folded in a certain way so that the return address appears on the outside. That way, the respondent does not risk losing the envelope.

Advantages of Mail Questionnaires:

- Covers large geographic area
- Provides an opportunity for honest answers to very personal questions
- No travel required
- Enables researcher to target a particular segment of the population
- Allows respondents to complete the questionnaire at their convenience

Disadvantages of Mail Questionnaires:

- May have possible coverage errors; for example, address lists might be inaccurate or out of date (duplicate address, incomplete or wrong addresses)
- Not appropriate for requesting detailed written responses
- May have a low return rate if too lengthy, poorly worded, or seems too personal
- May not have anyone available to assist the respondent with questions, especially if the questions are in English but the respondent's primary language is not English. Provisions must be made to provide non-English-speaking residents with a questionnaire in their own language. Also, provisions must be made for collecting responses from visually-impaired residents
- Easiest for people to disregard, postpone, misplace or forget about it
- Needs to allow longer time to collect responses
- Costly—must pay for return postage to get a decent response rate; also you have paid for postage even for those that aren't returned
- It's all or nothing—people will either do it all or not at all; with phone or in-person surveys, one might at least get some answers
- Lack of control over who fills out the questionnaire (for example, a child)
- People are more likely to give an inaccurate answer or provide the answer they think you want

HUD does not recommend mail surveys unless at least one follow-up letter or telephone call is made to obtain an adequate response rate. Combining a mail survey with a follow-up letter or telephone call may improve the rate of response.

(b) Face-to-Face (Door-to-Door) Interviews:

Face-to-face (door-to-door) interviews are where an interviewer asks questions of another (the respondent) in a face-to-face encounter. It involves more work since the interviewer must go and knock on doors in order to obtain interviews. However, in small areas this type of survey may be the easiest because one can define the service area by its geographic boundaries and develop procedures for sampling within those boundaries so that a list of families living in the area is not required. Interviewers have to be well trained to ensure that procedures are consistently followed and that responses are not influenced by facial expressions.

Advantages of Face-to-Face Interviews:

- Is a very reliable method of data-collection
- Researcher has full range and depth of information
- Interview may be scheduled to suit respondent's daily agenda
- Respondent has the option to ask for clarifications
- Target population may be easily located and defined
- People may be willing to talk longer, face-to-face, particularly with in-home interviews that have been arranged in advance

Disadvantages of Face-to-Face Interviews:

- Responses may be less candid and less thoughtful
- Interviewer's presence and characteristics may induce bias responses
- Interviewer is required to go to the respondent's location
- Residents who prefer anonymity may be reluctant to respond
- May reach a smaller sample
- Lengthy responses must be sorted and coded
- Can take too much time
- Costs more per interview than other survey methods; particularly true in rural areas where travel time is a major factor
- May not be able to gain access to the house (e.g., locked gates, guard dogs, "no trespassing signs," etc.)
- Translators may be needed when dealing with non-English speakers

(c) Web-based Survey:

A web-based survey is a data collection method whereby the questionnaire is administered online (i.e., through the internet). The questionnaire in a web-based survey may be the same as the questionnaire in mail surveys; the only difference is that rather than send it to the respondent by mail, the questionnaire is administered online.

Advantages:

- Respondent identity can be readily protected (unlike in paper questionnaires)
- Can be used to collect a large amount of data in major urban areas in a relatively short amount of time
- The privacy afforded by the computer makes it easier for respondents to provide honest answers to very personal questions
- No travel is required if respondent has internet at home
- Respondents are able to complete the questionnaire at their convenience within the time limit
- Responses can be automatically validated
- Automatic validation of responses enables the researcher to proceed directly to data analysis
- Surveys can be designed to accommodate those with visual, speech or hearing impairments, and can be translated into other languages to accommodate those with Limited English Proficiency

Disadvantages:

- Low-income families may not have internet at home and may be unwilling to go to a public library in order to respond to the survey therefore, it may be difficult getting a representative sample of the target population
- Also, the lack of internet at home and unwillingness to go to a public library to use the internet to participate in the survey may lead to a low response rate
- Easiest for people to disregard due to telemarketing fatigue
- It is costly to incorporate features that allow participants to respond only once
- Not easy to do follow-ups so as to improve response rate
- Equipment malfunction such as browser freeze or server crash may cause participant not to finish the process resulting in missing data
- A web survey is practically impossible in areas devastated by natural disasters
- Lack of control over who is completing the web survey

(d) Telephone Interviews:

A telephone interview is a data collection technique in which one person (an interviewer) asks questions of another (the respondent) via telephone. Telephone numbers of potential participants must be selected randomly. The interviewer must ensure that the respondent is someone competent and knowledgeable enough to answer questions about the family income status. In a telephone survey, you must devise a method for contacting those families without telephones or those with unlisted numbers. Hence it may be preferable to conduct door-to-door interviews in small service areas, especially in rural areas.

Advantages of Telephone Interviews:

- Relatively easy to conduct
- Saves money and time
- Appearance and demeanor of interviewer do not influence the respondent
- Respondents may be more honest in giving socially disapproved or sensitive answers due to greater anonymity for respondent
- Interviewer may use an alias rather than his/her real name for privacy or to conceal ethnicity if relevant to the study
- Allows interviewer to ask follow up questions
- No fear for personal safety

Disadvantages of Telephone Interviews:

- Respondents may be hostile to interviewers because of experience with previous telemarketing sales calls disguised as surveys
- Respondents may terminate the interview abruptly
- The interviewer may have problems reaching potential respondents by telephone because of the prevalence of answering machines that screen telephone calls
- May not be able to reach households with unlisted numbers, no telephone at all, or families that use only cell phones
- Some people do not like the intrusion of a telephone call to their homes
- Difficulty of reaching people due to reasons such as conflicting schedules
- It may be easier to be less candid to someone on the phone than in person
- Difficult to get accurate answers from non-English speakers
- Provisions must also be made for collecting responses from hearing or speaking-impaired residents.
- May not be able to reach residents who, due to cultural norms, do not use telephones

Since there are advantages and disadvantages to each approach, a grantee may use multiple methods to ensure equal access to and hence maximize response rates.

Step 2: Developing a Questionnaire:

Constructing a questionnaire requires decisions concerning the content, wording, format, and placement of questions—all of which have important consequences on the results of what you intend to measure. There are basically four areas involved in constructing a questionnaire:

- Determine the question content, scope, and purpose
- Choose the response format to be used in collecting information from the respondent
- Word the questions so as to get at the issue of interest
- Determine how best (i.e., the order) to place the question(s) of interest among other questions in the questionnaire

It is important that all respondents be asked the same questions, in the same order, and their responses recorded exactly, without additions or deletions. To ensure this, the questions must be written properly and the exact response of each respondent recorded as it is presented. It is recommended that interviewers carry two cards for each family. One card will contain figures for each low- and moderate-income level and its corresponding family size (see Table A). If racial data are to be collected, the other card will contain the following racial categories: White, Black/African American, Asian, American Indian/Alaskan Native, and Native Hawaiian/Other Pacific Islander, American Indian/Alaskan Native & White, Asian & White, Black/African American & White, American Indian/ Alaskan Native & Black/African American, Other Multi-racial; and the following ethnic categories: Hispanic, Latino, or not Hispanic or Latino.

Black/African American, Asian, American Indian/Alaskan Native, and Native Hawaiian/Other Pacific Islander, American Indian/Alaskan Native & White, Asian & White, Black/African American & White, American Indian/ Alaskan Native & Black/African American, Other Multi- racial; and the following ethnic categories: Hispanic, Latino, or not Hispanic or Latino.

TABLE A - Illustration of Income Cards

Card Number	Number of Persons in	Low/Mod Income Level
1	1	\$19,800
2	2	\$22, 650
3	3	\$25,450
4	4	\$28,300
5	5	\$30,050
6	6	\$31,850
7	7	\$33,600
8	8	\$35,400
9+	9+	\$35,400+

Information about the racial and ethnic composition of the service area may be obtained directly from ACS data. However, HUD does not object to collecting information about racial and ethnic composition of the service area from the survey. CDBG regulations at 24 CFR 570.506(g)(2) for the Entitlement program and 24 CFR 570.490(a)(1) for the State program require submission of data on the racial, ethnic and gender characteristics of persons who are applicants for, participants in or beneficiaries of their CDBG programs. This information must be reported for each activity and should indicate the number persons benefiting by race, ethnicity, and gender.

Sample Questions:

Question 1

How many families currently reside at this address? _____ (If more than one family, each family must complete a separate questionnaire since more than one family can be living in one household).

Question 2

How many persons are there in your family including yourself? _____ (If you are single with no dependents, write 1).

If more than one family resides at the address, complete the following:

Family #1: family size (i.e., number of persons in family) _____
Family #2: family size (i.e., number of persons in family) _____
Family #3: family size (i.e., number of persons in family) _____

Question 3

Is the current, combined income of all family members residing at this address (including any related, dependent persons over 65 or working dependent children over 18) above or below the figure quoted on this card? ____ Yes, ____ No (Present the card showing family sizes and income levels from Table A).

Question 4

Please, check the ethnic group to which you belong:

Hispanic or Latino ____, Not Hispanic or Latino ____

Please, check the racial group to which you belong:

White ____, Black/African American ____, Asian ____, American Indian/Alaskan Native ____, and Native Hawaiian/Other Pacific Islander ____, American Indian/Alaskan Native & White ____, Asian & White ____, Black/African American & White ____, American Indian/ Alaskan Native & Black/African American ____, Other Multi-racial ____.

(Present the card showing various categories).

Step 3: Selecting the sample:

The selection of a sample of families to interview involves a series of steps. Begin by defining the population whose characteristics are to be estimated. Then, determine how many families in that group must be sampled in order to accurately estimate the overall characteristics. Next, make some allowances for families that may not be readily available for the interview. Finally, select the families to be interviewed. This section discusses each of these steps.

Defining the Population:

If you (i.e., staff of the grant recipient) are trying to determine the proportion of families in a neighborhood with low- and moderate-incomes, that neighborhood is the population. However, instead of a neighborhood, the population may be a town, a county, or defined by some other boundary. But before you can obtain a sample, you must clearly define what area you want the sample to represent. For example, assume that the population is a neighborhood with about 400 families. You will sample from the 400 families and make estimates about the income levels of all of the persons in the sample.

Once you have defined your population, you need a method of identifying the families in that area so that you can interview them. Ideally, for a given neighborhood, you would have a list of every family living in the neighborhood and perhaps their telephone number. Then, you would devise a procedure to randomly select the families you want to interview. One way would be to go to the neighborhood and randomly select which homes to go to for an interview—the advantage of this method is that the houses are there, so you can go right to them instead of using a list. After collecting information on the various families, you can then make some estimates about the number of people in the neighborhood and their incomes.

City indexes (if available and up-to-date) usually provide the best source of household information suitable for sampling. Telephone books (no longer available in all communities) may be adequate, but keep in mind that you will miss people without landlines or with unlisted numbers. Also, telephone directories usually will have far more people listed than those who are in the service area, so you will need to eliminate those outside of your service area. Tax rolls are a source of identifying addresses in an area; however, they identify only property owners instead of residents. Also, tax rolls generally identify building addresses, whereas in the case of apartment buildings you are interested in the individual apartments. You can use tax rolls to identify addresses to go to, in order to get an interview, but you cannot use them as the basis of a mail or telephone survey (unless you have access to a telephone directory that identifies telephone numbers by property address).

How Big a Sample?:

After you have defined your population and selected a method for identifying individual families in the service area, you must next determine how many families to survey—that is, the sample size. A sample is representative of the population from which it is selected if its aggregate characteristics closely approximate those same aggregate characteristics in the population. The larger the sample, the more likely it is that its aggregate characteristics truly reflect those of the population. However, sample size is not dependent on the size of the population, for large populations. This means that a random sample of 500 people is equally useful in examining the characteristics of a state of 6,000,000 as a city of 100,000 or 50,000. For this reason, the size of the population becomes relevant when dealing with sparsely populated areas.

Sample Size Calculator (SSC) is a website (<http://surveysystem.com/sscalc.htm>) developed by Creative Research Systems to enable survey researchers to calculate sample sizes from various population sizes. To use the SSC you need both the confidence interval and the confidence level. The confidence interval is the range of values within which a population parameter is estimated to lie. Confidence interval is sometimes referred to as margin of error (+ or -).

Table B – Sample Sizes at 95% Confidence Level

Total Number of Families in the Service Area	Sample Size: Number of Families	
	95% Confidence Level	
	Confidence Interval = 4	Confidence Interval = 5
50	46 – 50 (may conduct a census)	43 – 50 (may conduct a census)
60	51 – 59	47 – 57
80	67 – 75	61 – 71
110	89 – 97	81 – 91
150	116 – 124	103 – 113
210	152 – 160	131 – 141
290	192 – 200	160 – 170
400	236 – 244	191 – 201
700	319 – 327	243 – 253
1200	396 – 404	286 – 296
1800	446 – 454	312 – 322
2500	480 – 488	328 - 338

For example, if a survey shows that 55 percent of a randomly selected sample has the parameter under investigation and the confidence interval is 5, what that means is that the actual percentage of the population which has that parameter may lie within the interval 50 to 60. Confidence intervals are applicable only in surveys where the sample is randomly selected from the relevant population.

The confidence level is the estimated probability that a population parameter lies within a given confidence interval. The confidence level tells you how sure you can be. It is expressed as a percentage and represents how often the true percentage of the population with the parameter being examined lies within the confidence interval. The 95% confidence level means you can be 95% certain; the 99% confidence level means you can be 99% certain. Most researchers use the 95% confidence level because the 99% level leaves very little margin for error.

The numbers in the column titled “Total Number of Families in the Service Area” in Table B, are hypothetical numbers. If the total number of families in your service area does not match any of the numbers in Table B, select a confidence level and a confidence interval, and use the SSC to calculate the number of families in your sample.

As seen in Table B, at the same confidence level, sample size decreases as confidence interval increases. A confidence interval provides a range of values which contain the population parameter of interest. The confidence interval estimate gives an indication of how much uncertainty there is in the estimate. The narrower the confidence interval, the more precise is the estimate. For example, when the total number of families in the service area is 80, the range for the number of families is 67 – 75, at a confidence interval of 4 compared to a range of 61 – 71, for a confidence interval of 5. This has serious implications on the representativeness of the sample. For any given population, the sample size will be larger at a confidence interval of 4 than at a confidence interval of 5. A small sample size may decrease the extent to which the sample is representative of the population.

Unavailable Persons and Other Non-responses:

The standard requirements for conducting surveys include not only the notion that systematic, representative sampling methods be used, but also that high response rates be obtained and statistical weighting procedures be imposed to maximize representativeness. No matter what you do, some families will not be home during the time you are interviewing, some will refuse to be interviewed, some will terminate the interview before you finish, and some will complete the interview but fail to provide an answer to the key question on income level. If you choose to get responses from replacements, they must be selected through a random sampling process. As a matter of policy (with the intent to preserve the credibility of the results of the survey), non-respondents are classified as non-LMI persons. The decision to get responses from replacements may become inevitable if the proportion of non-responses is high enough to affect the validity of the results of the survey. Non-response rates greater than 20 percent may affect the validity of the survey; for example, a non-response rate can become a serious problem when a 100% survey (referred herein as census) is conducted instead of a survey (as may the case in sparsely populated areas). If the non-response rate is too high, there is the risk of not having enough LMI respondents to make the required percent of the total population of the service area.

Drawing Samples:

In random sampling, you are looking at a portion of everyone in a group and making inference about the whole group from the portion you are observing. For those inferences to be most accurate, everyone who is in the group should have an equal chance of being included in the sample. If you encounter ‘unreachables’ you should replace them with the next family in the list, in the order they were selected.

If you do not have a list of all the families in a service area you are trying to measure, but you know the geographic boundaries of the area, you might randomly select a point at which to start and proceed systematically from there. You will achieve more accuracy if you are not too quick to write off a family as unreachable. You are more likely to achieve randomness if you obtain interviews from the families you selected first. Thus, if you are doing a door-to-door survey, you probably should make two or more passes through the area (preferably at different times) to try to catch a family at home. Frequently they will be busy, but may say that they can do the interview later—you should make an appointment and return. Only after at least two tries or outright refusal should a sampled family be replaced. With a telephone survey, at least three or four calls should be made before replacing a family.

Step 4: Conducting the survey:

To carry out the survey, you have to reproduce a sufficient number of questionnaires, recruit and train interviewers, schedule the interviewing, and develop procedures for editing, tabulating, and analyzing the results.

Publicity:

To promote citizen participation, advance notice may be needed. A notice in a local newspaper or announcements at churches or civic organizations let people know that you will be conducting a survey to determine the income levels of the area. Citizens can also be informed through local government websites and/or email listserve used for sending announcements to residents. Also, neighborhood associations and civic organizations may have websites or email listserve that can be used for publicity. If people are notified in advance how, why, and when they will be contacted, they may be more likely to cooperate.

As with all aspects of the survey and questionnaire, any publicity must be worded so that it does not bias the results. For example, it is better to say that the community is applying for a CDBG grant and that, as part of the application, the community has to provide current estimates of the incomes of the residents of the service area. It is not appropriate to say that, in order for the community to receive the desired funding, a survey must be conducted to show that most of the residents of the service area have low and moderate incomes.

Interviewers:

It may not be necessary to hire professional interviewers. Volunteers from local community groups and civic organizations serve well. Also, schools or colleges doing courses on civics, public policy, or survey research may be persuaded to assist in the effort as a means of providing students with practical experience. It is best if interviewers are chosen that make the respondents feel comfortable. For this reason, survey research companies often employ mature women as their interviewers. When interviewers are of the same race and social class as the respondent, the survey usually generates a better response rate and more accurate results. It is important that the interviewer commands the attention of the respondent, reads the question as written, and writes down the responses as given.

It is important that interviewers have all of the materials they need to complete the interview. Usually, you will want to assemble an interviewer kit that can be easily carried and includes all of the important materials such as:

- A ‘professional-looking’ 3-ring notebook (this may even have the logo of the organization conducting the survey)
- Map of the service area
- Sufficient copies of the survey instrument
- Official identification (preferably a picture ID)
- A cover letter from the sponsor of the survey
- A phone number the respondent can call to verify the interviewer’s authenticity.

Contact and follow-up:

Initially, the interviewer should make contact with the head of the family or someone who is qualified to speak for the family and has knowledge about the family income. After making contact, the interviewer should introduce him/herself, state the purpose of the survey and solicit the participation of the respondent. If the interview is being conducted face-to-face, the interviewer should find the card for the family size of the respondent, hand it to the respondent, and then ask the questions and record the answers. If the interview is being conducted by telephone, a card cannot be used; therefore, the interviewer should make reference to the income level that is the threshold for a family of the size of that of the respondent. For example, if there are three persons in the respondent’s family you might ask, “is the current combined income for your family during the past twelve months, less than or more than \$25,450?”

While the necessary questions are brief and simple, there are some additional factors to take into account when designing the questionnaire. First, the questions used in the survey cannot be “loaded” or biased. For example, the interviewer may not imply that the neighborhood will benefit or receive Federal funding if respondents say that they have low incomes. The questions must be designed to determine truthfully and accurately whether respondents are LMI persons. It is permissible to state that the reason for the survey is to gather information essential to support an application for funding under the CDBG program or to undertake a CDBG-funded activity in the area.

Second, bear in mind that questions about income are rather personal. Some respondents may be suspicious or reluctant to answer questions about their incomes—especially if they do not see the reason for the question. A good way to handle this problem is usually to put questions about income at the end of a somewhat longer questionnaire on other community development matters. In this instance, a local agency can use this questionnaire to gather some information on what the neighborhood sees as important needs or to gather feedback on a proposed policy or project. At the end of such a questionnaire, it is usually possible to ask questions on income more discretely. If this option is chosen, the interviewer should be cautioned that a lengthy questionnaire might cause respondents to lose interest before completing the survey. The ideal length here would probably be less than ten minutes, although certainly you could develop an even longer or shorter questionnaire as necessary.

Interviewers should plan to contact respondents at a time when they are most likely to get a high rate of response. Telephone interviews are usually conducted early in the evening when most people are home. Door-to-door interviews also may be conducted early in the evening (especially

before dark) or on weekends. Interviewers should try again, at a different time to reach anyone in the initial sample who is missed by the initial effort.

Generally, avoid selecting interview times that risk yielding biased results. For example, interviewing only during the day, from Monday to Friday, will probably miss families where both the husband and wife work. Since these families may have higher incomes than families with only one employed member, your timing may lead to the biased result of finding a high proportion of low-and moderate-income households.

In making contact with a member of the family, the interviewer first has to determine that the person being interviewed has sufficient knowledge and competence to answer the questions being asked. The interviewer should ask to speak to the head of the family. If it is absolutely necessary to obtain an interview at the sample residence, the interviewer may conduct an interview with other resident adults or children of at least high school age only after determining that they are mature and competent enough to provide accurate information.

As part of your questionnaire, you should develop an introduction to the actual interview. This should be a standard introduction in which the interviewers introduce themselves, identify the purpose of the survey, and request the participation of the respondents. Usually, it is also a good idea to note the expected duration of the interview to let respondents know that the burden to them will be minimal.

Interviewers also should follow the set procedures for replacing “unreachables” (discussed in step 3). If they must write off an interview, they should follow this procedure. This replacement procedure is not random and thus will ensure the validity of your survey results.

The Interview:

Every interview includes some common components. There is the introduction where the interviewer is invited into the home and establishes a rapport that facilitates the process of asking questions. The first thing the interviewer must do is gain entry and several factors can enhance this. Probably the most important factor is the interviewer’s initial appearance. The interviewer needs to dress professionally and in a manner that will be comfortable to the respondent. The initial appearance of the interviewer to the respondent sends simple messages—the interviewer is trustworthy, honest, and non-threatening.

The interviewer is standing at the doorstep and someone has opened the door, even if only halfway. The interviewer needs to smile and be brief. State why (s)he is there for and suggest what (s)he would like the respondent to do. For example, instead of saying “May I come in to do an interview?” the interviewer might try a more imperative approach like “I’d like to take a few minutes of your time to interview you for a very important study.”

Without waiting for the respondent to ask questions, introduce yourself. The interviewer should have this part of the process memorized so (s)he can deliver the essential information in 20-30 seconds at most. The interviewer should state his (or her) name and the name of the organization (s)he represents; and show his or her identification badge. If the interviewer has a three-ring binder or clipboard with the logo of the organization or sponsor, (s)he should have it out and visible. The interviewer should assume that the respondent will be interested in participating in the study—assume that (s)he will be doing an interview here.

If the respondent indicates that the interview should go ahead immediately, the interviewer needs an opening sentence that describes the study. Keep it short and simple. Use the questionnaire carefully, but informally. Interviewers should read the questions exactly as they are written. If the respondent does not understand the question or gives an unresponsive answer, it usually is best for the interviewer to just repeat the question. Do not attempt to guide the respondent to give particular responses. Questions should be read in the order in which they are written. The respondents' answers should be recorded neatly, accurately, and immediately as they are provided. At the end of the interview, and before proceeding to the next interview, the interviewer should always do a quick edit of the questionnaire to be sure that they have completed every answer correctly. This simple check helps to avoid the frustrating mistake of having taken the time and expense of conducting the interview, but without getting the information sought.

If other questions are included in the questionnaire and the questions on income are placed at the end, it is possible that a willing respondent may end the interview before getting to the critical questions on income. If it appears that the respondent is about to terminate the interview, it is recommended that the interviewer immediately tries to get an answer to the critical income question(s).

Editing:

Interviewers should turn their completed surveys over to the staff person (henceforth expert) for analyzing the data. That expert should review each survey to ensure that it is complete and that each question is answered only once and in a way that is clear and unambiguous. Questions or errors that are found should be referred to the interviewer for clarification. It also may be desirable to call the respondent, if necessary, to clarify incomplete or ambiguous responses. If a question or an error cannot be resolved, a replacement should be added and the new respondent contacted. Note that editing is an ongoing process because the expert may still discern errors that need correction during data tabulation and analysis.

Step 5: Determining the Results:

After collection and editing, the data are analyzed in two steps: (1) tabulate the responses from the questionnaires and calculate an estimated proportion of low-and moderate-income persons; and (2) determine how accurate that estimate is. The first part can be taken care of by completing the sample LMI Worksheet.

Tabulation:

Computer programs such as Excel, Access, Minitab, SAS, SPSS, etc. are easy to use for tabulating data. The computer also makes it relatively easy to check for accuracy and consistency in the data. However, you can perform the calculations by hand or with a calculator.

Also, you can process the data by putting it on a code sheet, by entering it on a manual spreadsheet, or just by flipping through the completed surveys. Regardless of how you process and tabulate the data, when you are finished you should be able to complete the Low-and Moderate-Income Worksheet.

Table D - Low- and Moderate-Income Worksheet

- | | |
|---|----------|
| 1. Enter the Estimated total number of families in the service area | 1. _____ |
| 2. Enter the total number of families interviewed | 2. _____ |
| 3. Enter the total number of persons in the families interviewed | 3. _____ |
| 4. Enter the total number of persons in the families interviewed who are low- and moderate-income persons | 4. _____ |
| 5. Divide Line 4 by Line 3 | 5. _____ |
| 6. Multiply Line 5 by 100. This is the percentage of LMI persons in the service area | 6. _____ |

Analysis:

If you have done everything correctly, including random selection of the required number of families, and your estimate shows that less than 51 percent of the residents of the service area have low- and moderate-incomes, you cannot undertake LMI area benefit activities in that area. However, this may not be the case if it is an “upper quartile exception community.” Therefore, this section is not applicable to exception grantees. If the entry at Line 6 is at least 51 percent, you can perform additional analyses to determine the extent to which your estimate of the LMI residents is correct. First, compare the average size of LMI families with non-LMI families. The closer these figures are to each other, the more confident you can be in your estimate. Thus, if you estimate that 53 percent of the residents have low- and moderate-incomes and you find in your sample that both LMI families and above LMI have an average of 3.4 people, you can be pretty sure that your results are reliable.

Since the purpose of the CDBG program is to principally benefit LMI persons, as a matter of policy, rounding is NOT to be used in determining whether an area meets the 51 percent threshold for the national objective compliance for an area benefit activity. For example, 50.99 percent cannot be rounded to 51 percent.

Step 6: Documenting the Results:

It is important that the results of the survey be documented, since those who audit or evaluate your program may want to review the procedures and data used to determine that the service area qualifies under the CDBG program regulations. The grantee should therefore maintain documentation of the survey. The contents of that documentation are as follows:

1. Keep the completed surveys. This will show that the grantee actually conducted the survey (and asked the proper questions). It is best if each survey has a cover sheet containing information that identifies the respondent, such as name, address, and telephone number. Then, when the survey is complete, the cover sheets can be separated from the questionnaires. The questionnaires can be saved as documentation, but the privacy of the respondents must be maintained.
2. Saving the cover sheets separately provides a record of who was contacted. If there is a need to subsequently verify any data, one could contact the respondents noted on the cover sheet and ask them whether, in fact, they had spoken to a particular person on a particular date to discuss matters related to community development. The privacy of the respondents' original responses is still protected by this procedure.
3. Keep a list of the actual families sampled. This might be one list with the sampled families, checked once if they were sampled and checked twice if they were interviewed. Replacement families should be noted too. There should be written documentation about the method used to select families from the list for interviewing. Note that this is different from keeping just the cover sheets, as it documents not just who was interviewed, but also who was not interviewed and how they were selected. If the method used is a door-to-door sample without starting from a universe of families, the procedures used to select the sample, including instructions to interviewers for replacing sampled families who were not interviewed should be documented.
4. Survey data should be retained in accordance with record-keeping requirements of the State program at 24 CFR 570.490 and the Entitlement program at 24 CFR 570.506. Keep a backup copy of the data; and when tabulating, retain any spreadsheets or tables containing raw data.

If you have any questions regarding this Notice, please contact your CPD Field Office. Field Offices should contact Neba Funiba, State and Small Cities Division (SSCD), Office of Block Grant Assistance, 451 7th Street, SW, Room 7184, Washington, DC 20410. Mr. Funiba's phone number is (202) 402-4553.

Appendix L: Timely Distribution Notice

Notice CPD 12-010



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

Special Attention of:

Notice: CPD 14-06

All Regional Directors
All Field Office Directors
All CPD Division Directors
All State CDBG Program Managers

Issued: March 10, 2014
Expires: March 10, 2015

Cross References: 24 CFR 570

SUBJECT: Timely Distribution of State CDBG Funds

I. Purpose

This Notice replaces Notice CPD 13-03 and sets forth HUD's policy and standards for the timely distribution of Community Development Block Grant (CDBG) funds by states. States administer the program but must distribute the funds to local governments, which carry out eligible activities. States must distribute the funds in a timely manner in order to benefit low- and moderate-income people. The distribution requirements allow states a reasonable time to administer the program while assuring that the funds are used as Congress intended. This Notice also provides a summary report of the states' performance in meeting the timely distribution requirements established by regulation for the 2012 annual allocations. Please Note: All State CDBG Grantees distributed 100% of their 2012 funds, see attachment 5. The 15-month timely distribution period for the 2013 allocations expires for the earliest grantees on October 08, 2014 and for the latest grantee on January 31, 2015. Timeliness for the 2013 grants will be reported in the next annual Notice. The Office of the Inspector General (OIG), the Government Accountability Office (GAO), and other entities maintain a continuing interest in the performance and results of the CDBG program, including the states' distribution of their allocations.

II. Statutory and Regulatory Requirements

The Housing and Community Development Act of 1974 as amended (HCDA) [section 104(e)(2)] requires that HUD determine "whether the state has distributed funds to units of general local government in a timely manner." This is the statutory basis for requiring states to meet a timeliness standard in distributing CDBG funds to units of general local government under their jurisdiction.

HUD regulations as established in 24 CFR 570.494, "Timely distribution of funds by states", define a state's distribution of CDBG funds as timely if "all of the state's annual grant (excluding state administration) has been obligated and announced to units of general local government within 15-months of the state signing its grant agreement with HUD." The regulation also encourages states to obligate and announce 95 percent of funds within 12 months of the state signing its grant agreement with HUD.

Definition:

The term “obligated and announced to” means the date on which a state officially announces the selection and award of grants to its units of general local government by means of any official letter, press release, news media announcement, public notice, or official notice of award that the state may use to notify its localities and citizens that a grant has been awarded. The date of such an announcement will be used to measure compliance with the 15-month period for timely distribution. This terminology replaced the term “placed under contract” and was developed in response to comments during the rule-making process in 1992. Its purpose was to allow States more flexibility in distributing grant amounts. Note that this definition of “obligated” is not the same as a business definition which establishes a legal duty for payment. For the purpose of this regulation, it is more appropriately classified as a “commitment” or “reservation” which provides for budgetary control of the grant funds.

Under the HCDA [section 106(d)] as amended by Public Law 108-199 (Jan. 23, 2004) states are authorized a maximum deduction for the combined purposes of state administration and technical assistance of \$100,000 plus up to three percent of the grant amount. The exclusion for state administration includes both state administrative expenses and technical assistance provided by the state to local governments and nonprofit program recipients. A state may opt to use less than this authorization in order to increase its distribution to local governments.

Recaptured funds and program income must also be expeditiously obligated and announced in order to meet the timeliness requirement at 24 CFR 570.494(b)(2). Special attention should be directed to program income to ensure that an amount equal to the amount received each year is budgeted for and committed to local governments. This is a separate standard from the requirement at 24 CFR 570.494(b)(1) to distribute the annual grant funds in a timely manner. Program income and recaptured funds should not be combined with the annual grant funds when determining compliance with the regulatory requirements for timely distribution.

To demonstrate compliance with the timely distribution requirement, the total funds obligated and announced from the annual grant should equal the total remaining after subtracting the deduction for state administration and the technical assistance set-aside. Program income is treated as additional CDBG funds and a state may take up to a 3 percent deduction for state administration and technical assistance from program income received. When program income is retained by units of general local government, the state may take its deduction for state administration and technical assistance from its annual allocation. The state must be able to support such an adjustment from its accounting records. A state may also reduce its distribution of its gross annual grant when necessary to fulfill an obligation for repayment of a Section 108 loan guarantee. The timely distribution requirement applies to the balance of funds remaining after any adjustments.

Requirements for HUD’s reviews and audits of the State CDBG program at 24 CFR 570.493(a)(1) provide that HUD will review, at least annually, whether the state has distributed CDBG funds to units of general local government in a timely manner. Whenever HUD finds evidence that a program statute, regulation or requirement has been violated, it is required to make a finding. HUD Headquarters will review the timely distribution of State CDBG funds and report on these data annually via a CPD Notice or other issuance. In addition, the State and Small

Cities Division (SSCD) will request information from field offices on findings issued and actions taken to address non-compliance. This information will be provided to the OIG, GAO or other parties as requested.

III. Required Actions by CPD Field Offices, Headquarters and Grantees

CPD Field Offices:

Field Offices are responsible for reviewing state compliance with the requirement at 24 CFR 570.494(b)(1) for the timely distribution of its annual grant. Field Offices will review the total amount of funds obligated and announced to local recipients from the State CDBG program allocation through the end of the 15-month period. The CPD Representative should use the *PR-57 CDBG State Timely Awards of Funds Report* in the Integrated Disbursement and Information System (IDIS) to assist in the review. The *PR-57* report is a management tool to monitor grantees' progress in "obligating and announcing" grant awards to participating units of general local government prior to the completion of the 15-month deadline. It is recommended that the field office run a report prior to the grantees' timeliness period to verify the compliance date, the expected distribution standard, and progress on committed funds. [Please note: Field Offices should confirm the award date on the grant agreement (HUD 7082) to ensure that it concurs with the award date on the *PR-57*. In rare circumstances, the award date in IDIS compared to the award date shown on the grant agreement may tabulate the wrong compliance date and give a grantee the impression they may have more time to "obligate and announce" their grant funds. In such cases, please alert the grantee of the correct compliance deadline to ensure the timely distribution of funds.

The field staff should notify the State of the impending deadline if the *HUD Form 40108-State CDBG Timely Distribution of Grant Funds Report* was not submitted prior to the start of your review. A copy of the form is in **Attachment 1**. Lastly, field staff should also include funds distribution as part of their annual review of the grantee's Performance and Evaluation Report (PER). A review at that time will provide an opportunity to resolve any problems with funds distribution before they become an issue of non-compliance.

Amounts from prior year allocations, recaptured funds and program income are not included in evaluating basic compliance with distributing the annual allocation. Field Offices will continue to separately review the timely distribution of recaptured funds and program income as required at 24 CFR 570.494(b)(2).

Each state must meet the regulatory requirement for timely distribution. States that do not meet the standard of obligating and announcing 100 percent of their grants within 15-months of accepting the HUD award are in noncompliance. HUD is required to make a finding when a regulatory requirement has been violated, but findings made outside formally scheduled monitoring based on risk analysis will not be tracked in the Grants Management Process (GMP) system. Upon making a finding of noncompliance with the timely distribution requirement, the Field Office will send a letter to the State advising it of the finding and send a copy of the letter to the SSCD. See **Attachment 2** for a sample letter advising a state of a finding for failure to meet the timely distribution requirement. If the CDBG recipient's performance is found, during an on-site monitoring visit, to be less than satisfactory, the Field Office must issue the finding and

request the State to provide a written response to the finding within 30 days of the date of the letter. See **Attachment 3** for a sample letter of the finding issued as a result of a monitoring visit.

Required corrective action for findings of untimely distribution should be proportionate to the violation incurred and should address the cause of the problem. If the Field Office finds that performance is significantly deficient (i.e., less than 99% of funds distributed at 15-months) or the record shows repeated findings of noncompliance in this area, the Field Office will give the state an opportunity to contest the finding and will request a plan for corrective action. The plan should address how the state will distribute any outstanding prior year's balance within the current program year, how it will fully distribute the current allocation's funding within the timely distribution period, and how it will comply with the timeliness requirement for future allocations. Where appropriate, the Field Office may recommend how it wants the state to meet the timely distribution requirement by proposing specific timetables and procedures. For lesser violations where 99% or more of a state's grant has been distributed and the evidence suggests that the remaining funds will be committed quickly, it may be appropriate to require no further action. Once the State notifies the Field Office that the corrective actions has been implemented and the outstanding funds from the prior year's allocation has been committed, the Field Office must send notification to the State within 30 calendar days of the State's submission that the finding has been closed. See **Attachment 4** for a sample letter that closes the finding.

If the state's response or corrective plan is not satisfactory to HUD, the Field Office may take additional action as specified in 24 CFR 570.495. If the state fails to adequately respond to any corrective or remedial actions, the regulations at 24 CFR 570.496 provide for a hearing and the imposition of additional remedies, including financial and civil actions. Such remedies may include reduction of one or more future grant allocations. Field Office records must document all findings, corrective actions, and resolution for review by the OIG and other oversight offices and send copies to the SSCD in Headquarters.

Headquarters:

SSCD will review data from the Line of Credit Control System (LOCCS), the IDIS, and GMP and send an alert notice with an attached copy of the HUD 40108 form to field offices and states at least one month prior to the expiration of the state's 15-month timeliness period. If timely distribution information has not been submitted to Headquarters at the expiration of each 15-month deadline, a second alert will be sent to the Field Office to follow up with the state to submit its State's distribution of CDBG funds report. SSCD will follow up with Field Offices 45 days after the expiration of the 15-month period to ensure that the Field Offices have verified that states have complied with the requirement or have issued findings for non-compliance. SSCD will update this Notice as necessary, generate the attached summary report annually and make it available through the Department's website.

Grantees:

In order to facilitate continuity in its program and to provide accountability to citizens, each Grantee is required to submit the *State CDBG Timely Distribution of Grant Funds Report* to HUD to report obligations and announcements of State CDBG funds within the timeliness period. Submissions after the expiration of the 15-month deadline are considered late. The form and instructions are located in **Attachment 1**.

IV. Grantees: Record Keeping and Reporting

States are required to maintain records documenting their administration of CDBG funds [24 CFR 570.490(a)]. In order for HUD to determine if a state has distributed its funds in a timely manner, the Department must review information concerning the state's obligations. Currently, IDIS has automated the collection of timeliness data to help assess the progress of each grantee's timely distribution of its annual grant. Grantees are strongly encouraged to enter the date funds are "obligated and announced" into IDIS to show whether the state has distributed funds to units of local government within 15-months of the State signing its grant agreement with HUD. **As a reminder, "obligated and announced" does not mean that grants have to be under contract, but the State must commit its funds publicly within 15-months of receiving its grant. However, once a CDBG-funded activity is entered in IDIS, the State and unit of general local government (UGLG) should be aware that they are required to make draws on the funds within a year to avoid the activity being flagged as at-risk.** Supplemental to the IDIS PR-57 report to determine compliance with the timeliness standard, HUD may review the following elements documented in the state's records:

- Amount budgeted by the state for state administration of the grant.
- Amount budgeted by the state for technical assistance to local governments.
- Adjustments to the allocated amount, for example,
 - Section 108 loan repayments,
 - Admin/TA allowance claimed for program income retained by local governments,
 - Other approved adjustments.
- Total funds distributed (i.e., "obligated and announced") from the annual grant as of the date 15-months after the state signed the grant agreement. State records must identify distributions made from the annual grant allocation. Distributions from program income and recaptured funds must be identified separately as they are subject to a different timeliness standard.

Attachment 5 to this Notice lists the individual performance by states on the timely distribution of funds at the end of the 15-months for the 2012 grant awards. This attachment includes a table summarizing the number of states by percent of their grant amount obligated and announced 15-months after award.

Should you have any questions regarding this notice, please contact Steve Rhodeside, Director, State and Small Cities Division at (202) 708-1322.

Notices are available online at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/cpd

Attachments

Attachment 1

Notice CPD 12-010

State CDBG
Timely Distribution of
Grant Funds Report

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

OMB No: 2506-0085
exp. (03-2014)

6	Grant Amount			
7	Admin deduction (NTE \$100,000 + 3% of grant)			
8	TA deduction (NTE 3% of grant)			
9	Total Admin/TA deduction (NTE \$100,000 + 3% of grant)			
10	Expected distribution from annual grant			
11	Adjustments (attach explanation)			
12	Available distribution from annual grant			
13	Amt Obligated & anncd at 15 mos <i>Do not include PI or Recaptures</i>			
14	% obligated & anncd at 15 mos			
Listing of grant awards and amounts (Optional):				
	Grantee (Local Govt.)	Grant Amount	Date Obligated / Announced	Grant Number
	TOTAL	\$ -		

HUD Form 40108

Distribution of State CDBG Funds
Timeliness Compliance Report Instructions

1. **State:** State name or abbreviation
2. **FY:** Fiscal year of the federal appropriation that funds the grant.
3. **Grant #:** Program grant number e.g., B-13-DC-###0001 where “B” indicates the CDBG program, “13” is the fiscal year, “DC” indicates the allocation for states’ use in nonentitlement areas, “##” is a code identification number for the state, and “0001” is the number of the grant.
4. **Date Signed by State:** Date the grant agreement was signed by the state. This date marks the beginning of the 15-month period for timely distribution.
5. **Timeliness Compliance Date:** This is the date 15-months after the date the grant agreement was signed by the state.
6. **Grant Amount:** The amount of the state’s allocation of CDBG funds for this grant.
7. **Admin Deduction:** The state may use \$100,000 plus up to 3% of the grant for state administration and must match the percentage allowance dollar for dollar. This line shows the actual amount claimed for state administration.
8. **TA Deduction:** The state may use up to 3% of the grant for technical assistance to local governments, no state match is required. This line shows the actual amount claimed for technical assistance.
9. **Total Admin/TA Deduction:** This is the total of the previous 2 lines. Note that the percentage allowance for State Administration and for Technical Assistance is a combined allowance for both functions, not a separate allowance for each. The state decides how to allocate the total 3% allowance. The total entered on this line may not exceed \$100,000 plus 3% of the grant.
10. **Expected Distribution:** This equals the Grant Amount less the Total Admin/TA deduction claimed by the state. This is the amount of the annual allocation expected to be available for distribution to its local governments.
11. **Adjustments:** The state may make certain additional adjustments in the amount of funds it distributes to local governments from its annual allocation. These may include Section 108 loan guarantee repayments and/or a 3% allowance for state administration and technical assistance associated with program income retained by units of local government. Any adjustments claimed on this line must be supported by an attached explanation justifying the adjustment in detail.
12. **Available Distribution:** This equals the Expected Distribution less Adjustments claimed on the previous line. This is the amount of the annual allocation required to be distributed to the state’s local governments.

13. Amount Obligated & Annncd (at 15-months): This is the amount which the state has actually obligated and announced to its units of general local government as of the 15-month timeliness target date. To be compliant, it should equal the amount of the “Available Distribution” on the previous line. This amount should include only awards from the original grant allocation. Do not include awards from program income or recaptured funds.

14. % Obligated & Annncd (at 15-months): This is the percentage of the “Amount Obligated and Annncd” divided by the “Adjusted Grant Amount”. To be compliant, this entry should equal 100%.

"Public reporting burden for this collection of information is estimated to average 1.5 hours. This includes the time for collecting, reviewing, and reporting the data. The information is authorized under 24 CFR 570.494, which requires state grantees to obligate and announce their annual CDBG grant (excluding state administration & TA) to units of general local government within 15-months of the state signing its grant agreement with HUD and will be used to determine if the states are in compliance with the timely distribution requirement. *Response to this request for information is required to continue receiving CDBG grants.* This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. No confidentiality is assured."

Privacy Statement: Public Law 97-255, Financial Integrity Act, 31 U.S.C. 3512, authorizes the Department of Housing and Urban Development (HUD) to collect all the information which will be used by HUD to protect disbursement data from fraudulent actions. The purpose of the data is to safeguard HUD form 40108.

Attachment 2

Sample Letter – Notice of Finding
(Issued When Finding is not part of Monitoring Visit)

October 1, 2013

Mr. Parker T. Johnson
Director
State Department of
Economic Development
200 East Broadway
Capital City, ST 12345-6789

SUBJECT: Finding of Noncompliance Relating to Timely Distribution of FY 2012 State CDBG Funds

Dear Mr. Johnson:

We have completed a review of the State's distribution of State CDBG funds for Fiscal Year 2012. Section 24 CFR 570.494 (b)(1) of the CDBG regulations requires a state to obligate and publicly announce to units of general local government all of the state's annual grant within 15-months of the state signing its grant agreement with HUD. According to the State's CDBG timeliness report dated September 15, 2013, the State did not meet the Timely Distribution of funds requirement. Therefore, we are issuing a finding as outlined in the enclosed document.

Please provide a written response to our office within 30 days of the date of this letter. Your response may either contest the finding or provide the State's plan for corrective action. If further information is necessary regarding this letter, please contact Ms. Mary Jones, Community Planning and Development Representative at 123-456-7890.

Sincerely,

Johnson Smith
Director
Community Planning and Development
Division

Enclosure:

Description of Finding of noncompliance with the timely distribution requirement:

- Finding: The state failed to distribute 100% of its 2012 Community Development Block Grant (CDBG) funds within 15-months.
- Condition: State records show that the state obligated and publicly announced to local governments a total of \$23,000,000.00. The state's 2012 award, less the deduction for state administration and technical assistance, was recorded as totaling \$24,150,000.00. Based upon these figures, the state was not timely in its distribution of CDBG funding. Only 95.24% of the funds available were obligated and announced to units of general local governments.
- Criteria: The regulations at 24 CFR 570.494(b)(1) establish that a state's distribution of CDBG funds is timely if all of the state's annual grant (excluding state administration) has been obligated and announced to units of general local government within 15-months of the state signing its grant agreement with HUD.
- Cause: The problem was caused by delays in completing the economic development competition due to lack of qualified staff.
- Effect: Failing to timely distribute State CDBG funds results in delays in program benefits to eligible low-and moderate-income beneficiaries.

Required Corrective Action: To clear this finding within 30 days of the date of this letter, the state must:

- a. Review its current program management system(s) to determine whether the State needs to assign experienced staff to oversee the review process to ensure that its staff is able to comply with the timely distribution requirement.
- b. Promptly evaluate the current process for reviewing funding proposals and preparing contracts and establish application and contract execution deadlines.
- c. Based upon this analysis, provide a written plan describing what procedural changes the State will make to obligate the remaining 4.76% in FY 2012 funds, as well as the changes that the State will make to assure that future allocations of CDBG funds will be distributed in a timely manner. The State must provide the date that the remaining FY 12 funds will be obligated and announced.

Attachment 3

Sample Letter – Notice of Finding
(Issued After Monitoring Visit)

October 1, 2013

Mr. Parker T. Johnson
Director
State Department of Economic Development
200 East Broadway
Capital City, ST 12345-6789

SUBJECT: On-Site Monitoring Review, September 15-18, 2013
 State Community Development Block Grant (CDBG) Program
 Grant #: B-12-DC-XX-0001

Dear Mr. Johnson:

 This letter transmits the report from our office's on-site monitoring review of the FY 2012 State CDBG program. HUD's overall objective was to evaluate the timeliness of the State's CDBG performance. We sincerely appreciate the cooperation and assistance that staff provided during the course of the review.

 Our report contains one finding. A finding is a deficiency in program performance based on a statutory, regulatory, or program requirement. A summary of the results is included in the attached monitoring report. Please provide a written response to the finding of the monitoring visit within 30 days of the date of this letter. Your response may either contest the finding or provide the State's plan for corrective action. If you would like to discuss any of the report's conclusions, please contact Ms. Mary Jones, Community Planning and Development Representative, at 123-456-7890, or by email at mary.x.jones@hud.gov.

Sincerely,

Johnson Smith
Director
Community Planning and Development Division

Enclosure

Finding Portion of Monitoring Report

- Finding:** The state failed to distribute 100% of its 2012 Community Development Block Grant (CDBG) funds within 15-months.
- Condition:** State records show that the state obligated and publicly announced to local governments a total of \$23,000,000.00. The state's 2012 award, less the deduction for state administration and technical assistance, was recorded as totaling \$24,150,000.00. Based upon these figures, the state was not timely in its distribution of CDBG funding. Only 95.24% of the funds available were obligated and announced to units of general local governments.
- Criteria:** The regulations at 24 CFR 570.494(b)(1) establish that a state's distribution of CDBG funds is timely if all of the state's annual grant (excluding state administration) has been obligated and announced to units of general local government within 15-months of the state signing its grant agreement with HUD.
- Cause:** The problem was caused by delays in completing the economic development competition due to lack of qualified staff.
- Effect:** Failing to timely distribute State CDBG funds results in delays in program benefits to eligible low-and moderate-income beneficiaries.

Required Corrective Action: To clear this finding within 30 days of the date of this letter, the state must:

- a. Review its current program management system(s) to determine whether the State needs to assign experienced staff to oversee the review process to ensure that its staff is able to comply with the timely distribution requirement.
- b. Promptly evaluate the current process for reviewing funding proposals and preparing contracts and establish application and contract execution deadlines.
- c. Based upon this analysis, provide a written plan describing what procedural changes the State will make to obligate the remaining 4.76% in FY 2012 funds, as well as the changes that the State will make to assure that future allocations of CDBG funds will be distributed in a timely manner. The State must provide the date that the remaining FY 12 funds will be obligated and announced.

Attachment 4

Sample Letter – Notice of Closing Finding

November 15, 2013

Mr. Parker T. Johnson
Director
State Department of
Economic Development
200 East Broadway
Capital City, ST 12345-6789

SUBJECT: Closing of Finding of Noncompliance Relating to Timely Distribution of FY 2012 State CDBG Funds

Dear Mr. Johnson:

Thank you for the October 29, 2013 letter and documentation demonstrating that the State obligated the remaining FY 2012 funds and implemented the required corrective actions. In response to the corrective actions executed by your office, HUD has determined that the finding below is cleared and closed.

FINDING: The State failed to distribute 100% of its 2012 Community Development Block Grant (CDBG) funds within 15-months.

REQUIRED CORRECTIVE ACTION: The State has provided a written plan on October 29, 2013 that demonstrated that the full obligation of FY 2012 funding had taken place, as well as a description of the process the State is taking to fully obligate the FY 2013 allocation. Therefore, this finding has been adequately addressed and is now closed.

We thank the State for diligently resolving this finding. If we may be of further assistance, please contact Ms. Mary Jones, Community Planning and Development Representative at 123-456-7890.

Sincerely,

Johnson Smith
Director
Community Planning and Development Division

Attachment 5

FY 2012 State CDBG Distribution
Of Grant Funds

State	Date Grantee Sign-Off	FY 2012 Grant Amount	Funds Available for Distribution	Awards Obligated & Annnd (at 15 months)	% of Funds Distributed (at 15 months)
AK	08/17/12	2,131,122	1,967,189	1,967,189	100.000%
AL	05/14/12	20,780,346	20,056,937	20,056,937	100.000%
AR	08/30/12	16,337,316	15,977,000	15,977,000	100.000%
AZ	07/23/12	8,908,063	8,540,821	8,540,821	100.000%
CA	08/07/12	29,636,301	28,647,212	28,647,212	100.000%
CO	05/24/12	7,967,210	7,628,194	7,628,194	100.000%
CT	10/10/12	11,141,302	10,707,063	10,707,063	100.000%
DE	09/01/12	1,796,093	1,642,211	1,642,211	100.000%
FL	08/27/12	22,887,374	22,100,753	22,100,753	100.000%
GA	08/17/12	34,533,844	33,397,829	33,397,829	100.000%
IA	05/14/12	21,053,513	20,321,908	20,321,908	100.000%
ID	04/26/12	7,388,470	7,066,817	7,066,817	100.000%
IL	05/11/12	26,160,799	25,494,437	25,494,437	100.000%
IN	07/20/12	27,107,784	26,194,551	26,194,551	100.000%
KS	04/20/12	13,613,981	13,062,761	13,062,761	100.000%
KY	08/13/12	23,102,002	22,308,942	22,308,942	100.000%
LA	06/14/12	20,817,250	20,092,733	20,092,733	100.000%
MA	08/09/12	27,738,930	26,476,762	26,476,762	100.000%
MD	08/27/12	6,751,086	6,448,553	6,448,553	100.000%
ME	08/01/12	10,581,799	10,164,346	10,164,346	100.000%
MI	08/27/12	30,214,761	29,208,318	29,208,318	100.000%
MN	05/07/12	16,736,169	16,301,446	16,301,446	100.000%
MO	05/11/12	20,063,764	19,361,851	19,361,851	100.000%
MS	07/16/12	23,838,889	23,063,889	23,063,889	100.000%
MT	04/25/12	5,497,803	5,232,869	5,232,869	100.000%
NC	04/10/12	41,046,412	39,715,020	39,715,020	100.000%
ND	05/09/12	3,617,517	3,408,991	3,408,991	100.000%
NE	08/01/12	9,937,502	9,539,377	9,539,377	100.000%
NH	05/21/12	7,740,815	7,408,591	7,408,591	100.000%
NJ	08/27/12	5,678,964	5,408,595	5,408,595	100.000%
NM	05/07/12	8,440,071	8,086,869	8,086,869	100.000%
NV	08/16/12	2,221,269	2,054,631	2,054,631	100.000%
NY	04/17/12	40,642,169	37,689,326	37,689,326	100.000%
OH	08/21/12	40,493,807	39,582,081	39,582,081	100.000%
OK	05/03/12	13,016,213	12,525,727	12,525,727	100.000%
OR	05/02/12	12,003,907	11,543,790	11,543,790	100.000%
PA	08/23/12	37,539,123	36,788,341	36,788,341	100.000%
PR	07/29/12	28,348,407	27,531,702	27,531,702	100.000%
RI	05/10/12	4,584,584	4,347,046	4,347,046	100.000%
SC	05/06/12	18,071,588	17,429,441	17,429,441	100.000%
SD	04/10/12	5,279,481	5,021,131	5,021,131	100.000%
TN	07/31/12	24,488,568	23,653,911	23,653,911	100.000%
TX	5/2/2012	59,537,991	57,651,852	57,651,852	100.000%
UT	06/26/12	4,088,940	3,866,272	3,866,272	100.000%
VA	08/07/12	16,495,737	16,000,865	16,000,865	100.000%
VT	09/04/12	6,210,448	5,924,135	5,924,135	100.000%
WA	08/06/12	12,141,100	11,676,867	11,676,867	100.000%
WI	07/20/12	23,503,250	22,698,152	22,698,152	100.000%
WV	08/31/12	13,177,973	12,682,634	12,682,634	100.000%
WY	05/14/12	2,561,407	2,384,565	2,384,565	100.000%

% distribution by States	
FY 2012	
100%	50
99-100%	
95-99%	
90-94%	
80-89%	
Under 80%	
	50