Basically CDBG Guide
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CHAPTER 1: OVERVIEW OF THE PROGRAM

CHAPTER PURPOSE & CONTENTS

This chapter provides a general overview of the Community Development Block Grant Program, including a brief synopsis of the history of the program, a summary of the objectives of the program and a summary of the process for implementing CDBG activities.

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1.1 Program History & Primary Objective

✓ This section explains the history of the CDBG program and its goals.

Key Topics in This Section	✓ Programs that preceded CDBG ✓ CDBG primary objective
Statutory/Regulatory Citations	Section 101(c) §570.1, §570.2
Other Reference Materials on This Topic	Not applicable

✓ The Community Development Block Grant (CDBG) Program is authorized under Title I of the Housing and Community Development Act of 1974, as amended. The CDBG program was enacted in 1974 under the Housing and Community Development Act or HCDA. Prior to this point in time, there were numerous federal programs which addressed community development issues.

✓ CDBG grew out of the consolidation of eight categorical programs under which communities competed nationally for funds. The consolidated programs include:

- Open Space;
- Urban Renewal;
- Neighborhood Development Program grants;
- Historic Preservation grants;

- Model Cities supplemental grants;
- Public Facilities loans;
- Neighborhood Facilities grants; and
- Water and Sewer grants.

✓ The primary objective of Title I of the Housing and Community Development Act of 1974, as amended, is the development of viable urban communities.

✓ These viable communities are achieved by providing the following, principally for persons of low and moderate income:

- Decent housing;
- A suitable living environment; and
- Expanded economic opportunities.

✓ To achieve these goals, the CDBG statute and regulations set forth eligible activities and the national objectives that each activity must meet. As recipients of CDBG funds, grantees are charged with ensuring that these requirements are met.

1.2 CDBG Regulations

✓ This section provides an overview of the CDBG regulations and regulatory changes over time.

Key Topics in This Section	✓ Regulatory basis for CDBG ✓ Key recent regulatory changes
Statutory/Regulatory Citations	24 CFR Part 570
Other Reference Materials on This Topic	Not applicable

✓ The regulations implementing the CDBG Program are found at 24 CFR Part 570.The CDBG regulations were dramatically revised from 1995 to 2006, primarily to increase flexibility for grantees in carrying out funded activities, to reflect statutory changes, and to respond to audits of the program by the Inspector General.

- **January 5, 1995 (Effective February 6, 1995)—**This rule established the guidelines for evaluating and selecting economic development projects and made certain other changes to facilitate the use of CDBG funding for economic development, including microenterprise activities, Neighborhood Revitalization Strategies and Community Development Financial Institutions.
- **November 9, 1995 (Effective December 11, 1995)—**This consolidated rule updated the regulations to reflect significant statutory enhancements since 1987, corrected identified deficiencies, implemented relevant portions of the National Affordable Housing Act of 1990, amended the conflict of interest provisions, and provided criteria for performance reviews and timely expenditure of CDBG funding.
- **April 29, 1996 (Retroactively effective December 11, 1995)—**This rule contained certain technical corrections to the rule published in November 1995.

- **July 19, 1999 (Effective December 22, 1999)—**This rule clarified the level of expenditure documentation that CDBG grantees and subrecipients must maintain to identify the use of funds for assisted activities.
- **November 21, 2000 (Effective December 21, 2000)—**This rule made two changes: (1) the pre-award requirements were revised to allow a new grantee without a consolidated plan to be reimbursed for costs of activities to develop and prepare its first consolidated plan; and (2) permit homeownership activities, to the extent authorized by statute, to be funded in connection with new construction.
- **July 17, 2002 (Effective August 16, 2002)—**This rule amended the regulation at 570.204(d) to require grantees to obtain HUD's approval to demolish HUD-owned housing units.
- **September 30, 2003 (effective October 30, 2003)—**This final rule revised various HUD regulations, including the CDBG regulations at 570.200(j), 570.503, and 570.607, to remove barriers to the participation of faith-based organizations in eight of HUD's Community Planning and Development programs, including the CDBG program. A subsequent rule change effective August 9, 2004, revised the CDBG regulations at 570.480 for the same purpose.
- **December 12, 2003 (Interim Rule, Effective January 12, 2004)—**This rule revised the definition of "metropolitan city" by replacing the obsolete term "central city" with the new term "principal city."
- **December 23, 2005 (Interim Rule, Effective February 21, 2006)—**This rule implemented a statutory amendment regarding limitations on the use of CDBG funds for activities involving job relocation. Provisions are codified at 24 CFR 570.210.
- **May 24, 2006 (Final Rule, Effective June 23, 2006)—**This rule clarified the eligibility of brownfields redevelopment activities and makes changes to national objectives provisions that relate to brownfields.

✓ Included as an Appendix to this manual is a copy of the CDBG regulations (Entitlement program only) and statute.

✓ These new flexibilities will be discussed throughout this manual and are summarized in memorandums from HUD located in the Appendix.

1.3 Key Definitions

✓ This section provides definitions of key CDBG topics and terms.

Key Topics in This Section	✓ Key definitions needed for entitlement programs
Statutory/Regulatory Citations	Section 102 §570.3
Other Reference Materials on This Topic	Not applicable

CDBG Recipient: Local governments are known as grantees or recipients. As noted above, they participate in either the Entitlement Program (for cities in metropolitan areas over 50,000 in population, designated principal cities of metropolitan statistical areas or urban counties with more than 200,000 people). Under the States and Small Cities Program, states receive funding directly from HUD and provide it to small cities (non-entitled communities), also referred to as

units of general local government.

Community Development Financial Institution (CDFI): An organization that: has as its primary mission the promotion of community development; serves an investment area or targeted population; provides development services and equity investments or loans; maintains accountability to residents within its investment area; and is not a public agency or institution.

Community-Based Development Organization (CBDO): CBDOs are generally nonprofit organizations that undertake specific kinds of CDBG-funded activities. CBDOs can be for-profit or nonprofit organizations, but cannot be governmental entities. A CBDO may be designated as a subrecipient by the grantee.

Consolidated Plan: The Consolidated Plan is prepared by the grantee in accordance with 24 CFR Part 91, and describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD's CPD formula programs, including CDBG. An approved Consolidated Plan is one which has been approved by HUD.

Contractors: A contractor is an entity paid with CDBG funds in return for a specific service (e.g., construction). Contractors must be selected through a competitive procurement process.

Draw down: Refers to the process of requesting and receiving CDBG funds. Grantees draw down funds from a line of credit established by HUD.

Entitlement Program: The Entitlement Program is the portion of the CDBG Program that provides formula grants to metropolitan cities and urban counties. The Entitlement Program is the largest component of the CDBG Program receiving 70 percent of CDBG appropriations. Participating grantees automatically receive an annual allocation of CDBG funds. The grant amounts are determined by the higher of two formulas: overcrowded housing, population and poverty; or age of housing, population growth lag, and poverty**.**

Entitlement Grantee: A city in a metropolitan area with a population of 50,000 or more, a principal city of a metropolitan area, or an urban county with a population of at least 200,000 (excluding the population of metropolitan cities located therein) that receives an annual allocation of CDBG funds directly from HUD under the CDBG Entitlement Program.

Family: Family, as defined in 24 CFR 5.403, includes, but is 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, disabled person, near-elderly person, or any other single person (see further definitions in 24 CFR 5.403); or
- ✓ A group of persons residing together, and such group includes, but is not limited to: foster care is considered a member of the family);
  - An elderly family;
  - A near-elderly family;
  - A disabled family;
  - A displaced family; and

- The remaining members of a family.

Household: means all persons occupying a housing unit. The occupants may be a family, as defined in 24 CFR 5.403; two or more families 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.

HUD: The U.S. Department of Housing and Urban Development (HUD). HUD established the regulations and requirements for the program and has oversight responsibilities for the use of CDBG funds.

Income: Grantees may select any of three definitions of income: (1) Annual income as defined under Section 8; (2) Annual income as reported under the Census long form/American Community Survey; or (3) Adjusted gross income as defined by the IRS Form 1040.

Live-in-Aide: means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities (see regulatory reference above under family), and who:

- ✓ Is determined to be essential to the care and well-being of the persons;
- ✓ Is not obligated for the support of the persons; and
- ✓ Would not be living in the unit except to provide the necessary supportive services.

Low and Moderate Income: Low and moderate income (also referred to in this manual as LMI) means family or household with an annual income less than the Section 8 Low Income Limit, generally 80 percent of the area median income, as established by HUD.

- ✓ **Low-Income Household/Family:** A household/family having an income equal to or less than the Section 8 Very Low Income limit (50% of the area median income) as established by HUD.
- ✓ **Moderate-Income Household/Family:** A household/family having an income equal to or less than the Section 8 Low Income limit (80% of area median income) established by HUD, but greater than the Section 8 Very Low Income limit (50% of area median income) established by HUD.
- ✓ Below is a *sample* income chart indicating the Section 8 low income limits, as well as the 30% of median income and 50% of median income limits.

Area: **Sample**				FY 2014 Median Family Income: $70,000				
	ADJUSTED INCOME LIMITS (by household size)							
	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8+ Persons
30% Limits	$14,700	$16,800	$18,900	$21,000	$22,700	$24,4000	$26,050	$27,750
Very Low Income (50% Limits)	$24,500	$28,000	$31,500	$35,000	$37,800	$40,600	$43,400	$46,200
Low & Moderate Income (80% Limits)	$39,200	$44,800	$50,400	$56,000	$60,500	$65,000	$69,450	$73,950

Microenterprise: A business that has five or fewer employees, one or more of whom owns the enterprise.

Person with disabilities: Means a person who:

- ✓ Has a disability, as defined in 42 U.S.C. 423;
- ✓ Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
  - Is expected to be of long-continued and indefinite duration;
  - Substantially impedes his or her ability to live independently, and
  - Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or
  - Has a developmental disability as defined in 42 U.S.C. 6001.
- ✓ Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;
- ✓ For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and
- ✓ Means "individual with handicaps", as defined in 24 CFR 8.3, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

State and Small Cities Program: The State and Small Cities Program provides CDBG grants to state governments (except in the state of Hawaii where HUD directly administers the program). State agencies then provide CDBG assistance to non-entitlement communities within their jurisdiction. This training manual focuses primarily on the regulations implementing the Entitlement Program. Although many of the rules for the State and Small Cities Program are very similar to the rules for the Entitlement Program, readers representing states or small cities are encouraged to consult the applicable regulations at 24 CFR Part 570, Subpart I and the statute for additional guidance.

Subrecipient: An entity that assists the recipient to implement and administer its program. Subrecipients are generally nonprofit organizations that assist the recipient to undertake one or

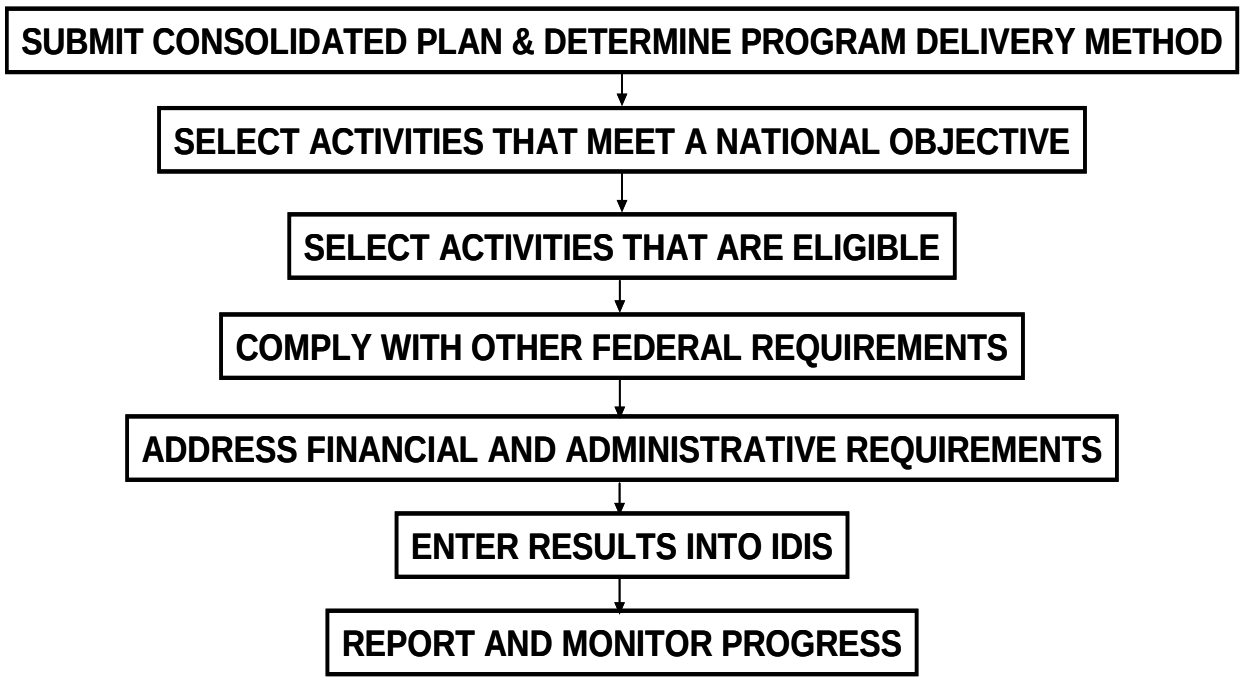
more activities on behalf of the grantee such as administer a home rehabilitation loan program or manage a job training program. More information on subrecipients is provided in Chapter 2 of this manual.

1.4 CDBG Implementation Process

✓ This section summarizes the key steps involved in implementing a CDBG program.

Key Topics in This Section	✓ Flow and key steps in implementing a CDBG program
Statutory/Regulatory Citations	Not applicable
Other Reference Materials on This Topic	Not applicable

✓ The flow chart below outlines the key steps involved in implementing a CDBG program. Note that the steps are not always undertaken in this particular order, but the chart is provided to remind grantees of the key elements in the process.



✓ The following chapters of this training manual highlight each of these key steps.

1.5 Introduction to Eligible Activities

✓ This section describes the range of activities that are eligible under the CDBG Program.

Key Topics in This Section	✓ Activities Related to Housing ✓ Other Real Property Activities ✓ Public Facilities ✓ Activities Related to Public Services ✓ Activities Related to Economic Development ✓ Assistance to Community Based Development Organizations ✓ Other Types of Activities ✓ Planning and Administration ✓ Eligible Activities and National Objectives
Regulatory/Statutory Citations	Section 105 §570.201, §570.202, §570.203, §570.204, §570.205 §570.206 and §570.207
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities - Chapter 2

✓ CDBG offers grantees a high level of flexibility in choosing program activities. Grantees are free to select those activities that best meet the needs of their communities, in accordance with the national objectives and other requirements of the CDBG Program.

✓ Please refer to the CDBG regulations for a more complete description of each of these eligible activities. The *CDBG Guide to National Objectives and Eligible Activities for Entitlement Communities* is another good resource for determining the eligibility of activities.

✓ The following is a representative overview of eligible CDBG activities. The activities have been loosely grouped in very general categories for the purposes of this manual. The categories of activities are described in more detail in the following chapters as noted.

✓ Determining under which category of eligible activities an activity falls is very important for various reasons. The regulations and statutes place certain requirements and stipulations on certain categories and not others. For example, the regulations and statute cap the amount of CDBG funds that can be used for public service and program administration activities. Additionally, the category of eligibility may dictate the costs that are eligible, the national objective under which the activity falls, and the rules that are triggered.

1.5.1 Housing

✓ There are many activities related to housing that are eligible under the CDBG Program. The list of eligible activities includes:

- Housing services in connection with Home Investment Partnerships (HOME) Program activities (§ 570.201(k));

- Construction of housing assisted under Section 17 of the U.S. Housing Act of 1937 (§ 570.201(m)) or construction of housing by eligible CBDOs (§570.204(a)) or as last resort housing under §570.207(b)(3)(i);
- Homeownership assistance (such as downpayment assistance and interest subsidies) (§570.201(n) or §570.201(e));
- Rehabilitation of buildings that are owner-occupied housing (§ 570.202). This also includes conversion of non-residential structures for residential use. The following types of rehabilitation activities may be undertaken:
  - Acquisition for rehabilitation and rehabilitation for residential purposes;
  - Labor, materials, etc. for rehabilitation of properties;
  - Loans for refinancing existing secured indebtedness;
  - Energy improvements;
  - Water efficiency improvements;
  - Connection to water and sewer lines;
  - Some homeowner warranty, hazard and flood insurance premiums;
  - Testing for and abatement of lead-based paint;
  - Costs of acquiring tools to be lent for rehabilitation;
  - Rehabilitation services;
  - Assistance for the rehabilitation of housing under Section 17 of the United States Housing Act of 1937; and
  - Removal of material and architectural barriers that restrict accessibility to eligible buildings
- Lead-based paint testing and abatement as a stand-alone program or included as rehabilitation as noted above (§ 570.202(f));
- Activities that support new housing construction such as acquisition (§570.201(a) and (b)), clearance (§570.201(d)), site improvements (§570.201(c)), and street improvements (§570.201(c)).

✓ Additional information about these types of activities may be found in Chapter 4: Housing Activities.

1.5.2 Other Real Property Activities

✓ In additional to the housing-related activities outlined above, many other real property activities are eligible to be funded by CDBG such as:

- Acquisition (§ 570.201(a));
- Disposition (§ 570.201(b));
- Clearance and demolition (§ 570.201(d));
- Rehabilitation of publicly- or privately-owned commercial or industrial buildings (§ 570.202);

- Code enforcement (§ 570.202(c));
- Historic preservation (§ 570.202(d));
- Renovation of closed buildings (§ 570.202(e));
- Interim assistance to arrest severe deterioration or alleviate emergency conditions (§ 570.201(f))—Note: this activity may include some specific types of services, please refer to the regulations for more information;
- Privately-owned utilities (§ 570.201(l));
- Completion of urban renewal projects (§ 570.201(h))—Additional information about this activity may be found at § 570.800;

✓ Additional information about these types of activities may be found in Chapter 5: Other Real Property Improvements.

1.5.3 Public Facilities and Improvements

✓ CDBG funds may be used for the acquisition, construction, reconstruction, rehabilitation, or installation of public improvements or public facilities. (§ 570.201(c))

- "Public improvements" includes, but is not limited to, streets, sidewalks, water and sewer lines, and parks.
- "Public facilities" includes, but is not limited to, neighborhood/community facilities and facilities for persons with special needs (e.g. homeless shelters, group homes, and halfway houses).

1.5.4 Additional information is provided in Chapter 6.Public Services

✓ Public services are also generally eligible under the CDBG Program (§ 570.201(e)). These public service activities may include, but are not limited to:

- Job training and employment services;
- Health care and substance abuse services;
- Child care;
- Crime prevention; and
- Fair Housing counseling.

✓ Additional information about the various types of public services is provided in Chapter 7.

1.5.5 Economic Development

✓ CDBG funds may also be used for activities related to economic development. The following are examples of eligible activities that can be funded by CDBG:

- Microenterprise assistance (§ 570.201(o));
- Commercial Rehabilitation; and
- Special economic development activities (§ 570.203).

✓ Additional information about economic development activities may be found in Chapter 8.

1.5.6 Community Based Development Organizations

- ✓ CDBG recipients may also provide grants or loans to CBDOs to carry out the following types of projects (§ 570.204):
  - Neighborhood revitalization;
  - Community economic development; and
  - Energy conservation.
- ✓ Additional information about CBDOs may be found in Chapter 2.

1.5.7 Other Types of Activities

- ✓ Certain other types of activities are also eligible under CDBG, including:
  - Payment of non-Federal share of grants in connection with CDBG-eligible activities (§ 570.201(g));
  - Relocation assistance (§ 570.201(i));
  - Loss of rental income (related to relocation) (§ 570.201(j));
  - Technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities (§ 570.201(p)); and
  - Assistance to institutions of higher education with the capacity to carry out other eligible activities (§ 570.201(q)).

1.5.8 Planning and Administration

- ✓ CDBG funds may be used for planning activities (§ 570.205). Such activities might include:
  - Comprehensive plans;
  - Community development plans (including the Consolidated Plan);
  - Functional plans (for housing; land use and urban environmental design; economic development; open space and recreation; energy use and conservation; floodplain and wetlands management; transportation; utilities; historic preservation; etc.);
  - Other plans and studies (e.g., small area and neighborhood plans; capital improvements program plans; individual project plans; general environmental; urban environmental design; historic preservation studies; etc.); and
  - Policy planning, management, and capacity building activities.
- ✓ Grantees may use CDBG funds for program administration activities (§ 570.206). Such activities may include:
  - General management, oversight and coordination;
  - Public information;
  - Fair Housing activities;
  - Indirect costs;

- Submission of applications for Federal programs; and
- Costs to pursue Section 17 of the United States Housing Act of 1937.

✓ Both planning and administration activities are subject to certain caps and constraints.

✓ More details concerning planning and administration costs can be found Chapter 11.

1.6 Ineligible Activities

✓ This section describes activities that are not eligible under the CDBG Program.

Key Topics in This Section	✓ Ineligible Activities
Regulatory/Statutory Citations	§570.207
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities for Entitlement Communities - Chapter 2

✓ The general rule is that any activity not specifically authorized under the CDBG regulations and statute is ineligible to be assisted with CDBG funds.

✓ In addition, the regulations stipulate that the following activities may ***not*** be assisted with CDBG funds:

- Buildings for the general conduct of government are ineligible. However, the removal of architectural barriers from government buildings is eligible under the category of public facilities and improvements.
- General government expenses are ineligible.
- Financing for political activities or to engage in other partisan political activities are ineligible. However, a facility assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, if the building is available to all community organizations on an equal basis.

✓ The following activities may ***not*** be assisted with CDBG funds unless authorized as a special economic development activity or when carried out by a CBDO:

- Purchase of equipment is generally ineligible.
  - Compensation for the use of construction equipment through leasing, depreciation, or use allowances is eligible.
  - Fire protection considered an integral part of public facilities is eligible. 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.
- Purchase of personal property, including equipment, fixtures, motor vehicles, furnishings, or other personal property is generally ineligible.
- Operating and maintenance expenses (of public facilities, improvements, and services) are 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;
- New housing construction is ineligible except under certain conditions or when carried out by a CBDO.
- Income payments made to an individual or family for items such as food, clothing, housing, or utilities are ineligible.
- One time grants, emergency type grants, or loans for such purposes may be eligible under the category of Public Services.

1.7 CDBG Resources

The following resources are helpful to grantees and subrecipients administering CDBG activities:

- ✓ Community Development Block Grant Program: Guide to National Objectives and Eligible Activities for Entitlement Communities.
- ✓ "A Guidebook for Grantees on Subrecipient Oversight: Managing CDBG." (Revised March 2005) Available on HUD web site and via Community Connections.
- ✓ Some of the resources listed above as well as other documents and information may be found on the OneCPD Resources Exchange: http://www.onecpd.info.

Glossary of Common Acronyms & Abbreviations in the CDBG Program

ABA	Architectural Barriers Act of 1968
ADA	Americans With Disabilities Act
AFFH	Affirmatively Furthering Fair Housing
AI	Analysis of Impediments to Fair Housing
ARC	Appalachian Regional Commission
BNA	Block Numbering Area (now obsolete)
CAPER	Consolidated Annual Performance and Evaluation Report (the annual Con Plan report)
CBDO	Community-based development organization
Certs	Certifications
CDFI	Community Development Financial Institution
CFR	Code of Federal Regulations (24 CFR is HUD regulations)
COG	Council of Governments
ConPlan	Consolidated Plan
CP	Citizen Participation
CPD	HUD Office of Community Planning & Development
CRSA	Community Revitalization Strategy Area
CT	Census Tract
ED	Economic Development
EZ/EC /RC	Empowerment Zones/Enterprise Communities/Renewal Communities
FHA	Federal Housing Administration –HUD Office of Housing
FmHA	Farmers Home Administration (sometimes also called FHA; both are obsolete), now the Rural Housing Administration in the Department of Agriculture
FHEO	HUD Office of Fair Housing and Equal Opportunity
FTE	Full-time equivalents (for jobs)
GoZone	Gulf Opportunity zone (hurricane recovery)
HCDA (or the Act)	Housing & Community Development Act of 1974, as amended
HoZo	Homeownership Opportunity Zone
IDIS	Integrated Disbursement & Information System
LBP	Lead-Based Paint

LDP	Limited Denial of Participation
LMI (or low/mod)	Low- and Moderate-Income
LMISD	Low and Moderate Income Summary Data (shows percent of low/mod persons by grantee, and by CT, BG)
MBE	Minority-owned Business Enterprise
MOD	Method of Distribution (part of the annual Action Plan for States)
NRSA	Neighborhood Revitalization Strategy Area
OGC	HUD Office of General Counsel
PDR	HUD Office of Policy Development & Research
PI	Program Income
PJ	Participating Jurisdiction (in the HOME program)
RLF	Revolving Loan Fund
Title VIII	Title VIII of the Civil Rights Act of 1968 (also known as the Fair Housing Act)
UGLG	Unit of General Local Government (“ug-lug”)
URA	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
WBE	Woman-owned Business Enterprise
§105	Section of the HCDA which contains the list of eligible activities in the CDBG program
§109	Section of the HCDA prohibiting discrimination

CHAPTER 2: ACTIVITY SELECTION AND IMPLEMENTATION

CHAPTER PURPOSE & CONTENTS

This chapter provides an overview of the framework within which grantees must make decisions concerning activities and organizations to fund under their CDBG programs. This chapter also discusses the various types of organizations that grantees may choose to work with as well as how the selection process might be implemented.

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2.1	The Planning Framework	2-1
2.2	Methods of Administering Programs	2-7
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2.1 The Planning Framework

✓ Within the framework established by the CDBG rules, grantees need to make strategic choices about how they administer their local programs. This chapter highlights the planning framework under which the grantee will make these choices.

Key Topics in This Section	✓ The Consolidated Plan
Regulatory/Statutory Citations	Section 104 §91, §570.302
Other Reference Materials on This Topic	✓ Consolidated Plan Guidelines • http://www.onecpd.info

✓ To begin the process of implementing CDBG activities, grantees must understand community needs, interests, and objectives in order to make effective choices about how to administer their CDBG programs.

✓ Based on this analysis of the community, grantees can then make decisions about:

- What types of activities will be funded?
- Who will implement these activities?
- How will activities/organizations be selected?

✓ The remainder of this chapter highlights these key program administration questions and the framework within which these key decisions are made. The first step in this process is the creation of a Consolidated Plan.

2.1.1 Consolidated Plan Components

- ✓ Completing the Consolidated Plan (and annual Action Plans) will help grantees determine what activities and organizations to fund in the coming year.
  - The Consolidated Plan is a plan of three to five years in length, which describes community needs, resources, priorities, and proposed activities to be undertaken under certain HUD programs, including CDBG, Home Investment Partnerships (HOME), Emergency Shelter Grant (ESG), and Housing Opportunities for Persons with AIDS (HOPWA).
  - Each year, grantees must submit an update to HUD, referred to as an Action Plan. The Action Plan describes the specific planned uses for HUD programs, including CDBG, as well as certain other program requirements.
  - Finally, the grantee must also assess the effectiveness of their analysis of impediments (AI) to fair housing choice and update as necessary. An AI is a comprehensive review of an Entitlement jurisdiction's laws, regulations, and administrative policies procedures and practices; an assessment of how those laws, etc. affect the location, availability and accessibility of housing; an assessment of the conditions, both public and private affecting fair housing choice for all protected classes; and an assessment of the availability of affordable, accessible housing in a range of unit sizes. The AI is covered further in Chapter 19: Fair Housing, Accessibility and Equal Employment.
- ✓ To meet the minimum requirements set forth by HUD, the Consolidated Plan must include five main components:
  - A description of the lead agency or entity responsible for overseeing the development of the Consolidated Plan and a description of the process undertaken to develop the plan;
  - A housing and homeless needs assessment;
  - A housing market analysis;
  - A strategic plan (three to five years in length); and
  - A one-year Action Plan.
- ✓ See Exhibit 2-1 for specific information on what each of these components must include.

Exhibit 2-1: Contents of a Consolidated Plan

A description of the lead agency or entity responsible for overseeing the development of the Consolidated Plan and a description of the process undertaken to develop the plan.

A housing and homeless needs assessment:

- ✓ Number and type of families in need of housing assistance;
- ✓ Disproportionate needs of minority groups, if applicable;
- ✓ Nature and extent of homelessness;
- ✓ Number of persons requiring supportive housing;
- ✓ Size and characteristics of population with HIV/AIDS; and
- ✓ Number of housing units occupied with LMI families with lead-based paint hazards.

A housing market analysis which contains:

- ✓ Supply, demand, cost and condition of housing;
- ✓ Housing stock available to persons with special needs;
- ✓ Description of areas of minority and low-income concentrations;
- ✓ Number, physical condition and rehabilitation needs of public housing units;
- ✓ Housing authority's strategy for improving management and operations of public housing and for improving the living environment of families residing in public housing; and
- ✓ Identification of public housing developments participating in an approved PHA Plan (as per 24 CFR 91.201(b)(1)), including a reference to those being funded with other funds covered by the Consolidated Plan.

A strategic plan that includes the following:

- ✓ General housing, homeless and special needs priorities and geographic investment among priority needs;
- ✓ Identification of any obstacles to meeting underserved needs;
- ✓ Description of how funds made available will be used to address priority needs;
- ✓ Proposed accomplishments over a specific time period;
- ✓ Non-housing community development plan;
- ✓ Neighborhood revitalization strategy (optional);
- ✓ Strategy to remove or improve barriers to affordable housing;
- ✓ Actions to evaluate and reduce lead-based paint hazards;
- ✓ Anti-poverty strategy;
- ✓ A description of the institutional structure;
- ✓ A description of activities to enhance coordination between public and private housing providers; and
- ✓ Public housing resident initiatives.

An **action plan** which contains:

- ✓ Application form (SF 424);
- ✓ An Executive Summary which includes:
  - Objectives and outcomes for the upcoming year;
  - Self-evaluation of past performance;
  - Citizen participation and consultation process;
  - Public comments, views, and responses;
- ✓ A description of Federal and other resources expected to be available;
- ✓ A description of leveraging of sources and how match obligations will be met;
- ✓ Annual objectives expected to be achieved;
- ✓ A description of the activities to be undertaken, including:
  - Number and type of families that will benefit;
  - Priority needs addressed;
  - Program income anticipated;
  - Proposed accomplishments;
  - Target completion dates;
- ✓ Outcome measures for proposed activities;
- ✓ A description of the geographic distribution of investment;
- ✓ A description of planned homeless and other special needs activities;
- ✓ A description of other actions proposed to:
  - Address obstacles to address underserved needs;
  - Foster and maintain affordable housing;
  - Remove barriers to affordable housing;
  - Evaluate and reduce lead-based paint hazards;
  - Reduce the number of families in poverty;
  - Develop the community's institutional structure;
  - Enhance coordination between public and private housing providers, social service agencies; and
  - Foster public housing improvements and resident initiatives.
- ✓ Appropriate reference to annual revisions made in the PHA plan by the housing authority;
- ✓ If the housing authority is designated as a "troubled" housing authority, the plan to assist the agency in addressing its problems;
- ✓ General certifications;
- ✓ A description of proposed alternate forms of investment not specifically listed as eligible in the HOME regulations;
- ✓ If undertaking homebuyer activities, a description of proposed resale and/or recapture guidelines; and
- ✓ Program-specific certifications.

2.1.2 eCon Planning Suite

- ✓ In May 2012, HUD introduced the eCon Planning Suite, a collection of new online tools to help grantees create market-driven, leveraged housing and community development plans. These three tools are designed to help grantees with the needs analysis and strategic decision making:
  - IDIS Template for Consolidated Plan, Annual Action Plan, and Consolidated Annual Performance and Evaluation Report (CAPER).
  - CPD Maps, an online data mapping tool for place-based planning.

- New data sets describing a broad spectrum of community, economic, and market conditions.

✓ The IDIS Template for the Consolidated Plan provides a number of benefits to grantees.

- A uniform, web-based format helps ensure that the Consolidated Plan includes all the required elements per the regulations. The template also includes a Quality Check that grantees can use to review the plan for missing information and discrepancies before submitting the final version to HUD.
- With the incorporation of the Consolidated Plan and Annual Action Plan into IDIS Online, all of the key reporting elements of the grants management cycle are integrated into one system. This will help ensure cohesiveness between the goals described in the Consolidated Plan and Action Plan and the outcomes tracked in IDIS and reported in the Consolidated Annual Performance and Evaluation Report (CAPER); making the Consolidated Plan a useful management tool.
- Many of the data tables within the Consolidated Plan Template are pre-populated with the latest housing and economic data. The data is provided to help grantees develop their funding priorities in the Strategic Plan and to save time in searching for and compiling the data.
- The Consolidated Plan Template is integrated with the CPD Maps tool. The maps and data sets available in CPD Maps can help grantees assess market conditions and present the information in a compelling fashion. CPD Maps is publicly available so that community stakeholders will also have access to the same data sets. The Consolidated Plan Template allows grantees to easily insert maps and data tables from CPD Maps throughout the document.

✓ CPD Maps is an online GIS mapping tool designed to provide easy access and analysis of data sets pertinent to the Consolidated Plan. Use of this tool is not required. However, CPD Maps is designed to increase a grantee's understanding of how needs and market conditions are distributed geographically throughout its jurisdiction and to assist with needs- and market-based decision-making.

✓ Underlying both the IDIS Template for the Consolidated Plan and CPD Maps are expanded data sets that grantees can use as a basis for planning. In addition to the Comprehensive Housing Affordability Strategy (CHAS) data, HUD is providing 5-year American Community Survey data from the U.S. Census, public housing data, and additional data sets describing business and employment characteristics.

For more details on the e-Con Planning Suite, please visit
http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/about/conplan

2.1.3 Citizen Participation

✓ The Consolidated Plan regulations stipulate that grantees meet certain minimal citizen participation requirements. In fact, each grantee is required to prepare a Citizen Participation Plan that details the community's procedures for involving the public in its program planning and implementation. The complete requirements can be found in 24 CFR 91.105.

✓ At a minimum, the Citizen Participation Plan must ensure that the following requirements are met:

- The grantee must hold at least two public hearings a year to obtain citizens' views and to respond to proposals and questions. They should be conducted at a minimum of two different stages of the program year;
- One of the public hearings should be held during the development of the plan. This can count as one of the two required public hearings;
- The proposed Consolidated Plan must be published. At a minimum, the grantee is required to publish a summary of the proposed plan in one or more newspapers of general circulation, and make copies available in libraries, government offices, and public places;
- There must be a 30-day period for citizen review and comment prior to submitting the plan to HUD; and
- Public comments must be given consideration. The plan should include a summary of comments received and reasons the comments/suggestions were not incorporated.

✓ In addition, grantees must consult with other public and private agencies that provide assisted housing, health services, social services, child welfare agencies (regarding lead paint), adjacent units of local government (for non-housing community development needs), and local housing authorities.

✓ Meeting or exceeding the minimum citizen participation requirements may help grantees to:

- Better inform the public about community needs and the resources available to address needs;
- Learn about “hidden” community needs and issues;
- Allow citizens and organizations to bring forward ideas on how to address community needs; and
- Generate involvement in and commitment to proposed solutions.

✓ In developing the Consolidated Plan and making choices about the types of programs to be undertaken, grantees need to think about the range of possible CDBG activities and about how these activities compare to the needs of the community.

2.1.4 Plan Review and Approval

✓ A grantee's Consolidated Plan must be submitted to its respective field office for review and approval at least 45 days before the start of the grantee’s program year. HUD will not accept a submission earlier than November 15 or later than August 16 of the Federal fiscal year for which the grant funds are appropriated.

✓ HUD will review the consolidated plan upon receipt. The grantee should consider the Plan approved after 45 days unless HUD notifies the grantee before that date that it is disapproved.

- Within 15 days of a disapproval notice, HUD must provide the grantee with written reasons for disapproval and corrective actions.
- The grantee then has 45 days to resubmit its corrected Consolidated Plan.

✓ HUD will disapprove a plan if:

- Any portion of the Plan is inconsistent with the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12703); or
- It is "substantially incomplete,” meaning:

- The Plan was developed without the required citizen participation or the required consultation;
- The Plan does not include all the elements listed in 24 CFR 91.200 through 91.225; or
- The Plan contains an inaccurate certification.

✓ There are times when grantees must amend their Consolidated Plans after they have been approved. A grantee must amend its Plan:

- To make a change in its allocation priorities or a change in its method of distributing funds;
- To carry out a new activity using funds covered under the consolidated plan; or
- To change the purpose, scope, location or beneficiaries of an activity.

✓ The citizen participation plan must specify what program changes constitute a substantial amendment to the Consolidated Plan, and what procedure will be followed to amend the plan. While all amendments must be made public, it is substantial amendments that are subject to a citizen participation process, in accordance with the grantee's citizen participation plan. Such plan must provide a period of not less than 30 days to receive public comments on substantial amendments before they are implemented.

✓ Grantees may submit a copy of each amendment to HUD as it occurs, or at the end of its program year.

2.1.5 Reporting on the Consolidated Plan

✓ Grantees are required to submit a Consolidated Annual Performance and Evaluation Report (CAPER) 90 days after the end of the grantee's program year. The CAPER must include the following:

- A description of the resources made available;
- The investment of available resources;
- The geographic distribution and location of investments;
- The families and persons assisted including their racial and ethnic status; and
- Actions taken to affirmatively further fair housing

✓ The CAPER must also include detailed information on progress towards addressing priorities, goals, and objectives outlined in a grantee's Consolidated Plan.

✓ Refer to Chapter 13 of this manual for further details on the CAPER.

2.2 Methods of Administering Programs

✓ Grantees have many options for how they can administer their CDBG programs. This section highlights the range of possible options.

Key Topics in This Section	✓ Grantee responsibilities ✓ Subrecipients ✓ Community Based Development Organizations (CBDOs)

	✓ Community Development Financial Institutions (CDFIs) ✓ Faith Based Organizations ✓ Contractors
Regulatory/Statutory Citations	Section 105(a)(15) §570.3, §570.200(j), §570.204, §570.503
Other Reference Materials on This Topic	OneCPD website resource library on http://www.onecpd.info: ✓ Managing CDBG: A Guidebook for Grantees on Subrecipient Oversight ✓ Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government ✓ CPD Notice 04-10: Notice of Guidelines for Ensuring Equal Treatment of Faith-based Organizations

2.2.1 Overview

✓ The CDBG Program does not dictate which kinds of activities or organizations grantees work with to implement their programs. Instead, grantees must make choices about who will administer and carryout CDBG activities. These choices are made as part of the planning process. Options for carrying-out eligible activities include use of:

- Grantee staff;
- Subrecipients;
- Community Based Development Organizations (CBDOs);
- Community Development Financial Institutions (CDFIs);
- Faith Based Organizations;
- Developers,
- Contractors.

2.2.2 Grantee Staff Administration of Programs

✓ Some communities' CDBG programs are run with few staff and a large number of subrecipients while others are administered primarily by grantee staff and few subrecipient organizations. Factors which tend to affect the degree to which grantee staff are relied upon more heavily for all CDBG functions include:

- Size of the community and of the entitlement grant amount;
- Types of programs undertaken;
- Local politics;
- Capacity of in-house staff; and
- Capacity and availability of subrecipient organizations.

✓ Before undertaking any CDBG-funded activity, grantees should consider the following issues:

- Is there political will to carry the program/project through the development, approval, and implementation phases?
- Does the required staffing experience currently exist?
- Is there sufficient time to take on new or expanded work?
- Are there adequate and appropriate administrative resources (e.g., legal, financial, etc.)?
- Are there subrecipients with the capability to assist with the program/project?
- Will consultants be needed?
- Are there sufficient funds to carry out the program/project and/or to invest the level of effort necessary for its implementation?

✓ Staffing for CDBG programs and activities generally requires:

- Conducting a skills inventory of staff members;
- Developing a list of required skills;
- Assessing where gaps exist between existing staff skills and required skills; and
- Undertaking the appropriate training, capacity building, and staff expansion necessary to administer the programs/activities.

✓ Based upon the grantee's analysis of staffing capacities and upon programmatic needs, the grantee must determine whether and/or to what extent it will work with subrecipients, CBDOs, contractors, and CDFIs.

2.2.3 Subrecipients

✓ A subrecipient is a public or private non-profit agency or organization receiving CDBG funds from a grantee or another subrecipient to undertake eligible activities.

- Entities, including public and private for-profit organizations, providing assistance to microenterprises are considered subrecipients.
- Contractors are ***not*** considered subrecipients.
- CBDOs are not considered subrecipients ***unless*** the grantee specifically designates these organizations as such.
- Institutions of higher learning may be subrecipients if carrying out CDBG-eligible activities.

✓ The grantee is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated subrecipients (or public agencies or contractors) does not relieve the grantee of this responsibility. The grantee is also responsible for determining the adequacy of performance under subrecipient agreements (and procurement contracts) and for taking appropriate action when performance problems arise.

✓ Before disbursing funds to any organization that is carrying out CDBG activities on behalf of the grantee as a subrecipient, a written agreement must be executed. The CDBG regulations stipulate that certain requirements be included in all written agreements with subrecipients. These requirements are listed in the section below.

✓ Written agreements must remain in effect for the length of time that the subrecipient has control over any CDBG funds, including program income. However, it is good practice to

update subrecipient agreements annually to ensure the agreements are current with regulations and requirements. This process also allows an opportunity to revisit and clarify problem areas or issues.

2.2.4 Subrecipient Agreements

- ✓ For subrecipients, compliance with applicable requirements is covered through a Subrecipient Agreement. The following general requirements are applicable:
  - All CDBG requirements are applicable to subrecipients.
  - Procurement by the subrecipient must follow a written code of conduct and established procurement procedures that provide open and free competition in accordance with OMB Circular A-110.
  - Uniform administrative requirements in 24 CFR Part 85 and OMB Circular A-87 and A-133 must be met by subrecipients that are governmental entities (including public agencies).
- ✓ The grantee may allow the subrecipient to retain program income for use for specified eligible activities, provided a subrecipient agreement remains in effect during any period the subrecipient has control over the program income. The agreement must specify the activities that will be undertaken with the program income. Program income is subject to all CDBG requirements. At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:
  - Statement of work - The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the grantee to effectively monitor performance under the agreement.
  - Records and reports - The grantee shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the grantee in meeting its recordkeeping and reporting requirements.
  - Program income - The agreement shall include the disposition of any program income received as a result of the CDBG project in compliance with all CDBG requirements. The agreement shall also specify that, at the end of the program year, the grantee may require remittance of all or part of any program income balances held by the subrecipient. For more information on the remittance of excess program income, please see chapter 11 of this manual.
  - Uniform administrative requirements - The agreement shall require the subrecipient to comply with applicable uniform administrative requirements, (OMB Circular A-110, implemented at 24 CFR Part 84; A-122 or A-21, as applicable; and A-133).
  - Other program requirements - The agreement shall require the subrecipient to carry out each activity in compliance with all Federal and State laws and regulations except that:
    - The subrecipient does not assume the grantee's environmental responsibilities; and
    - The subrecipient does not assume the grantee's responsibility for initiating the review process under the provisions of 24 CFR Part 52, Intergovernmental Coordination Regulations.

- Conditions for religious organizations - Where applicable, the conditions prescribed by HUD for the use of CDBG funds by religious organizations shall be included in the agreement.
- Suspension and termination - The agreement shall specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any terms of the agreement, and that the agreement may be terminated for convenience in accordance with 24 CFR 85.44.
- Reversion of assets - The agreement shall specify that upon its expiration, the subrecipient shall transfer to the grantee any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds in excess of $25,000 is either:
  - Used to meet one of the three National Objectives of the CDBG program until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the grantee; or
  - Disposed of in a manner that results in the grantee being reimbursed 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, or improvement to, the property. (Reimbursement is not required after the five years referenced above.)

2.2.5 Community Based Development Organizations

✓ CDBG funds may also be provided to Community Based Development Organizations (CBDOs) to carry out certain activities in connection with neighborhood revitalization, community economic development or energy conservation projects.

- A neighborhood revitalization project must include activities of sufficient size and scope to have an impact on the decline of a particular neighborhood.
  - The neighborhood must be designated in a local comprehensive plan or other local planning document or ordinance.
  - For communities with populations of less than 25,000, the entire community can be considered a neighborhood.
- A community economic development project must include activities that will increase economic opportunity, principally for LMI persons, or that retain or create jobs.
  - Projects that address a lack of affordable housing accessible to existing or planned jobs are considered eligible under a community economic development project.
- Energy conservation projects must include activities that address energy conservation, principally for LMI persons in the community.

✓ In order to qualify as a CBDO, an organization must have the following characteristics:

- Is organized under state or local law to engage in community development activities in a specific geographic area within the community;

- Has as its primary purpose the improvement of the physical, social, economic environment of its service area by addressing one or more critical problems in the area, with particular attention to the needs of LMI persons;
- If a for profit organization, the profits to shareholders or members must be incidental to its operations;
- The governing body's membership consists of 51 percent LMI residents of its service area or owners or officers of entities located in the service area or representatives of LMI organizations in the service area;
- Is not an agency or instrumentality of the grantee, and no more than one-third of the board is elected or appointed public officials or employees of the grantee; and
- The governing body is nominated by the general membership of the organization.

✓ Certain types of Community Housing Development Organizations (CHDOs) designated by the grantee under the HOME Program may qualify as a CBDO.

- NOTE: CHDOs only automatically qualify as CBDOs if that CHDO serves a single neighborhood.

✓ CBDOs that do not meet the above requirements may be determined to qualify if HUD determines that the organization is sufficiently similar in purpose, function, and scope to the above criteria.

✓ CBDOs are not automatically designated as subrecipients: the grantee may elect whether or not to consider the CBDO as a subrecipient.

✓ Note that the assets of a CBDO do not revert back to the grantee (as is required with subrecipient organizations) and that CBDOs are free to contract for goods and services.

- For CBDO assets paid for by the grantee ***under CDBG***, the grantee may elect to require reversion of assets. It is good practice for the grantee to develop policies about the types of CDBG-funded assets that will be subject to reversion from CBDOs.
- If the grantee elects to designate the CBDO as a subrecipient, all of the rules regarding subrecipients will also apply to that CBDO, including the requirement for reversion of assets.

2.2.6 Community Development Financial Institutions

✓ A community development financial institution (CDFI) is a community-based lending institution. The CDBG regulation changes that took effect in 1995 included certain flexibilities for activities carried out by CDFIs.

✓ As defined in the Community Development Banking and Financial Institutions Act of 1994, CDFIs have the following characteristics:

- Primary mission of promoting community development;
- Serve an investment area or targeted population;
- Have as its predominant business the provision of loans or development investments and provides development services in conjunction with such loans and investments;
- Maintains accountability to residents of its investment area or targeted population through representation on its governing board or some other means; and

  - Is not an agency or instrumentality of the government (Federal, state or local).

- ✓ CDFIs are not considered subrecipients or contractors. A CBDO may qualify as a CDFI.
- ✓ Types of organizations that may meet these criteria include community development banks; community development loan funds; microenterprise loan funds; and venture capital organizations.
- ✓ The Community Development Banking and Financial Institutions Act of 1994 also created a CDFI Fund to promote economic revitalization and community development through investment in and assistance to CDFIs.
  - The CDFI Fund is managed by the Department of Treasury and provides assistance to qualified organizations.
  - CDFIs then provide funds to other organizations in accordance with their missions.
- ✓ Activities carried out by CDFIs receive special consideration under CDBG regulations regardless of whether or not the CDFI is actually receiving assistance from the CDFI Fund.
  - For a CDFI whose charter limits its investment area to a primarily residential area with 51 percent LMI persons:
    - Job creation/retention activities may be qualified as meeting area benefit requirements;
    - Scattered site housing activities may be considered to be a single structure for the purposes of applying the LMI housing national objective criteria; and
    - Economic development activities may be exempt from the aggregate public benefit standards.
- ✓ For any CDFI, regardless of its investment area, job creation/retention national objective requirements may be met by aggregating the jobs created/retained by all businesses for which CDBG assistance was obligated during the program year.

2.2.7 Faith Based Organizations

- ✓ Effective October 30, 2003, HUD issued a new final rule to remove barriers to the participation of faith-based organizations in eight of HUD's Community Planning and Development programs, including the CDBG program.
- ✓ The amended CDBG regulations establish the following policies (§570.200(j)):
  - Faith-based organizations are eligible for CDBG funding on an equal footing with any other organization. There is no Federal requirement that an organization incorporate or operate as a nonprofit to obtain tax-exempt status under section 501(c)(3) in order to receive CDBG funds.
  - Organizations may not use direct CDBG funds to support inherently religious activities such as worship or religious instruction. If an organization does conduct such activities, the activities must be offered separately than activities funded by the CDBG program, in time or location.
  - Faith-based organizations retain their independence from Federal, state, and local governments, including their exemption from the federal prohibition on employment discrimination on the basis of religion for employees not involved in CDBG funded activities (§570.607).

- Faith-based organizations, like all organizations implementing HUD-funded programs, must serve all eligible beneficiaries without regard to religion. The CDBG statute and regulations prohibit any person from being denied the benefits of, or being subjected to discrimination, on the basis of religion under any activity funded in whole or in part with CDBG funds.
- Faith-based organizations, like all organizations, may receive CDBG funds to acquire, construct, or rehabilitate buildings and other real property as long as the funds only pay the costs attributable to CDBG activities.
- The final rule applies to state or local funds if a state or local government chooses to commingle its own funds with CDBG funds.

2.2.8 Developers

✓ A nonprofit or for-profit entity may be considered a developer when the organization is being paid by CDBG funds for the purposes of acquisition and/or rehabilitation for homebuyer or rental housing under 24 CFR 570.202(b)(1).

✓ A developer does not have to be competitively procured by the grantee; however, costs must be eligible and reasonable for the development being undertaken and a written agreement must be executed between the grantee and the developer outlining all applicable requirements.

2.2.9 Contractors

✓ A contractor can be either a for-profit or a nonprofit entity that is paid CDBG funds by the grantee (or subrecipient/CBDO) in return for specific services, where payment is made to the contractor as compensation for such services.

✓ A contractor is different than a CBDO and/or subrecipient in the following ways:

- A contractor must be procured competitively according to the OMB rules; and
- Most of the uniform administrative requirements do not apply to contractors (once the procurement process is complete).

✓ Typically, grantees use a contractor when:

- The project is a discrete activity and does not involve program management or administration;
- There will be a specific activity under contract with a clearly defined beginning and end date; and
  - The specific activity undertaken by a contractor may be a physical project (like a multi-family rehabilitation) or a social service activity (like running a day care center.)

✓ See Chapter 14 in the manual for additional information on procurement.

2.3 Project and Partner Selection

✓ There are several common ways that grantees may choose their partners. The section below highlights some possible processes for selecting partners.

Key Topics in This Section	✓ Application processes

Regulatory/Statutory Citations	Not applicable
Other Reference Materials on This Topic	Guidebooks for Grantees and Subrecipients in the CDBG Program

- ✓ There are a variety of approaches that grantees use to select activities and organizations for funding under local CDBG programs within the framework of the Consolidated Plan. Note, however, that ***contractors*** must be selected in accordance with the procurement requirements of 24 CFR Part 85. See Chapter 14 for information on procurement.
- ✓ Communities take many different approaches toward activity selection, including:
  - Some communities take a "wait and see" approach: evaluating each activity on a case-by-case basis as it is proposed.
  - Other communities take a more proactive approach: seeking out and choosing only those projects clearly falling within the scope of a concrete series of objectives and plans.
  - Many communities are somewhere in between these two: on the lookout for interesting opportunities, but working from a basic program design framework.
- ✓ There are four basic models upon which the selection process can be based; however, different variations of these approaches may be necessary or appropriate to meet community needs. These models are discussed below.

2.3.1 Formal Application Process

- ✓ Requires the submission of a formal application or proposal from the potential partner organizations, and is typically undertaken once a year in conjunction with the grantee's planning and budgeting process.
- ✓ Under the formal application process, applications are evaluated based on explicit selection criteria.
- ✓ This process works best in communities with:
  - Numerous or complex activities;
  - Numerous potential applicants with varying degrees of experience; or
  - Politics or other community issues require standardized, consistent treatment of all requests for funding.
- ✓ Advantages to a formal application process are that:
  - It requires the subrecipients to provide all the information needed (e.g., details on the proposed activity and on the organization's experience and capacity); and
  - It helps to ensure consistency throughout the evaluation process.
- ✓ Disadvantages to a formal proposal approach are that:

  This type of process tends to favor more experienced subrecipients (i.e., those familiar with the application process);
  - Staff time to ensure consistency, from the preparation of application packages to the review and evaluation of submissions, may be substantial; and
  - This approach may limit new activities or new subrecipients to only one chance per year.

2.3.2 Limited Application Process

- ✓ This approach is similar to the formal application process, but the application is not as detailed and grantees provide more follow-up and "hands on" involvement in the process.
- ✓ Grantees may review the applications and narrow the number of applications under consideration before requesting additional detailed information from the subrecipient.
- ✓ This approach may be useful for grantees interested in encouraging the participation of potential subrecipients not familiar with the program or the application process, or when the grantee's program is not complex.
- ✓ Some of the advantages of the limited application approach include the fact that it is more open and may attract new organizations or new ideas to the program. On the other hand, this approach shifts the responsibility for determining capacity and experience to the grantee. This, in turn, may require more grantee staff time. In addition, this process may not ensure the consistency and fairness that is more evident in the formal application process.

2.3.3 Solicitation of Applications from Qualified Organizations

- ✓ Grantees identify potential qualified applicants through an informal process or through a general Request For Qualifications (RFQ).
- ✓ From the identified group, grantees identify organizations to carry out specific activities and approach the organization about their interest in doing so.
- ✓ This approach is proactive and is more focused on qualified organizations. Because of this, it may result in less grantee staff time.
- ✓ However, this approach is much more "closed door" than the previous two and can result in criticism of the grantee's selection process. In addition, by focusing on the known, qualified organizations, lesser known, but possibly equally capable organizations may be overlooked.

2.3.4 "Open Door" Or Unsolicited Application Process

- ✓ This is a "laissez faire" approach to selecting activities and partner organizations. It either encourages or allows consideration of requests for funding at any time during the program year, and may or may not include an actual application.
- ✓ In reality, unsolicited applications may occur regardless of the type of approach in place in the community. However, if there is another process in place (e.g., formal application), the unsolicited application should be required to meet the requirements of the process already in place. This may mean that the application is held until the next application process is conducted, or the application is evaluated based on the criteria used during the regular application process.
- ✓ If the grantee uses the "Open Door" or "Unsolicited Application" process as its only means for accepting applications, it must ensure that all applications are treated consistently and that the same types of information are received and reviewed by the grantee.
- ✓ One of the advantages of this type of process is that it is open and may allow opportunities for grantees to more quickly respond to community needs.
- ✓ The primary disadvantage of this approach is that it is unplanned. Applications may come in at any time and require crucial staff time and effort to respond.

- ✓ Another disadvantage to this approach is timing. By not conducting the process at a specific time of year, grantees may commit funds to projects before qualified applications are received. This process tends to result in budget changes and program amendments throughout the year.

2.3.5 Mixed Approach

- ✓ As mentioned previously, the reality in many communities may be that one application process only is not feasible or does not work given local politics and community needs. In these cases, a variation of any of the above approaches or a mix of the four approaches may be more appropriate.
- ✓ Grantees should use caution, however, when mixing very different types of application processes and strive to maintain accountability to applicants and consistent treatment of requests for funds regardless of the process used.

2.3.6 The Application Package

- ✓ The specific elements of a grantee's application package will vary based on the type of application process used as well as the grantee's preferred level of information requested on the applicant organization and project/activity.
- ✓ In order for an application package to be effective, it should:
  - Provide a clear explanation of the grantee's CDBG program in order for prospective subrecipients to understand what they are applying for, how their proposed project fits into the overall program and what their responsibilities will be;
  - Provide detailed information regarding eligible activities and national objectives to eliminate the possibility of applications for ineligible activities;
  - Not be so complicated that organizations are discouraged from applying; and
  - Require enough information about the organization to permit the grantee to make informed reasonable decisions about the subrecipient's ability to carry out the proposed activity.

2.3.7 General Contents of an Application Package

- ✓ The general contents of an application package fall into two categories:
  1. Information provided to applicants; and
  2. Information required from the applicants when their applications are submitted.

Information Provided to Applicants

- ✓ In order to provide a clear picture to prospective subrecipients of the CDBG program as a whole and the grantee's program in particular, the application package may contain the following elements:
  - Summary of funding available (total and, if applicable, by activity type);
  - Summary of the grantee's funding priorities (if applicable);
  - Current income limits for the program;
  - Summary of eligible activities;

- Summary of national objectives;
- Description of the policies and criteria used to determine funding allocations;
- Schedule for determining funding allocations;
- Summary of rules and requirements applicable to CDBG subrecipients;
- Name and telephone number of a contact person for questions; and
- Application deadline and location where applications are to be submitted.

Information Required from Applicants

✓ Types of information required from applicants often includes:

- Project summary:
  - Need/problem to be addressed;
  - Project location;
  - Population/area to be served;
  - Description of work;
  - Proposed budget (including staff and other sources of funding);
  - Proposed schedule of work;
- Agency information:
  - Background and mission;
  - Non-profit determination;
  - Articles of information/by-laws;
  - Personnel; and
  - Financial information (funding sources, financial statements, audits, etc.).

✓ The amount of information required from applicants under a grantee's CDBG program will vary depending upon the type of application process used.

- For example, if a grantee uses the formal application process, this process typically requires applicants to provide all the information needed (e.g., details on the proposed activity and on the organization's experience and capacity).
- On the other hand, if using a limited application or open door process, the amount of information required from applicants is typically less. In this case, the grantee either makes decisions based on a lesser amount of information, or it requests the detailed information later in the process.

2.3.8 Evaluating Applications

✓ Grantees should establish criteria for selecting its partners and assessing risk. The criteria should be used to determine whether a prospective subrecipient has the necessary systems in place to carry out the proposed project/activity ***and*** to comply with applicable rules and regulations.

- ✓ At a minimum, the criteria should include:
  - Eligibility of the activity under CDBG;
  - Compliance with a CDBG national objective;
  - Consistency with the priorities and specific objectives established in the Consolidated Plan;
  - Prior experience with CDBG and/or other grant programs;
  - Prior experience in the community;
  - Prior experience in the type of project/activity being proposed;
  - Organization's administrative and financial capacity to carry out the proposed activity; and
  - Appropriateness of the design of the proposed project or program delivery approach.
- ✓ In addition to general selection criteria, some grantees perform a risk analysis. This process provides for a way to assess potential risks associated with proposed projects. The analysis can also be used to guide the allocation of training, technical assistance and monitoring resources once activities are funded.

CHAPTER 3: NATIONAL OBJECTIVES

CHAPTER PURPOSE & CONTENTS

This chapter provides a summary of the three national objectives of the program, the category for meeting the three national objectives as well as selecting and documenting the appropriate national objective for activities funded by grantees.

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3.1 Introduction to National Objectives

✓ This section provides general background on the national objectives and an overview of the possible approaches.

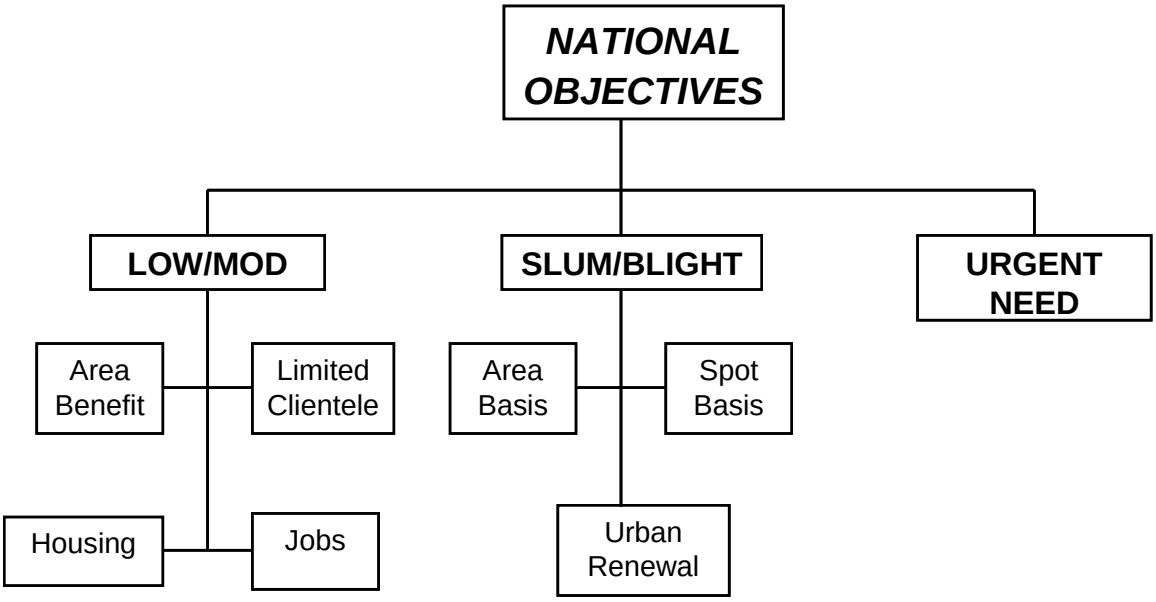
Key Topics in This Section	✓ Overview of the three national objectives
Regulatory/Statutory Citations	Section 101(c), Section 104(b)(3), 105(c) §570.208
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities for Entitlement Communities – Chapter 3: Meeting a National Objective

✓ The authorizing statute of the CDBG program requires that each activity funded, except for program administration and planning activities, must meet one of three national objectives. The three national objectives are:

- Benefit to low- and moderate- income (LMI) persons;
- Aid in the prevention or elimination of slums or blight; and
- Meet a need having a particular urgency (referred to as urgent need).

✓ An activity that does not meet a national objective is not compliant with CDBG requirements and may be subject to remedial actions.

✓ The following exhibit depicts the different categories associated with each of the national objectives.



- ✓ Each national objective and the categories are discussed in further detail in the following sections of this chapter.
- ✓ This chapter will also explore the strategic decisions grantees can make when qualifying an eligible activity under a national objective. It is possible for an activity to qualify under more than one national objective, although only one national objective may be selected for an activity. Additionally, activities can qualify under more than one category. This chapter will discuss considerations for making a decision regarding which category works best for an eligible activity.
- ✓ HUD has developed a matrix of the national objectives, eligible activities and IDIS matrix codes. Grantees may wish to refer to this matrix when selecting national objectives. A copy is attached to the IDIS chapter of this manual.

3.2 Benefit to Low and Moderate Income Persons or Households

- ✓ This section describes each of the possible LMI national objectives.

Key Topics in This Section	✓ Overview of the primary objective and associated expenditure cap ✓ Area benefit activities (LMA) ✓ Limited Clientele Activities (LMC) ✓ Housing Activities (LMH) ✓ Job Creation and Retention Activities (LMJ)
Regulatory/Statutory Citations	Section 101(c), Section 104(b)

	§570.1, §570.200(a)(3), §570.208(a)
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities – Chapter 3: Meeting a National Objective – Chapter 4: Overall Expenditure Level –Benefit to LMI Persons – Appendix D: Determining Service Areas ✓ CPD Notice 05-06: US HUD Suggested Survey Methodology to Determine the Percentage of LMI Persons in the Service Area of a Community Development Block Grant-Funded Activity

- ✓ The LMI national objective is often referred to as the "primary" national objective because the statute requires that recipients expend 70 percent of their CDBG funds to benefit LMI persons.
- ✓ Additional information on how to meet the 70 percent test and certification to HUD is located later in this chapter.
- ✓ In addition to meeting the 70 percent test, applicants must ensure that the activities proposed, when taken as a whole, will not benefit moderate-income persons to the exclusion of low-income persons. This does not mean that each activity has to include both low- and moderate income beneficiaries, but it further ensures that the CDBG program will primarily benefit low-income persons.
- ✓ This section covers the four categories that can be used to meet the LMI national objective:
  - Area benefit activities;
  - Limited clientele activities;
  - Housing activities; or
  - Job creation or retention activities

3.2.1 Low Mod Area Benefit (LMA)

- ✓ The area benefit category is the most commonly used national objective for activities that benefit a residential neighborhood. An area benefit activity is one that benefits all residents in a particular area, where at least 51 percent of the residents are LMI persons.
- ✓ Examples of area benefit activities may include the following when they are located in a predominately LMI neighborhood:
  - Acquisition of land to be used as a neighborhood park;
  - Construction of a health clinic;
  - Improvements to public infrastructure like the installation of gutters and sidewalks; and
  - Development of a community center.
- ✓ The activities listed above benefit all LMI residents in a service area and thus are the type of activities that may qualify under the LMI area benefit category for the purposes of meeting a national objective.

- ✓ Grantees are responsible for determining the service area of an activity. HUD will generally accept a grantee's determination as long as it complies with CDBG regulations.
  - The factors that should be considered in making a determination regarding the service area include:
    - *The nature of the activity:*

      In general the size and the equipment associated with the activity should be taken into consideration. A small park with a limited number of slides and benches would not be expected to a large neighborhood. In the same way, a larger park that can accommodate a considerable number of people would not be expected to serve just the immediately adjacent properties. The same applies to improvements or assistance to an alleyway versus a small two-lane street versus an arterial four-lane street within the same neighborhood. The service area for each of these infrastructure projects will be different in size and population.

    - *The location of the activity:*

      In general, the immediate area surrounding a facility or improvement is expected to be included in the service area. Additionally, when a facility is located near the boundary of a particular neighborhood, its service area could likely include portions of the adjacent neighborhood as well as the one in which it is located.

    - *Accessibility issues:*

      Geographic barriers can separate and preclude persons residing in a nearby area from taking advantage of a facility or improvement. Other limits to accessibility can include access fees, language barriers, time or duration that an activity is available, access to transportation and parking, etc.

    - *The availability of comparable activities:*

      Comparable activities within the service area should be taken into account so that the service area does not overlap with the service area of another comparable activity.

    - *Boundaries for facilities and public services:*

      The service area for some public facilities and services are determined based on specified and established boundaries or districts. Examples of such services and facilities are police precincts, fire stations, and schools.

  - If the service area has not already been identified for an activity, the grantee has to determine the service area <u>before</u> CDBG assistance can be provided under the LMI Area Benefit category.

- ✓ An area is considered to meet the test of being LMI if there is a sufficiently large percentage (51 percent) of LMI persons residing in the service area as determined by:
  - The most recently available decennial Census/American Community Survey (ACS) information, together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau; or
  - A current survey of the residents of the service area.

- ✓ With respect to using Census/American Community Survey (ACS) information to document that the service area qualifies, grantees can obtain the following data:

  - A listing of all census tracts and block groups in the community's jurisdiction;
  - The number of persons that resided in each such tract/block group at the time of the last census; and
  - The percentage of such persons who were LMI (based on the CDBG definition) at that time.

- ✓ The above data (low/mod income summary data (LMISD)) is available directly from HUD online at: http://www.hud.gov/offices/cpd/systems/census/statemap.cfm.
- ✓ If the proposed activity's service area is generally the same as a census tract or block group, then the Census data may be used to justify the income characteristics of the area served.
- ✓ Additionally, grantees can compute the percentage of LMI persons in multiple census tracts and block groups because the data includes both the total number of persons as well as the number of LMI persons within a tract and block group.
- ✓ HUD permits an exception to the LMI area benefit requirement that an area contain 51 percent LMI residents. This exception applies to entitlement communities that have few, if any, areas within their jurisdiction that have 51 percent or more LMI residents. These communities are allowed to use a percentage less than 51 percent to qualify activities under the LMI Benefit category.
  - This exception is referred to as the "exception criteria" or the "upper quartile".
  - A grantee qualifies for this exception when fewer than one quarter of the populated block groups in its jurisdictions contain 51 percent or more LMI persons.
  - In such communities, activities must serve an area which contains a percentage of LMI residents that is within the upper quartile of all Census block groups within its jurisdiction in terms of the degree of concentration of LMI residents.
  - HUD assesses each grantee's census block groups to determine whether a grantee qualifies to use this exception and identifies the alternative percentage the grantee may use instead of 51 percent for the purpose of qualifying activities under the LMI area benefit category.
  - HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee accordingly.
- ✓ HUD uses the following steps in computing the upper quartile for a given community:
  - Identifies the total number of block groups in the grantee's jurisdiction;
  - Subtracts the block groups with zero persons to determine the net number of block groups in the jurisdiction;
  - Arranges the remaining block groups in descending order, based on LMI residents in the block group;
  - Computes the last block group in the upper quartile by multiplying the net number of block groups by 25 percent; and
  - Applies the "exception criteria" if the percentage of LMI persons in the last census block group in the top quartile is less than 51 percent.

- ✓ Grantees which qualify for the exception criteria may use CDBG funds for area benefit activities in any service area, whether or not located in a block group in the highest quartile, if the percentage of LMI persons in the service area is equal to or exceeds the upper quartile percentage.
- ✓ If the grantee will use the exception criteria, the percentage of LMI persons in the service area must be determined by use of the Census data provided by HUD.
  - This is because the "upper quartile" was determined using Census data collected at the point in time of the use of CDBG funds.
- ✓ Income surveys are often used to determine LMI area in one of two instances:
  - If HUD data does not indicate the service area contains at least 51 percent LMI persons or if a grantee decides it would be more appropriate to use a methodologically sound survey. This could be based on a change in either population or income of the area since the Decennial Census.
  - Also, when the service area is not generally the same as a census tract or block group, then the grantee should conduct household surveys to determine the LMI percentage for the service area.
- ✓ The survey instrument and methodology must be approved by HUD for the purpose of establishing the percentage of LMI persons in a service area.
  - A survey must meet standards of statistical reliability that are comparable to that of the Decennial Census/American Community Survey data for areas of similar size.
  - Additional guidance is available in CPD Notice 05-06.
- ✓ Finally, the service area of the activity must be primarily residential and the activity must meet the identified needs of LMI persons.
  - An activity with a service area that is not primarily residential may not qualify under the LMI area benefit category even if the activity provides benefits to all residents in the service area and 51 percent of the residents are LMI persons.
  - This requirement does not apply to the location of the activity itself but rather the service area of the activity. As such it does not mean that activities located in commercial districts cannot be qualified under the LMI area benefit category on the virtue of their geography. The primarily residential test is applied to the service area of the activity.
    - For example, activities that support the infrastructure of a commercial district composed of institutions and firms that serve a national and international clientele will not qualify under LMI area benefit.
    - In contrast, if the commercial district is composed of stores and businesses that serve local customers such that the service area boundaries of the commercial district is around a primarily residential area with the requisite percentage of LMI residents, the activity qualifies under the LMI area benefit category.
- ✓ Activities under Public Facilities and Improvements and some Public Service activities (e.g. police or fire services) tend to provide benefits to all residents in the service area. Additionally, public schools can be qualified under LMI area benefit because of the affect a school may have on the value of the residential property in the area. Public schools are

considered to benefit all the residents of the service area and may qualify under this category.

- ✓ There are activities and facilities that are located in a service area but are designed to meet special needs. These activities cannot be qualified under this category. For example, a senior center would qualify under the LMI limited clientele category and not the LMI area benefit category.
- ✓ With respect to exceptions and special situations, the statute allows two kinds of area benefit activities to meet the national objective of benefit to LMI persons even when the general requirements of the area benefit category cannot be met. The two kinds of area benefit activities are described below:

  911 Systems (§ 570.208(a)(1)(iii))

  With prior HUD approval, a grantee may develop, establish and operate for up to two years after the establishment, a uniform emergency telephone number system serving an area having less than the percentage of LMI persons otherwise required.

  Special Assessments (§ 570.208(a)(1)(iv))

  The use of CDBG funds to pay special assessments levied against residential properties that are owned and occupied by LMI persons will qualify under the LMI area benefit category provided that this is the only use of CDBG funds in the financing of a public improvement. The activity will qualify even if the public improvement provides a benefit to all the residents of an area.

- ✓ Finally, there are two special situations that can meet the national objective of benefiting LMI persons under either the area benefit category or the job creation or retention category, at the option of the grantee.

  1. Activities undertaken pursuant to a HUD approved Neighborhood Revitalization Strategy Area (NRSA) for the purpose of creating or retaining jobs, and
  2. Activities carried out for the purpose of creating or retaining jobs by a Community Development Financial Institution (CDFI) whose charter limits its investment area to a primarily residential area consisting of at least 51 percent LMI persons.

3.2.2 Low Mod Limited Clientele (LMC)

- ✓ The limited clientele category is a second way to qualify specific activities under the LMI benefit national objective. Under this category, 51 percent of the beneficiaries of an activity have to be LMI persons.
- ✓ In contrast to the area benefit category, it is not the LMI concentration of the service area of the activity that determines whether the activity will qualify or not, but rather the actual number of LMI persons that benefit from the activity.
- ✓ Activities in this category provide benefits to a specific group of persons rather than everyone in an area. It may benefit particular persons without regard to their residence, or it may be an activity that provides a benefit to only particular persons within a specific area.
- ✓ Examples of activities that qualify under the limited clientele category include:
  - Acquisition of a building to be converted into a shelter for the homeless;

- Rehabilitation of a center for training severely disabled persons to enable them to live independently;
- Clearance of a structure from the future site of an neighborhood center that will exclusively serve the elderly; and
- Public service activities like the provision of health services.

✓ The listed examples qualify under the limited clientele category because the beneficiaries can be identified as LMI residents.

✓ With respect to determining the beneficiaries of activities as LMI and qualifying under the limited clientele category, activities must meet one of the following tests:

- Benefit a clientele that is generally presumed to be principally LMI. This presumption covers abused children, battered spouses, elderly persons, severely disabled adults (see the box below), homeless persons, illiterate adults, persons living with AIDS and migrant farm workers; or
- Require documentation on family size and income in order to show that at least 51 percent of the clientele are LMI; or
- Have income eligibility requirements limiting the activity to LMI persons only; or
- Be of such a nature and in such a location that it can be concluded that clients are primarily LMI. An example is a day care center that is designed to serve residents of a public housing complex.

✓ In addition, the following activities may qualify under the limited clientele national objective:

- Removal of architectural barriers to the mobility of elderly persons or the severely disabled will be presumed to qualify under this category if 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 area benefit category;
  - The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under area benefit or job creation or retention category: or
  - The rehabilitation of common areas in a residential structure that contains more than one dwelling unit and that does not qualify under the LMI housing category for meeting national objectives.
- Microenterprise activities carried out in accordance with the HUD regulations when the person owning or developing the microenterprise is LMI; or
- Activities that provide training and other employment support services when the percentage of persons assisted is less than 51 percent LMI may qualify if: the proportion of total cost borne by CDBG is no greater than the proportion of LMI persons assisted; and when the service assists businesses, CDBG is only used in the project to pay for the job training and/or supportive services.

✓ There are two sets of activities that are precluded from qualifying under this category based on statutory limitations:

- Acquisition, construction, or rehabilitation of property for housing, including homeownership assistance must qualify under the housing national objective which will be discussed below in further detail.
- Creation or retention of jobs generally qualify under the jobs or the area benefit category of the LMI benefit national objective.

Definition of Severely Disabled

Persons are considered severely disabled if they:

- Use a wheelchair or another special aid for 6 months or longer;
- Are unable to perform one or more functional activities (seeing, hearing, having one's speech understood, lifting and carrying, walking up a flight of stairs and walking);
- Need assistance with activities of daily living (getting around inside the home, getting in or out of bed or a chair, bathing, dressing, eating and toileting) or instrumental activities of daily living (going outside the home, keeping track of money or bills, preparing meals, doing light housework and using the telephone);
- Are prevented from working at a job or doing housework;
- Have a selected condition including autism, cerebral palsy, Alzheimer's disease, senility or dementia or mental retardation; or
- Are under 65 years of age and are covered by Medicare or receive Supplemental Security Income (SSI).

3.2.3 Low Mod Housing Activities (LMH)

✓ The housing category of LMI benefit national objective qualifies activities that are undertaken for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by LMI households.

✓ Examples of eligible activities include, but are not limited to:

- Acquisition of an apartment house to provide dwelling units to LMI households at affordable rents, where at least 51 percent of the units will be occupied by LMI households;
- Site improvements on publicly-owned land to serve a new apartment structure to be rented to LMI households at affordable rents;
- Housing rehabilitation for single family units;
- Conversion of an abandoned warehouse to be reconfigured into new apartments, where at least 51 percent of the units will be occupied by LMI households at affordable rents.

✓ In order to meet the housing LMI national objective, structures with one unit must be occupied by a LMI household. If the structure contains two units, at least one unit must be LMI occupied. Structures with three or more units must have at least 51percent occupied by LMI households.

- Rental buildings under common ownership and management that are located on the same or contiguous properties may be considered as a single structure.
- For rental housing, occupancy by LMI households must be at affordable rents, consistent with standards adopted and publicized by the grantee.

- ✓ Under the following limited circumstances, structures with less than 51 percent LMI occupants may be assisted:
  - Assistance is for an eligible activity that reduces the development cost of new construction of non-elderly, multi-family rental housing; and
  - At least 20 percent of the units will be occupied by LMI households at an affordable rent; and
  - The proportion of cost borne by CDBG funds is no greater than the proportion to be occupied by LMI households.
- ✓ When housing activities are conducted by a Community Development Financial Institution (CDFI) or as part of an approved NRSA, multiple units (e.g. scattered site housing) may be aggregated for the purposes of meeting the LMI housing national objective.
  - NOTE: This flexibility does not apply to activities under the Direct Homeownership Assistance eligibility category (570.201(n)).
  - Please refer to the chapter on Revitalization Areas for more information.
- ✓ There are a number of activities that generally do not qualify under the LMI Housing national objective. These include code enforcement, interim assistance, microenterprise assistance, public services, and special economic development activities.

3.2.4 Low Mod Job Creation or Retention Activities (LMJ)

- ✓ The job creation and retention LMI benefit national objective addresses activities designed to create or retain permanent jobs, at least 51 percent of which (computed on a full-time equivalent basis) will be made available to or held by LMI persons.
- ✓ Some examples of activities that qualify when at least 51 percent of jobs created/retained will be for LMI persons 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; and
  - Assistance to expand a small house cleaning service with four employees that agrees to hire three additional LMI employees.
- ✓ The following requirements must be met for jobs to be considered created or retained.
  - If grantees fund activities that *create* jobs, there must be documentation indicating that at least 51 percent of the jobs will be held by, or made available to, LMI persons.
  - For funded activities that *retain* jobs, there must be sufficient information documenting that the jobs would have been lost without the CDBG assistance and that one or both of the following applies to at least 51 percent of the jobs:
    - The job is held by a LMI person; or

    - The job can reasonably be expected to turn over within the following two years and steps will be taken to ensure that the job will be filled by, or made available to, a LMI person.

- ✓ The following requirements apply for jobs to be considered available to or held by LMI persons.
  - Created or retained jobs are only considered to be *available to* LMI persons when:
    - 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
    - The grantee and the assisted business take actions to ensure that LMI persons receive first consideration for filling such jobs.
  - Created or retained jobs are only considered to be *held by* LMI persons when the job is actually held by a LMI person.
- ✓ For the purpose of determining if the preceding requirements are met, a person may be presumed to be LMI if:
  - He/she resides in a Census tract/block numbering area that has a 20 percent poverty rate (30 percent poverty rate if the area includes the central business district); and the area evidences pervasive poverty and general distress; or
  - He/she resides in a Census tract/block numbering area where at least 70 percent of the residents are LMI.
- ✓ Jobs created or retained by assisted businesses may also be presumed to be LMI if the job and business are located in an area that:
  - Has a 20 percent poverty rate (30 percent poverty rate if the area includes the central business district) ***and*** the area evidences pervasive poverty and general distress
- ✓ To determine if an area evidences pervasive poverty and general distress, the following standards are applicable
  - 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 grantee, 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.
- ✓ As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under the job creation and retention category for meeting a national objective.
- ✓ However, 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 such businesses are not otherwise assisted by CDBG funds.

- ✓ Additionally, where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during the program year.
- ✓ As mentioned under the area benefit category, certain job creation or retention activities carried out by a CDFI or under a Neighborhood Revitalization Strategy can meet the national objective of benefiting LMI persons under either category. In these instances, the grantee will decide which category it will use to qualify the activity and record the decision in program files so that HUD will know which category is being applied.

3.3 Elimination of Slums and Blight

- ✓ This section highlights the national objectives related to the elimination of slums and blight.

Key Topics in This Section	✓ Overview of elimination of slums and blight – Area basis (SBA) – Spot basis (SBS) – Urban renewal (SBR)
Regulatory/Statutory Citations	Section 101(c), Section 104(b)(3), Section 105(c) §570.208(b)
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities - Chapter 3: Meeting a National Objective

- ✓ 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.
- ✓ This difference in focus has an impact on the information that is required to asses the qualifications of an activity. Under the LMI benefit national objective, determining the number of LMI persons that actually or could potentially benefit from an activity is central to qualifying the activity. Under the elimination of slums and blight national objective, determining the extent of and physical conditions that contribute to blight is central to qualifying an activity.

- ✓ There are three categories that can be used to qualify activities under this national objective:
  - Prevent or eliminate slums and blight on an area basis;
  - Prevent or eliminate slum and blight on a spot basis; or
  - Be in an urban renewal area.

3.3.1 Slum Blight Area Basis (SBA)

- ✓ This category covers activities that aid in the prevention or elimination of slums or blight in a designated area. Examples of activities that qualify when they are located within the slum or blighted area include
  - Rehabilitation of substandard housing located in a designated blighted area when the housing is brought to standard condition;
  - Infrastructure improvements in a deteriorated area; and
  - Economic development assistance in the form of a low-interest loan to a business as an inducement to locate a branch store in a redeveloping blighted area.
- ✓ To qualify under this category, the area in which the activity occurs must be designated as slum or blighted. The following tests apply:
  - The designated area in which the activity occurs must meet the definition of a slum, blighted, deteriorated or deteriorating area under state or local law;
  - Additionally, the area must meet either one of the two conditions specified below:
    - Public improvements throughout the area are in a general state of deterioration; or
    - At least 25 percent of the properties throughout the area exhibit one or more of the following:
      - Physical deterioration of buildings/improvements;
      - Abandonment of properties;
      - Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;
      - Significant declines in property values or abnormally low property values relative to other areas in the community; or
      - Known or suspected environmental contamination.
  - Documentation must be maintained by the grantee on the boundaries of the area and the conditions that qualified the area at the time of its designation. The designation of an area as slum or blighted must be re-determined every 10 years for continued qualifications.
- ✓ Finally, eligible activities must address one or more of the identified conditions that contributed to the deterioration of the area.

- ✓ NOTE: When undertaking residential rehab in a slum/blight area, the building must be considered substandard under local definition and all deficiencies making the building substandard must be eliminated before less critical work is undertaken.

3.3.2 Slum Blight Spot Basis (SBS)

- ✓ These are activities that eliminate specific conditions of blight or physical decay on a spot basis and are not located in a slum or blighted area. Examples include:
  - Acquisition and demolition of a dilapidated property;
  - Rehabilitation of a decayed community center that eliminates code violations that are detrimental to the health and safety of potential occupants like faulty wiring, falling plaster, or other similar conditions;
  - Preservation of a deteriorated building of historic significance; and
  - Financial assistance to a business to demolish a decayed structure
- ✓ Activities under this category are limited to acquisition, clearance, relocation, historic preservation, remediation of environmentally contaminated properties, and building rehabilitation activities.
- ✓ Furthermore, rehabilitation is limited to the extent necessary to eliminate a specific condition detrimental to public health and safety.

3.3.3 Slum Blight Urban Renewal Area (SBR)

- ✓ These are activities located within an Urban Renewal project area or Neighborhood Development Program (NDP) action area that are necessary to complete an Urban Renewal Plan.
- ✓ A copy of the Urban Renewal Plan in effect at the time the CDBG activity is carried out, including maps and supporting documentation, must be maintained for record keeping purposes.
- ✓ This national objective category is rarely used as there are only a handful of communities with open Urban Renewal Plans.

3.4 Urgent Need (URG)

- ✓ This section describes the urgent need national objective.

Key Topics in This Section	✓ Overview of urgent need
Regulatory/Statutory Citations	Section 101(c), 104(b)(3), 105(c) §570.208(c)
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities - Chapter 3: Meeting a National Objective

- ✓ Use of the urgent need national objective category is rare. It is designed only for activities that alleviate emergency conditions. Examples include:
  - Acquisition of property located in a flood plain that was severely damaged by a recent flood;

- Public facility improvements like the reconstruction of a publicly-owned hospital that was severely damaged by a tornado;
- Demolition of structures that are severely damaged by a major earthquake;
- Public services like additional police protection to prevent looting in an area damaged by a recent hurricane;
- Interim assistance such as emergency treatment of health problems caused by a flood; and
- Special economic development assistance to a grocery store that was damaged by an earthquake.

✓ Urgent need qualified activities must meet the following criteria:

- The existing conditions must pose a serious and immediate threat to the health or welfare of the community;
- The existing conditions are of recent origin or recently became urgent (generally, within the past 18 months);
- The grantee is unable to finance the activity on its own; and
- Other sources of funding are ***not*** available.

3.5 LMI Benefit Expenditures

✓ Grantees are required to expend a substantial portion of their funds in order to benefit LMI persons. This section describes the calculation of LMI benefit.

Key Topics in This Section	✓ Expenditure requirement ✓ Meeting the requirement – Excluded expenditures – Activities that meet the requirement ✓ Examples: – Excluded housing activity expenditures – LMI calculation
Regulatory/Statutory Citations	Section 101(c), Section 104(b), 105(c) §570.200(a)(3)
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities – Chapter 4: Overall Expenditures Level – Benefit to L/M Income Persons

✓ The primary national objective of the CDBG Program is the development of viable urban communities principally for LMI persons.

✓ To meet the primary national objective, the CDBG regulations require that grantees expend not less than 70 percent of CDBG funds for activities that benefit LMI persons.

- Planning and administrative costs are excluded from the LMI benefit calculation.
- Activities meeting this requirement are those which qualify under one of the four LMI benefit national objective category:
  - Area basis;
  - Limited clientele;
  - Housing activities; or
  - Job creation or retention.
- The percentage calculation is based on aggregate CDBG expenditures over a period specified by the grantee (up to three years) in a certification to HUD. The certification must be included in grantee's annual Consolidated Plan action plan submission.

LMI Calculation Example	
Total entitlement grant amount	$1,000,000
Less actual planning and admin (up to 20 percent)	(200,000)
Equals amount subject to LMI calculation	$800,000
Multiplied by 70 percent	x 0.70
Equals minimum to benefit LMI	$560,000
Amount subject to LMI calculation	$800,000
Less LMI minimum	(560,000)
Equals maximum allowable for slum/blight and urgent needs activities	$240,000
* NOTE: This example is for illustrative purposes only. It does not demonstrate the calculation for grantees on a multi-year certification cycle, and does not take into account program income.	

✓ Due to the 70 percent LMI benefit standard, grantees ***must*** limit expenditures under the Slum/Blight and Urgent Need national objectives in order to meet the LMI expenditure requirement.

✓ Under housing activities, the expended funds that count towards the 70 percent requirement may be limited depending on number of LMI units in the housing structure and the amount of the CDBG funds expended on the structure.

- To determine the amount expended under housing activities that counts towards the 70 percent requirement, grantees should take the following steps:
  - Divide the number of units in an assisted structure that is occupied by LMI households by the total number of units to determine the percentage of units that are or must be occupied by LMI households;
  - Multiply the total costs of the assisted activity (including those paid for with CDBG and non-CDBG funds) by the percentage of units that are occupied by LMI households; and

- Exclude the amount of CDBG funds expended for the assisted structure that is in excess of the amount calculated in the above step.

Excluded Housing Activity Expenditures Example	
Number of units occupied by LMI households	4
Total number of units in assisted structure	6
Divide number of units occupied by LMI households by total number of units in assisted structure and multiple by 100	(4/6) * 100
Equals percent of LMI units in structure	67%
Total cost of the housing activity (all sources of funds)	$300,000
Multiplied by percent of LMI units in structure (i.e. proportion of housing costs attributed to LMI units)	$200,000
CDBG assistance to the structure	$250,000
Excess CDBG funds that have to be excluded from LM expenditures	$50,000
* NOTE: This example is for illustrative purposes only.	

3.6 Choosing the Right National Objective

✓ Grantees may have options regarding which national objective is used for a particular activity. This section provides tips on selecting the right national objective.

Key Topics in This Section	✓ Activities that meet more than one national objective ✓ Selecting the most appropriate national objective
Regulatory/Statutory Citations	§570.200(a)(3), §570.208
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities – Chapter 3: National Objectives

✓ Activities may qualify for more than one national objective category. If an activity meets the LMI benefit national objective, then the best decision for most grantees will be to use the LMI benefit national objective because of the 70 percent requirement associated with that national objective.

✓ For the activities that meet more than one national objective, grantees may find it useful to document compliance with all the applicable national objectives, especially if there is some uncertainly regarding the ability of an activity to meet the chosen national objective upon completion.

✓ For example, grantees may have concern that an activity qualifying on the basis of creating jobs may not meet the test that at least 51 percent of the jobs created will benefit LMI persons. If the activity could also qualify under the slum/blight area category, the grantee may be best served by documenting compliance with both national objectives. This way, if

the activity does not meet the LMI job creation criteria the grantee can switch the activity to the slum/blight area national objective rather than have the activity in non-compliance with CDBG rules. Note that switching the activity from LMI benefit to slum/blight area may affect the grantees certification that 70 percent of expenditures are associated with the LMI benefit national objective, so grantees should proceed with precaution.

3.7 Documenting National Objectives

✓ It is critical that grantees document the results of their activities and the related national objective. This section highlights required national objective documentation.

Key Topics in This Section	✓ Timing of documentation activities ✓ Documenting LMI Benefit national objective ✓ Documenting Prevention/Elimination of Slums or Blight ✓ Documenting Urgent Need
Regulatory/Statutory Citations	§570.208, §570.506(b)
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities - Chapter 3: National Objectives

✓ Grantees must maintain records that funded activities meet one of the national objectives. The records depend on the national objective category.

✓ The Performance Measurement, Reporting, Record Keeping and Monitoring chapter in this manual, Chapter 13, has more details regarding records that must be maintained to document compliance with CDBG regulations, including records on meeting national objectives.

✓ The timing of documentation for activities is an important consideration. Compliance with national objectives can be documented upfront for a number of the categories. For example, compliance documentation for the following national objectives can be established upfront:

- Under the national objective of benefit to LMI persons, the LMI area benefit;
- Under the national objective of elimination of slums or blight, all three categories (area basis, spot basis, and urban renewal); and
- The urgent need national objective.

✓ Some national objectives have to be documented over time. For example, it is likely that the future occupants of a rental rehabilitation activity cannot be identified up-front. Compliance with the LMI Housing requirement that 51 percent of the occupants have to be LMI households, will require collecting documentation demonstrating compliance during the lease-up period and until the national objective is met.

✓ In the same way, future hires of created jobs cannot be identified and documentation of compliance cannot be obtained upfront. Rather, hires by the assisted business have to be monitored over a period of time.

3.7.1 Benefit to LMI Persons

LMI Area Benefit

✓ The following records will demonstrate compliance under this national objective category:

- Boundaries of service area;
- Percentage of LMI persons that reside in the service area; and
- The data used for determining percentage of LMI persons.

LMI Limited Clientele

✓ One of the following five types of records must be kept:

1. Documentation showing that the activity is designed for exclusive use by a segment of the population presumed by HUD to be LMI persons; or
2. Documentation describing how the nature and the location of the activity establishes that it will be used predominantly by LMI persons; or
3. Data showing the family size and annual income 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 category; 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 LMI persons.

LMI Housing

✓ The following records must be maintained:

- A written agreement with each landlord or developer receiving CDBG assistance. The agreement must specify
  - The total number of dwelling units in each multi-unit structure, and
  - The number of those units which will be occupied by LMI households after assistance.
- Total cost of the activity, including both CDBG and non CDBG funds
- The household size and income eligibility for each of the LMI households occupying assisted units
- For rental housing
  - The rent charged (or to be charged) after assistance for each dwelling unit in each assisted structure; and
  - Documentation of compliance with the locally established standards for housing that is “affordable to LMI households”.
- When assisting structures with less than 51 percent LMI occupants, documentation of qualification under the special conditions:
  - Number of units to be occupied by LMI households at an affordable rent;

    - Total development cost of new construction; and
    - Amount of CDBG funds expended for activity.
  - When aggregating scattered sites, documentation of the basis for aggregating scattered sites and considering them as a single structure.
  - When assisting with the delivery costs of HOME assisted projects and assistance, evidence that housing projects and/or tenant based rental assistance achieves HOME income targeting requirements.

✓ While compliance with the housing national objective is based on the initial occupancy of the housing following completion of the CDBG-assisted activity, grantees are urged to establish their own requirements for replacing such households with other LMI 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 developer.

✓ Another consideration when documenting compliance is that occupancy of the unit may not be for some time after the completion of the activity. For example, there may be a time lag between the acquisition or land clearing activity subsidized by CDBG funds and the development of the housing units. It is not sufficient to document the intention to comply. The grantee is responsible for documenting that the housing units are constructed and that the appropriate number of units are initially occupied by LMI households.

LMI Job Creation and Retention

✓ Record keeping requirements in this category relate to both the status of the business, the jobs created or retained, and the LMI persons benefiting from the activity. The following is an outline of the documents that have to maintained by grantees:

  - Written agreement with the business in which the following is specified:
    - A commitment from the assisted business to hire or retain LMI persons; A list by job title of jobs to be created and/or retained and which will be full- or part-time; and
    - The actions that the business will take to ensure that at least 51 percent of the hires or retainees will be LMI persons, including providing training for any jobs requiring special skills or education
  - Compliance with the written agreement must be documented as follows:
    - A list of jobs that were actually created and/or retained;
    - Whether each such job was held by or made available to a LMI person, and
    - The full-time equivalency status of the jobs.
  - For created jobs that will be held by LMI persons, the records must demonstrate:
    - Listing by job title of the jobs created and which were initially held by LMI persons;
    - Listing by job title of the jobs filled;
    - The family size and income of the person who filled each position; and
    - The full-time equivalency status of the jobs.

- For created jobs that will be made available to LMI persons but are not taken by LMI persons:
  - The title and description of the jobs made available;
  - The full-time equivalency status of the jobs;
  - The prerequisites for the job; special skills or education required for the job, if any; and the business' commitment to provide needed training for such jobs; and
  - How first consideration was given to LMI persons. This can include:
    - The name(s) of person(s) interviewed for the job and the date of the interview(s), and
    - The family size and income of the person(s) interviewed.
- For retained jobs that would otherwise be lost:
  - Specific evidence that the jobs would be lost without the CDBG assistance.
  - If the retained job is held by a LMI person:
    - A listing by job title of permanent jobs retained;
    - The jobs that are known to be held by LMI persons at the time of assistance;
    - The full time equivalency status of each job; and
    - Family size and annual income of each LMI person.
- For retained jobs that are projected to turnover to LMI persons:
  - A listing of the retained jobs that are projected to become available within two years of assistance;
  - The basis of the determination that the job is likely to turnover within two years of assistance;
  - The actual turnover date;
  - The name and income status of the person who filled the vacancy;
  - If the person who took the job was not a LMI person, records to demonstrate that the job was made available to LMI persons:
    - The name(s) of person(s) interviewed for the job and the date of the interview(s) and
    - The income status of the person(s) interviewed
  - Information on the family size and annual income of each LMI person hired.

✓ There are five options for documenting the LMI status of an applicant or employee:

1. Referrals from an agency that has agreed to refer individuals who are determined to be LMI based on HUD's category. These agencies must maintain records, which must be available to the grantee or federal inspection, showing the basis upon which they determined that the person was LMI; or
2. A written self certification by the employee or applicant of his/her family size and total income that is signed and dated. Certification can either include actual size and income

of family or can contain a statement that the annual family income is below the Section 8 low-income limit for the applicable family size; or

3. Qualification of employee or application for assistance under another program with income qualification that are as restrictive as those used by the CDBG program. Examples include referrals from Public Housing, Welfare Agency, or the Workforce Investment Area (WIA), with the exception of the WIA Title III program for dislocated workers; or
4. Evidence that the individual is homeless; or
5. Evidence that the individual may be presumed to be LMI by way of residence address and poverty rates of applicable census tract

✓ The grantee can use any combination of documenting income status for the persons benefiting from a job creation or retention activity.

✓ When documenting income, the income status of an individual is made at the time the CDBG assistance is provided. This may have an affect on the retention of high-paying unskilled jobs counting as eligible except for turnover purposes. This is because a person who occupies a high-paying but low-skilled job may not qualify as a LMI person. Whereas a LMI person may fill the job at a lower pay rate if it were created or if it became available through turnover.

3.7.2 Prevention/Elimination of Slums or Blight

✓ Under the categories of Area Basis and Spot Blight, the presence of blight has to be evidenced in record keeping. In documenting the presence of blight, the use of pictures is encouraged.

Area Basis

✓ Records to be maintained include:

- Area designated (i.e., boundaries) and date of designation
- Documentation and description of blighted conditions that meet the criteria identified at 570.208(b)(1)(ii)(A) or (B) (e.g., photographs, structural surveys, or development plans)
- For residential rehabilitation:
  - Local definition of substandard,
  - Pre-rehabilitation inspection report qualifying the building as substandard and work plan describing deficiencies,
  - Scope of work performed, by structure, with documentation that substandard elements were addressed first; and
  - Evidence that the activities undertaken address one or more of the conditions that contributed to the deterioration of the area.

Spot Blight

✓ Grantee files should include the following:

- Description of condition addressed by activity,

- Documentation of eligibility of activity under this category, and
- For rehabilitation, a description, by structure, of specific conditions detrimental to public health and safety identified and those addressed by the rehabilitation."

Urban Renewal Area

✓ Records must contain:

- A copy of the Urban Renewal Plan, and
- Documentation that activity was required to meet the goals outlined in the renewal plan.

3.7.3 Urgent Need

✓ Files should include:

- Documentation of urgency of need and timing and that the activity was designed to address the urgent need;
- Evidence the recipient certified that the CDBG activity was designed to address the urgent need; and
- Evidence confirming that other financial resources were unavailable and CDBG had to be used.

CHAPTER 4: HOUSING ACTIVITIES

CHAPTER PURPOSE & CONTENTS

This chapter provides detailed information on CDBG eligible homeownership and rental activities, guidance for grantees on documenting national objectives and guidance on complying with other federal requirements and program design considerations for grantees.

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4.1 Homeowner Rehabilitation

Homeowner rehabilitation is one of the most common community development programs administered nation-wide. CDBG funds provide a wide range of flexibility with rehabilitation of projects and design considerations. Grantees can choose to do emergency repair programs, spot rehabilitation or full house rehabilitation. This section reviews the eligible and ineligible activities under the CDBG program for homeowner rehabilitation.

Key Topics in This Section	✓ Eligible homeowner rehabilitation activities
Regulatory/Statutory Citations	Section 105(a)(4) §570.202
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2 ✓ HOME and CDBG Model Guide

- ✓ CDBG funds may be used to assist existing homeowners with the repair, rehabilitation, or reconstruction of owner-occupied units.
- ✓ Grantees have the flexibility under the CDBG Program to design repair and rehabilitation programs that meet the needs of their residents. Examples of the types of local programs that may be funded include:
  - General programs aimed at rehabilitation of existing structures, including substantial rehabilitation programs, which typically bring the property up to local codes and standards.
  - Special purpose programs, including:

    - Energy efficiency programs aimed at improving the energy efficiency of homes through additional insulation, new windows and doors and other similar improvements;
    - Handicapped accessibility programs through which improvements, such as installation of ramps and grab bars, are made to homes of persons with disabilities to make the home more accessible;
    - Emergency repair programs that provide for the repair of certain elements of a housing unit in emergency situations, such as repairs to a roof that is leaking, but the whole house is not rehabilitated; and
    - Weatherization programs aimed at improving a home's ability to withstand the elements, including insulation and weather-stripping.

- ✓ Rehabilitation to a single-family residential property that is also used as a place of business and is required to operate the business may be considered homeowner rehabilitation (as opposed to commercial rehabilitation) if the improvements provide general benefit to the residential occupants of the building.
  - NOTE: Assistance to microenterprises for the establishment, stabilization, and expansion of microenterprises, which might include rehabilitation of a home that contains a microenterprise, may be eligible under the separate microenterprise activity category.
- ✓ Reconstruction is an eligible activity. While the CDBG regulations have not yet been amended to reflect this change, it is generally defined as follows:
  - Reconstruction means demolishing and re-building a housing unit on the same lot in substantially the same manner.
  - The number of housing units on the lot may not be increased as part of a reconstruction, however, the number of rooms in a unit may be increased or decreased.
  - The number of housing units on the lot may be decreased to reduce density.
    - Decreasing units may trigger the one-for one replacement of LMI income dwelling units at 24 CFR part 42, subpart C (see the Relocation Chapter for additional guidance).
  - Reconstruction also includes replacing an existing substandard manufactured housing unit with a new or standard manufactured housing unit.
- ✓ Homeowner counseling programs for LMI persons may be funded by CDBG. A grantee may use CDBG to pay for homeowner counseling related to a HOME or CDBG homeowner rehabilitation program.
- ✓ CDBG can be used for grants, loans, loan guarantees, interest subsidies, or other forms of assistance to homeowners for the purpose of repairs, rehabilitation, or reconstruction.
- ✓ CDBG-eligible costs include:
  - Labor and materials,
  - Replacement of principal fixtures and components of existing structures;
  - Water and sewer connections;
  - Installation of security devices, including smoke detectors; and
  - Conservation costs for water and energy efficiency;

- Landscaping, sidewalks, garages, and driveways when accompanied with other rehabilitation needed on the property; and
- Evaluating and treating lead-based paint; and
- For rehabilitation carried out with CDBG funds:
  - Initial homeowner warranty premium;
  - Hazard insurance premium (except when a grant is provided); and
  - Flood insurance premium.

✓ Loans for refinancing existing debt are eligible under CDBG if the grantee determines that this type of assistance is necessary to achieve local community development objectives. This refinance must be part of a rehabilitation project -- CDBG does not permit refinance only projects.

4.2 Home Purchase Activities

Owning a home is part of the American dream. CDBG funds can help support this dream by providing funds to income eligible households to purchase an existing or newly constructed home. This section reviews the eligible activities under the CDBG program for home purchase activities.

Key Topics in This Section	✓ Eligible homebuyer activities
Regulatory/Statutory Citations	Section 105(a)(24) §570.201(e), §570.201(n)
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2 ✓ HOME and CDBG Model Guide ✓ CPD Notice 02-06

✓ CDBG funds may be used to provide direct homeownership assistance to LMI households in two ways. Both options are described below.

- As direct homeownership assistance under 570.201(n), a separate and permanent eligibility category that allows CDBG funding to:
  - Provide up to 50 percent of required down payment;
  - Pay reasonable closing costs;
  - Provide principal write-down assistance;
  - Subsidize interest rates;
  - Finance acquisition of housing occupied by the homebuyer; and
  - Acquire guarantees for mortgage financing from private lenders (i.e., assist homebuyers with private mortgage insurance).
- As a public service activity; however, this eligibility category is limited to down payment assistance only and would count towards the 15 percent public services cap under 570.201(e).

  - For downpayment assistance to be provided as a public service to non-LMI households, it must be located in a HUD approved neighborhood revitalization strategy area (NRSA) (see §91.215(g)). This is because in a NRSA, the units for which assistance is obligated during a grantee's program year may be aggregated and treated as a single structure for purposes of determining compliance with the housing national objective. Therefore, only 51% of the units in a NRSA need to be occupied by LMI households to meet a national objective if the home purchase activity is funded as a public service. Homeowner assistance located in an NRSA and carried out as a public service by a CBDO can also be excluded from the 15 percent public services cap.

- ✓ Activities that support development of housing for LMI persons such as acquisition, clearance, and site improvements (when the land is in public ownership) are eligible for CDBG assistance.
- ✓ Providing assistance to private individuals and entities to acquire for the purpose of rehabilitation and to rehabilitate properties for use or resale for residential purposes is also eligible.
- ✓ Individual Development Accounts (IDAs), dedicated savings accounts providing start up funds to assist low-income persons purchase a home can be supported with CDBG funds.
  - CDBG funds may be deposited in an IDA to capitalize the account or as matching deposits over the course of the household's participation in the program.
  - If the individual does not complete the requirements of the IDA program, the CDBG funds must be returned to the grantee and any interest earned returned to the U.S. Treasury.
- ✓ Homebuyer counseling programs for LMI income persons may be funded by CDBG. A grantee may use CDBG to pay for housing counseling related to a HOME or CDBG homebuyer program.
- ✓ Community-Based Development Organizations (CBDOs) may use CDBG funds to construct housing for sale to LMI homebuyers in conjunction with a neighborhood revitalization or community economic development project.

4.3 Rental Housing Activities

Many communities struggle with providing decent, safe and sanitary affordable rental housing to their residents. CDBG funds can be used to acquire, rehabilitate or construct rental housing. There are tenant income requirements and rent restrictions for projects. This section reviews the eligible activities under the CDBG program for rental housing activities.

Key Topics in This Section	✓ Eligible rental activities
Regulatory/Statutory Citations	Section 105(a)(4) §570.201(a), 570.202
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2 ✓ HOME and CDBG Model Guide ✓ CPD Notice 03-14

- ✓ CDBG funds may be used for acquisition of property for an eligible rental housing project. CDBG may also be used to rehabilitate rental housing.
- ✓ In Rem housing--CDBG funds may also be used 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 LMI neighborhoods.
  - Note the LMI benefit national objective is met through the Area Benefit subcategory.
- ✓ Conversion of a closed building from one use to residential use (such as a closed school building to residential use) is also eligible.
- ✓ Grantees may provide assistance in the form of loans, grants, loan guarantees, interest subsidies and other forms of assistance for rental housing rehabilitation and acquisition/rehabilitation projects.
  - Eligible properties may be:
    - Publicly- or privately-owned; and
    - Residential or mixed use.
  - Eligible expenditures include:
    - Labor, materials and other rehabilitation costs;
    - Refinancing, if necessary and appropriate;
    - Energy efficiency improvements;
    - Utility connections;
    - Evaluating and treating lead-based paint; (NOTE: This is also eligible as a separate activity);
    - Conservation costs for water and energy efficiency;
    - Landscaping, sidewalks, and driveways when accompanied with other rehabilitation needed on the property;
    - Rehabilitation services (loan processing, work write-ups, inspections, etc.); and
    - Handicap accessibility improvements.
- ✓ Grantees may also develop facilities for persons with special needs and homeless shelters. However, in general, these facilities are categorized under CDBG as public facilities and not housing.
- ✓ New construction of rental housing by a CBDO is eligible provided the construction activity is carried out as part of a neighborhood revitalization, community economic development, or energy conservation project.
- ✓ Grantees may provide support for the development of new rental housing as an eligible activity. See the new construction section below for more information.
- ✓ CDBG funds can be used to compensate property owners for the loss of rental income incurred while holding, for temporary periods, housing units for the relocation of households displaced by CDBG activities.

4.4 New Construction

CDBG funds can be used for new construction but only in very limited circumstances. This section reviews the eligible activities under the CDBG program for new construction housing activities.

Key Topics in This Section	✓ Eligible new construction activities
Regulatory/Statutory Citations	Section 105(a)(15) §570.204, §570.207(b)(3)
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2 ✓ HOME and CDBG Model Guide

- ✓ Generally, new construction of housing is not eligible under the CDBG program. However, the regulations allow for certain eligible entities to carry out this activity on behalf of the grantee (570.204(c)).
  - This entity is known as Community Based Development Organization or CBDO.
  - The eligible groups include neighborhood-based organizations, section 301(d) Small Business Investment Companies (SBICs), local development corporations (LDCs), and some Community Housing Development Organizations (CHDOs).
  - These development organizations must meet the definition outlined in Section 105(a)(15) of the Housing and Community Development Act and §570.204 of the regulations to be considered eligible to undertake such activities.
  - These organizations must be undertaking a neighborhood revitalization, community economic development or energy conservation project in order to use CDBG for new construction. Note that new housing construction carried out by an eligible CBDO must be part of a larger effort to revitalize the neighborhood (i.e., a plan for the community's revitalization efforts based on a comprehensive plan, not just for the sake of the CDBG project).
  - See chapter 2 for more information about the types of organizations that qualify as CBDOs.
- ✓ Grantees may also provide support for the development of new housing as an eligible activity. "Support" refers to:
  - Acquisition by the grantee or public or private nonprofit entities;
  - Site clearance and assemblage; and
  - Site improvements (if in public ownership).
- ✓ Finally, grantees may use CDBG funds to construct new housing under the last resort provisions of the URA (24 CFR Part 42, subpart I). This is housing that the grantee has determined must be constructed in order to provide suitable replacement housing for persons to be displaced by a contemplated CDBG project, subject to the Uniform Act, and where the project is prevented from proceeding because the required replacement housing is not available otherwise. Note: Under this provision, national objective compliance is based on the activity that caused the displacement rather than the income of the occupants.

4.5 Services in Connection with Housing

CDBG is flexible in allowing services to be provided to persons and households. CDBG funds may be used to pay costs in support of activities eligible for funding under the HOME program. This section details the services that provided in connection with housing activities.

Key Topics in This Section	✓ Eligible housing services activities
Regulatory/Statutory Citations	Section 105(a)(20); §570.201(k)
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2 ✓ HOME and CDBG Model Guide

✓ Services that are related to housing activities may qualify under several eligibility categories of the CDBG regulations, including:

- As a public service activity (e.g., a housing counseling program) if the activity meets the public service eligibility criteria. (Note, however, the amount of CDBG funds used for public service activities may not exceed the 15 percent cap.);
- As part of a CDBG-funded housing activity (e.g., preparing work specifications for CDBG-funded rehabilitation projects), generally referred to as a program delivery cost; and
- CDBG funds may be used to pay for program administration of the HOME program (under 570.206).
- As a separate eligibility category (under 570.201(k)) when the housing activities are linked to providing services to owners, tenants, contractors or other entities participating in or seeking to participate in the grantee's HOME Program. Eligible services under this category include:
  - Housing counseling;
  - Energy auditing;
  - Preparation of work specifications;
  - Loan processing;
  - Inspections;
  - Tenant selection; and
  - Management of tenant-based rental assistance (TBRA) programs.

4.6 Ineligible Activities

Although CDBG is very flexible in its approach to housing activities, some activities cannot be funded. This section highlights ineligible activities related to housing.

Key Topics in This Section	✓ Ineligible activities
Regulatory/Statutory Citations	§570.207
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2 ✓ HOME and CDBG Model Guide

- ✓ CDBG funds cannot be used to subsidize or assist the new construction of housing, *unless* carried out by a CBDO, as part of certain kinds of projects. Note that activities, which support the development of housing for LMI households (e.g., clearance, site improvements, and public facilities), are eligible for CDBG assistance under other eligibility categories.
- ✓ CDBG may not be used to guarantee mortgage financing directly, and grantees may not provide such guarantees directly.
- ✓ CDBG funds may not be used to provide on-going income payments such as paying for a tenant's rent or a household's mortgage. The only exceptions to this are:
  - Income payments that are provided as a loan; or
  - Income payments that are emergency in nature and do not exceed three consecutive months.
- ✓ The purchase of construction equipment is generally ineligible. However, the purchase of tools to be part of a "tool-lending" rehabilitation program is eligible. Compensation for the use of construction equipment through leasing, depreciation or other use allowances (described in the OMB circulars) is allowable provided the activity is otherwise eligible.

4.7 National Objectives for Housing Activities

All CDBG activities must meet a national objective in order to be eligible to use CDBG funds. This requires that all housing activities must qualify as meeting one of the three national objectives of the program and meet specific tests for benefiting LMI persons, preventing or eliminating slums or blight and 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. This section is set up by national objective and then lists the different housing activities that are applicable to that particular national objective.

Key Topics in This Section	✓ LMI Area Benefit ✓ LMI Limited Clientele ✓ Slum/Blight Area and Spot Basis ✓ Urban Renewal Completion ✓ Urgent Needs
Regulatory/Statutory Citations	Section 101(c)(2), 104(b), 105(c) §570.208
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 3

4.7.1 National Objective Summary Chart

✓ The following chart summarizes the national objective options related to housing activities. The text below provides additional details. For a complete copy of the matrix codes and national objectives chart, please see the IDIS chapter of this manual.

National Objective (N = Not Allowed)									
HUD Matrix Code	Activity	LMA	LMC	LMH	LMJ	SBA	SBS	SBR	URG
05R	Homeownership Assistance (not direct)	N	N		N		N	N	
05S	Rental Housing Subsidies	N	N		N		N	N	
05T	Security Deposits	N	N		N		N	N	
05U	Housing Counseling	N		N	N	N	N	N	N
12	Construction of Housing	N	N		N		N		
13	Direct Homeownership Assistance	N	N		N	N	N	N	N
14A	Rehab; Single Unit Residential	N	N		N				
14B	Rehab; Multi-Unit Residential	N	N		N				
14C	Public Housing Modernization	N	N		N				
14D	Rehab: Other Publicly Owned Residential Buildings	N	N		N				
14F	Energy Efficiency Improvements	N	N		N				
14G	Acquisition for Rehabilitation	N	N		N				
14H	Rehabilitation Administration								
14I	Lead Based Paint/Hazards Test/Abatement	N	N		N				
16A	Residential Historic Preservation	N	N		N				N

4.7.2 LMI Housing National Objective

- ✓ If a grantee wishes to qualify a housing rehabilitation, acquisition or construction activity under the LMI national objective, the housing national objective must be used. The grantee may not use LMI area, LMI limited clientele or LMI job creation for these activities.
  - A LMI household must occupy a structure with one unit. Two-unit structures must have at least one unit occupied by a LMI household. If the structure contains three or more units, at least 51 percent must be LMI occupied.
  - When housing rehabilitation or new construction single family housing activities are conducted by a CDFI or as part of a HUD-approved Neighborhood Revitalization Strategy, multiple units (e.g. scattered site housing) may be aggregated for the purposes of meeting the LMI benefit national objective.

- ✓ Home Purchase assistance qualifies under the ***Housing*** criteria of the LMI benefit national objective.
  - LMI persons must occupy structures with one unit. If the structure contains more than one unit, at least 51 percent must be LMI occupied. (Two-unit structures must have at least one unit occupied by a LMI household.)
  - NOTE: Due to statutory requirements related to the eligibility category, when direct homeownership assistance is provided under 24 CFR 570.201(n), the flexibility to aggregate units when the assistance is provided by a CDFI or as part of an approved Neighborhood Revitalization Strategy to meet the Housing National Objective is NOT allowed.

- ✓ Rental housing (both new construction and rehabilitation) activities that provide or improve permanent residential structures can only qualify as benefiting LMI households under the ***Housing*** criteria of the LMI benefit national objective, which deals with the occupancy of units by LMI households.
  - The general rule is that 51 percent of the units in each assisted structure are to be occupied by LMI households. However, when rental housing activities are carried out by a CDFI or as part of an approved Neighborhood Revitalization Strategy, multiple units (e.g. scattered site housing) may be aggregated for the purposes of meeting the LMI Benefit National Objective.
  - When less than 51 percent of the units in a structure will be occupied by LMI households, CDBG assistance may be provided in the following limited circumstances:
    - The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project;
    - Not less than 20 percent of the units will be occupied by LMI households at affordable rents; and
    - 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 LMI households.
  - In order to meet the LMI housing national objective, rents in CDBG-assisted rental projects must be set at levels which are affordable to LMI persons.

- Grantees are required to adopt and make public their standards for determining "affordable rents."
- The generally accepted affordability standard is that households pay no more than 30 percent of income for rent and utilities. However, use of this standard is not required by CDBG regulations.
- Grantees may want to establish rent limits or ceilings based on local LMI limits and bedroom sizes, similar to those used for the HOME Program. However, *each project* must be undertaken in such a manner as to ensure that rents are truly affordable to LMI persons.

✓ Housing services provided in connection with a CDBG-funded housing activity (generally as a program delivery cost) or in connection with a HOME-funded program qualify under the ***Housing*** criteria of the LMI benefit national objective.

– The general rule is that 51 percent of the units in each assisted structure are to be occupied by LMI households. Some housing activities, when carried out by a CDFI or as part of an approved Neighborhood Revitalization Strategy, may be aggregated for the purposes of meeting the LMI benefit national objective.

4.7.3 LMI Limited Clientele National Objective

✓ Housing counseling services provided as a public service activity must qualify under the LMI ***limited clientele*** national objective.

– LMI ***limited clientele*** national objective activities benefit a limited number of people as long as at least 51 percent of those served are LMI persons. These activities must:

- Benefit a clientele that is generally presumed to be principally LMI (abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS and migrant farm workers); or
- Require documentation on family size and income in order to show that at least 51 percent of the clientele are LMI; or
- Have income eligibility requirements limiting the activity to LMI persons only; or
- Be of such a nature and in such a location that it can be concluded that clients are primarily LMI.

4.7.4 Slum/Blight National Objective

✓ If a housing rehabilitation or acquisition activity does not meet the LMI Housing National Objective, 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 funds benefit LMI persons.

– The requirements for meeting the Slum/Blight National Objective under the ***Area Basis*** criteria include:

- The area delineated by the grantee in which the activity occurs meets a definition of a slum, blighted, deteriorated or deteriorating area under state or local law;

- At least 25 percent of the properties in the area experience one or more of the conditions identified at 570.208(b)(1)(ii)(A),, or the public improvements are in a general state of deterioration; and
- The activity addresses one or more of the conditions that contribute or contributed to the deterioration of the area. ***CAUTION:*** Residential rehabilitation 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.

– To meet the Slum/Blight National Objective under the ***Spot Basis*** criteria:

- The rehabilitation activity must eliminate specific conditions of blight or physical decay on a spot basis (i.e., not in an area meeting the Area Basis criteria); and
- The rehabilitation must remove only those conditions that are detrimental to public health and safety.

✓ New construction housing may qualify under the Slum/Blight National Objective under the **Area Basis**. However, the new housing only qualifies if the following conditions are met:

– The new housing is located with a designated slum or blighted area; and

– Development of new housing addresses one of the conditions which contributed to the deterioration of the area.

4.7.5 Urban Renewal Completion National Objective

✓ New construction housing may qualify under the Urban Renewal Completion National Objective. However, the new housing only qualifies if the following conditions are met:

– The new housing is located within an Urban Renewal project or an NDP action area designated under Title I of the Housing Act of 1949; and

– The new housing is necessary to complete the Urban Renewal Plan.

4.7.6 Urgent Needs National Objective

✓ New construction housing may qualify under the Urgent Needs National Objective. However, 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).

4.8 Drawing Down Funds

There are a number of different ways that grantees may draw down their CDBG funds for housing rehabilitation activities. This section discusses three ways, escrow accounts, lump sum drawdowns and revolving loans.

Key Topics in This Section	✓ Escrow Accounts ✓ Lump Sum Drawdowns and Revolving Loan Funds
Regulatory/Statutory Citations	Section 104(h) §570.511, §570.513, §570.500(b)
Other Reference Materials on This Topic	N/A

Escrow Accounts

- ✓ Grantees may draw down CDBG funds from HUD to set up escrow accounts for the rehabilitation of privately owned residential property. Many grantees use this type of account for paying contractors on behalf of homeowners under CDBG single-family rehabilitation programs.
- ✓ The escrow accounts are subject to the following limitations:
  - Escrow accounts must be used for loans and grants for the purpose of rehabilitating primarily residential properties with no more than four units.
  - Deposits to escrow accounts must not take place until a contract has been executed between the property owner and the contractor.
  - The contract between the property owner and the contractor must specify that an escrow account will be used for payment purposes and that the grantee or a subrecipient will maintain the escrow account.
  - All CDBG funds drawn down from HUD for escrow must be deposited into one interest bearing account.
  - The amount of funds deposited into an escrow account must be limited to the amount expected to be disbursed within 10 working days from the date of deposit (any excess funds must be transferred to the grantee's program account).
  - Funds deposited in an escrow account must be used only to pay the actual rehabilitation costs incurred by the owner under contract with a private contractor. Other costs may not be paid from escrowed funds.
- ✓ Interest earned on escrow accounts must be ***remitted to HUD at least quarterly*****.**

Lump Sum Drawdowns and Revolving Loan Funds

- ✓ Lump sum drawdowns may be used for housing rehabilitation programs. Lump sum drawdown refers to the process of drawing down CDBG funds in a lump sum in order to establish a fund in one or more private financial institutions for the purpose of financing eligible activities. The fund may be used in conjunction with various financing techniques, including loans, interest subsidies, loan guarantees, loan reserves, or other uses approved by HUD.

- ✓ A revolving fund is a separate fund (independent of other CDBG program accounts) set up for the purpose of carrying out specific activities. These activities generate payments to the revolving loan fund for use in carrying out the same types of activities. Revolving loan funds are often set up for housing rehabilitation loan programs.
- ✓ The rules governing lump sum drawdowns and revolving loan funds are found in Chapter 11: Financial Management.

CHAPTER 5: OTHER REAL PROPERTY IMPROVEMENTS

CHAPTER PURPOSE & CONTENTS

This chapter provides a brief overview of additional types of real property improvement activities that are CDBG-eligible. The chapter explains how these activities meet one of the national objectives and describes the forms that assistance may take.

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5.1 Acquisition

- ✓ Acquisition refers to the purchase of real property. An example of an acquisition activity is the purchase of a building to be converted into a shelter for the homeless, or the purchase of land in a LMI residential neighborhood to be used as a park.
- ✓ Acquisition can also occur under other eligibility categories, such as rehabilitation or economic development, depending on the type of real property as well as its use.
- ✓ The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible acquisition activities ✓ Ineligible acquisition activities ✓ Documenting national objective for acquisition activities
Regulatory/Statutory Citations	Section 101(c), Section 104(c), Section 105(a)(1), Section 105(c) §570.201(a), §507.207
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 1, Chapter 2

5.1.1 Eligible Activities

- ✓ CDBG funds may be used to acquire real property either in whole, or in part by purchase, long-term lease, donation, or otherwise for any public purpose. CDBG funds may be used under this category by the grantee; a public agency; a public nonprofit entity, or a private nonprofit entity.
- ✓ Real property to be acquired may include, but is not limited to:
  - Land;
  - Air rights;
  - Easements;
  - Water rights;
  - Rights-of-way; and
  - Buildings and other real property improvements.
- ✓ CDBG funds may be used to pay for 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 the acquisition process.

5.1.2 Ineligible Activities

✓ The following activities are **not** eligible to be funded under this category:

- The costs of moveable equipment, furnishings, or machinery if this is the principal purpose of the activity because these items are not real property;
- Acquisition of property which is then expected to be donated or sold at less than the purchase price to the same entity that purchased the property because this is not considered a legitimate change of ownership;
- Acquisition of newly-constructed housing or an interest in the construction of new housing.

5.1.3 Documenting the National Objective

✓ Acquisition may qualify under each of the three national objectives. Documenting an acquisition activity as one of the CDBG national objectives depends entirely on the actual use of the acquired real property. The planned use of the acquired property may be used to make a preliminary determination of compliance with a national objective, though the final determination must be made based on the actual use of the property.

✓ For example, when 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. Any subsequent use or disposition of the cleared property must be treated as a "change of use" under 570.503(b) or 570.505, as applicable. Though if, for example, the property is to be acquired for general purpose, such as a planned housing activity, but the specific project is not yet identified, the grantee must document the intended use of the property; the national objective expected to be met; and make a written commitment to use the property only for a specific project under that general use that will meet the specific national objective.

✓ Acquisition may qualify under each of the national objectives as outlined below. For more detailed information about the national objectives, please refer to that chapter of this manual.

LMI National Objective

✓ Acquisition may qualify under the area benefit category if the property will be used for an activity that benefits the residents of a primarily residential area and at least 51% of those residents are LMI households.

✓ Acquisition may qualify under the limited clientele category if the real property acquired will be used for an activity that benefits a specific group of people, at least 51% of whom are LMI persons.

✓ Acquisition may qualify under the Housing category if the property will be used for housing to be occupied by LMI persons.

✓ Lastly, if the property acquired is to be used for an economic development project that will create or retain permanent jobs and at least 51% of those jobs will benefit LMI persons, the acquisition qualifies under the jobs category.

Slum/Blight National Objective

✓ Acquisition may qualify under the Slum or Blighted Area category if the acquired real property is in an area designated by the grantee as a slum or blighted area, and the property

will be used in a manner which addresses one or more of the conditions which contributed to the deterioration of the area.

- ✓ Acquisition may qualify under the Spot Blight category if the acquired property is located outside a designated slum or blighted area and the acquisition is required for clearance which will eliminate specific conditions of blight or physical decay on a spot basis.
- ✓ Finally, acquisition may qualify under the Urban Renewal Completion category if the property is located within an urban renewal project area or a Neighborhood Development Program action area designated under Title 1 of the Housing Act of 1949 and the acquisition is necessary to complete the urban renewal plan.

Urgent Need National Objective

- ✓ Acquisition may qualify under the Urgent Need category if the acquisition is part of an activity designated to alleviate existing conditions and the grantee certifies that those conditions are a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.

5.2 Disposition

Disposition refers to the sale, lease, and donation of real property. When grantees choose to dispose of real property acquired with CDBG funds, costs associated with the disposition are CDBG-eligible. The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible disposition activities ✓ Documenting national objective for disposition activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(7), Section 105(c) §570.201(b)
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2, Chapter 3

5.2.1 Eligible Activities

- ✓ CDBG funds may be used to pay the costs associated with the disposition of real property acquired with CDBG funds through sale, lease, donation, or other means, including its disposition at less than fair market value if the property will be used to meet a national objective of the CDBG program.
- ✓ Disposition costs may include:
  - Preparation of legal documents;
  - Surveys;
  - Marketing;
  - Financial services;
  - The transfer of taxes;

- Other costs involved in the transfer of ownership; and
- Reasonable costs of temporarily managing property with CDBG funds or acquired under urban renewal until final disposition is made. Costs of long-term management of properties for which there are no plans for disposition in the near future are not CDBG-eligible.

5.2.2 Documenting the National Objective

✓ 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 for which is was acquired, the costs of the disposition meet the same national objective under which the property was acquired.

✓ If the property is being disposed of for a different purpose than that for which it was acquired, the disposition activity falls under the national objective that will be met by the new use of the property.

5.3 Clearance

Clearance activities are usually related to demolishing structures or preparing a site for development. An example of this would be the demolition of a dilapidated structure in a LMI residential neighborhood from the site on which a neighborhood center will be built. As in this example, and in general, clearance activities often go hand-in-hand with other CDBG-eligible activities. The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible clearance activities ✓ Documenting national objective for clearance activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(4), Section 105(c) §570.201(d)
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2, Chapter 3

5.3.1 Eligible Activities

✓ The following clearance activities are eligible under the CDBG Program:

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

5.3.2 Documenting the National Objective

LMI National Objective

- ✓ Clearance may qualify under the Area Benefit category if the cleared property will be used for a purpose that benefits the residents of a primarily residential area and at least 51% of those residents are LMI persons.
- ✓ Clearance may qualify under the Limited Clientele category if the cleared property will be used for an activity that benefits a specific group of people, at least 51% of whom are LMI persons.
- ✓ Clearance may qualify under the Housing category if the cleared property will be used for housing to be occupied by LMI households.
- ✓ Lastly, if the cleared property is part of an activity that will create or retain permanent jobs and at least 51% of those jobs will benefit LMI, the acquisition may qualify under the Jobs category.

Slum/Blight National Objective

- ✓ Clearance may qualify under the Slum or Blighted Area category if the clearance activities are in an area designated by the grantee as a slum or blighted area and address one or more of the conditions which contributed to the deterioration of the area.
- ✓ Clearance may qualify under the Spot Blight category if the activity eliminates specific conditions of blight or physical decay on a spot basis not located in a designated slum/blight area.
- ✓ Finally, clearance may qualify under the Urban Renewal Completion category if the activities are located within an urban renewal project area or a Neighborhood Development Program action area designated under Title 1 of the Housing Act of 1949 and the clearance is necessary to complete the Urban Renewal Plan.

Urgent Need National Objective

- ✓ Clearance may qualify under this national objective if the clearance is part of an activity designated to alleviate existing conditions and the grantee certifies that those conditions are a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.

5.4 Tax Foreclosed Housing (In Rem)

This section outlines activities that are eligible and ineligible in-rem housing activities under the CDBG program. The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible In-Rem Housing Activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(23), Section 105(c)
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2, Chapter 3

5.4.1 Eligible Activities

- ✓ CDBG funds may be used to assist housing units acquired through tax foreclosure proceedings.
- ✓ To prevent abandonment and deterioration of such housing in primarily LMI neighborhoods CDBG funds may be used in the following ways:
  - To make essential repairs; and
  - To cover operating expenses needed to maintain habitability.

5.4.2 National Objectives

LMI Benefit National Objective

- ✓ Since these expenses are limited to housing located in primarily LMI neighborhoods, the LMI Benefit national objective is to be met through the Area Benefit subcategory. Even though these are housing activities, the requirement that occupancy by LMI households must be demonstrated does not apply.

Slum/Blight National Objective

- ✓ Where the criteria could be demonstrated, the grantee may also qualify activities under the Slum/Blight national objective.

5.5 Code Enforcement

Code enforcement refers to the payment of salaries and overhead costs that are directly related to state and/or local code enforcement. The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible code enforcement activities ✓ Ineligible code enforcement activities ✓ Documenting national objective for code enforcement activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(3), Section 105(c) §570.202(c), §570.207
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2, Chapter 3

5.5.1 Eligible and Ineligible Activities

Eligible Activities

✓ The costs incurred for code enforcement efforts are an eligible expense under CDBG provided that:

- The enforcement takes place in deteriorated or deteriorating area(s); and
- The enforcement effort is accompanied by public or private improvements or services (e.g., a homeowner rehab program) and can be expected to arrest the decline of the area(s).

✓ Eligible costs under code enforcement include:

- Costs incurred for inspections for code violations (including salaries and overhead); and
- The enforcement of code requirements (including salaries, overhead and legal proceedings).

✓ Both residential and commercial structures may be included in the code enforcement effort.

Ineligible Activities

✓ The costs associated with inspections for the purpose of processing applications for rehabilitation assistance and overseeing such rehabilitation are not eligible under Code Enforcement. Costs associated with these activities may be eligible under other CDBG eligibility categories.

✓ The costs associated with correcting the code violations identified during inspections are not eligible under this activity; however, these costs may be eligible under other CDBG eligible activity categories such as rehabilitation activities.

5.5.2 Documenting the National Objective

LMI National Objective

✓ Code enforcement activities may meet the LMI national objective under the area benefit category if they take place in a deteriorated or deteriorating area delineated by the grantee that is primarily residential containing at least 51 percent LMI persons and the code enforcement, along with other activities, may be expected to stop the decline of the area.

Slum/Blight National Objective

✓ Code enforcement may qualify under the Slum or Blighted Area category if targeted at a designated slum or blighted area and is designed to address one or more of the conditions which contributed to the deterioration of the area.

✓ Code enforcement may qualify under the Urban Renewal Completion category if necessary to complete the urban renewal plan.

Urgent Need National Objective

✓ Though infrequent, it is possible for code enforcement to qualify under the Urgent Need national objective if the following conditions are met:

- The activity is targeted at a deteriorated or deteriorating area;
- The code enforcement activity, together with public or private improvements, rehabilitation, and services to be provided, may be expected to stop the decline of the area; and
- The grantee can certify that the existing conditions which the code enforcement is designed to alleviate pose a serious and immediate threat to the community, they are recent or recently became urgent, the grantee is unable to finance the activity, and other sources of funds are not available.

5.6 Lead-Based Paint Hazard Evaluation and Reduction

This category encompasses costs associated with the evaluation and abatement of lead-based paint hazards. The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible lead-based paint activities ✓ Documenting national objective for lead-based paint activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(25), Section 105(c) §570.202(f)
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2, Chapter 3

5.6.1 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 may be CDBG-eligible 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.

5.6.2 Documenting the National Objective

LMI National Objective

✓ 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 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. There are two exceptions: NRSA “aggregation” and CDFI “aggregation.”

- ✓ 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.

Slum/Blight National Objective

- ✓ If a lead-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 meets 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) or the public improvements throughout the area are in a general state of deterioration; and
    - The activity addresses one or more of the conditions, which contribute or 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-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).

5.7 Historic Preservation

The preservation and restoration of publicly and privately owned properties of historical significance are generally eligible under CDBG. The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible historic preservation activities ✓ Ineligible historic preservation t activities ✓ Documenting national objective for historic preservation activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(1), Section 105(a)(4), Section 105(c) §570.201, §570.202(d), §570.207
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2, Chapter 3

5.7.1 Eligible and Ineligible Activities

Eligible Activities

- ✓ CDBG funds may be used for the preservation, rehabilitation or restoration of historic properties.
- ✓ Both publicly and privately owned properties are eligible, as are both commercial and residential properties.
- ✓ Historic properties are those sites or structures which are:
  - Listed 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.
- ✓ Typical eligible costs include:
  - Historic preservation studies and plans;
  - Acquisition assistance to private individuals and entities, if the acquired property is to be used for residential purposes after rehabilitation;
  - The actual costs of rehabilitating, restoring or preserving the property; and
  - The cost of temporarily relocating residents while preservation work is performed.
- ✓ Additional eligible costs may include costs required by a State Historic Preservation Officer to permit the use of a historic structure for the public or private purposes intended.

- ✓ The National Historic Preservation Act of 1996 established a detailed list of procedures for actions involving historic structures. Prior to conducting any type of historic preservation activities, grantees should contact their State Historic Preservations Officer (SHPO) to ensure compliance with the 1996 Act and other relevant statutes.

Ineligible Activities

- ✓ Historic preservation of buildings used for the general conduct of government is not eligible under CDBG.

5.7.2 Documenting the National Objective

- ✓ Documenting that historic preservation meets a national objective can be accomplished in different ways depending on whether the property is a residential or non-residential structure.

LMI National Objective

- ✓ Residential properties can qualify under the Housing category of the LMI Benefit national objective, if the criteria for occupancy by LMI households and affordability (for rental housing) are met.
- ✓ Non-residential properties may qualify under the Area Benefit, Limited Clientele, or Job Creation/ Retention category of the LMI national objective.
  - To qualify under the Area Benefit category, the historic structure (such as a building used as a neighborhood center) must benefit all residents of an area that is primarily residential and at least 51 percent of the residents are LMI.
  - To qualify under the Limited Clientele category, the property must benefit a specific targeted group of persons of which at least 51 percent must be LMI. This can be achieved by meeting one of the following criteria:
    - Having documentation and data concerning beneficiary family size and income to show that at least 51 percent are LMI;
    - Having income-eligibility requirements which limit the service to persons meeting the LMI income requirement, as evidenced by the administering agency's procedures, intake/application forms and other sources of documentation;
    - Serving a group primarily presumed to be LMI such as abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS and migrant farm workers; or
    - Being of such a nature and in a location that it may be concluded that the activity's clientele are LMI.
    - Public facilities such as homeless shelters or group homes for persons with special needs are just two examples of public facilities that may qualify under the Limited Clientele category. The populations served by these facilities serve populations that are presumed to be LMI.

- To qualify under the job creation/retention category, the historic preservation must create or retain permanent jobs, at least 51 percent of which (computed on a full-time equivalent basis) will be made available to or held by LMI persons.
    - Qualifying a historic preservation project under this set of criteria is extremely unlikely. One possible scenario involves the restoration of a historic structure (e.g., theatre), which will lead to the creation of jobs, which will be available to LMI.

Slum/Blight National Objective

✓ Historic preservation activities may meet the Slum/Blight National objective under the Area Basis, Spot Basis, or Urban Renewal category.

- The requirements for meeting the Area Basis category include:
    - The area delineated by the grantee in which the activity occurs meets a definition of a slum, blighted, deteriorated or deteriorating area under state or local law;
    - At least 25 percent of the properties throughout the area evidence one or more of the conditions identified at 570.208(b)(1)(ii)(A) or the public improvements are in a general state of deterioration; and
    - The activity addresses one or more of the conditions, which contribute or contributed to the deterioration of the area.
- To meet the Slum/Blight national objective under the Spot Basis category the historic preservation must eliminate *specific* conditions of blight or physical decay not in a slum or blighted area (i.e., not in an area meeting the Area Basis category).
- To meet the Slum/Blight National Objective under the Urban Renewal category:
    - The activities must be located within an urban renewal project area or Neighborhood Development Program (NDP) action area and be necessary to complete the urban renewal plan; and
    - A copy of the Urban Renewal Plan in effect at the time the activity is carried out, including maps and supporting documentation must be maintained for record keeping purposes.

5.8 Renovation of Closed Buildings

This eligibility category generally refers to the renovation of closed buildings for use as an eligible public facility as well as both residential and commercial facilities. The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible activities ✓ Ineligible activities ✓ Documenting national objective for renovation of closed buildings activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(4), Section 105(c) §570.202(e), §570.207
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2, Chapter 3

5.8.1 Eligible and Ineligible Activities

Eligible Activities

✓ CDBG funds may be used to fund the renovation of closed buildings, such as closed school buildings, for use as an eligible public facility. Funds may also be used to rehabilitate and convert closed buildings for residential uses.

Ineligible Activities

✓ The following activities are not eligible to be funded by CDBG:

- The costs of equipment, furnishings, or other personal property that are not integral structural fixtures, such as a window air conditioner or a clothes washer;
- The installation of luxury items; and
- The creation of a secondary housing unit attached to a primary unit.

5.8.2 Documenting the National Objective

LMI National Objective

✓ The renovation may qualify under the Area Benefit category if, after the renovation is complete, the property will be used for an activity that benefits the residents of a primarily residential area and at least 51% of those residents are LMI persons.

✓ Renovation may qualify under the Housing category if, after the renovation and rehabilitation is complete, the property will be used for housing to be occupied by LMI households.

✓ Lastly, if a closed building renovated as a public facility will create or retain permanent jobs and at least 51% of those jobs will benefit LMI persons, the renovation qualifies under the Jobs category.

Slum/Blight National Objective

- ✓ Renovation of a closing building as a residential property may qualify under the Slum or Blighted Area category if:
  - The structure is located in a designated slum or blighted area;
  - The structure is considered substandard;
  - All deficiencies making the structure substandard are corrected before less critical work is undertaken; and
  - The activity addresses one or more of the conditions that contributed to the deterioration of the area.
- ✓ Renovation of a closed building as a public facility may qualify under the Slum or Blighted Area category if:
  - The structure is located in a designated slum or blighted area; and
  - The activity addresses one or more of the conditions that contributed to the deterioration of the area.
- ✓ Additionally, renovation of a closed building may qualify under the Urban Renewal Completion category if the property is located within an urban renewal area and the activity is necessary to complete the Urban Renewal plan then in effect.

Urgent Need National Objective

- ✓ Renovation of a closed building may qualify under this national objective if it is part of an activity designated to alleviate existing conditions and the grantee certifies that those conditions are a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.

5.9 Handicapped Accessibility

This section outlines activities that are eligible and ineligible handicapped accessibility activities under the CDBG program. The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible handicapped access activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(5), Section 105(c), §570.201, §570.202, §570.203
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2

5.9.1 Eligible Activities

- ✓ CDBG funds may be used for the removal of material and architectural barriers that restrict the accessibility or mobility of elderly or handicapped persons.

- When carried out on residential, commercial or industrial properties, this type of work is considered rehabilitation under that eligibility category (570.202).
- When carried out on other type of property, the accessibility improvements are part of the activity being carried out (e.g., accessibility improvements to a public facility would be eligible as a public facility activity).

5.9.2 National Objectives

LMI Benefit National Objective

✓ If costs are restricted to the removal of material and architectural barriers, to the extent practical, such activities qualify under the LMI Income Limited Clientele benefit when:

- The reconstruction of a public facility or improvement, or portion thereof, does not meet the standard to qualify for LMI Income Benefit under Area Benefit;
- The rehabilitation of a privately owned nonresidential building or improvement does not meet the standard for LMI 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 does not meet the standard for LMI Income Benefit under Housing.

✓ If the new construction of a public facility or improvement cannot meet a national objective, then the features that are required in such construction in order to provide for handicapped accessibility also cannot meet a national objective.

5.10 Energy Efficiency

This section outlines energy efficiency activities that are eligible under CDBG.

Key Topics in This Section	✓ Eligible energy efficiency activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(2), Section 105(a)(8), Section 105(a)(16), Section 105(c) §570.201(c), §570.201(e), §570.202, §570.205
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2

5.10.1 Eligible Activities

✓ CDBG funds can be used for a wide range of eligible energy activities. The list is long and flexible. For example, you can

- Weatherize a home or apartment building;
- Install solar and wind equipment;
- Finance energy-efficient rehabilitation;
- Establish energy standards, including recognition of the use of energy star for appliances and buildings;

- Provide free audits and home energy ratings, free materials for insulation and other services;
- Pay the cost of getting an Energy Star rating;
- Produce energy from many sources, including hydroelectric, geothermal, biomass for gasohol, burning municipal waste, tapping methane gas from landfills;
- Distribute energy through district heating and cooling systems and cogeneration (combined heat and power);
- Prepare comprehensive community energy use strategies. These strategies may describe energy use, project demand and analyze options for conserving scarce fuels. They may outline how neighborhood revitalization and economic development strategies will support energy conservation, how energy conservation will be integrated into local government operations, and other activities the community determines will help meet its energy goals.

✓ Please note that weatherization and/ or installation of Energy Star light bulbs or appliances does not make a unit Energy Star certified.

5.10.2 National Objectives

✓ The national objective for energy efficiency activities depends upon the type of activity undertaken. Please refer to the applicable eligible activity chapters for more information on the national objective options.

5.11 Brownfields

This section outlines brownfields remediation and revitalization activities that are eligible under CDBG.

Key Topics in This Section	✓ Eligible brownfields activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 205 of the FY 1999 HUD Appropriations Act, Section 105(c) §570.201(d) and §570.703(e)
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2

5.11.1 Eligible Activities

✓ In the 1999 HUD Appropriations Act, Congress explicitly stated the eligibility of environmental clean-up and economic development activities for brownfields.

✓ In a 2006 Final Rule, HUD added project-specific assessment and remediation of known or suspected environmentally contaminated sites to the list of eligible activities under §§ 570.201(d) and 570.703(e), which address brownfields activities.

5.11.2 National Objectives

- ✓ The national objective for brownfields activities depends upon the type of activity undertaken. Please refer to the applicable eligible activity chapters for more information on the national objective options.
- ✓ Note that HUD expanded the ‘‘slums or blight’’ national objective criteria in 2006 to include known and suspected environmental contamination as blighting influences. As evidence of blighting influences, HUD will accept signs of economic disinvestment, such as property abandonment, chronic high turnover rates; or chronic high vacancy rates in occupancy of commercial or industrial buildings; and significant declines in property values.
- ✓ HUD also changed the definitions required to substantiate how the area met the ‘‘slums or blight’’ criteria. Specifically, grantees would be required to define deteriorating or deteriorated buildings or improvements, abandonment of properties, chronic high turnover rates, chronic high vacancy rates, significant declines in property values, abnormally low property values, and environmental contamination. At least 25 percent of the properties in the designated area meet one or more of these conditions and the ‘‘slums or blight’’ designation for the area must be re-determined every 10 years.

5.12 Summary of National Objective Options for Other Real Property Improvements

- ✓ All CDBG activities must meet a national objective in order to be eligible to use CDBG funds.
- ✓ The following chart summarizes the national objective options related to other real property activities. The text in each section above provides additional details for each specific type of activity. For a complete copy of the matrix codes and national objectives chart, please see the IDIS chapter of this manual.

National Objective Codes (N = Not Allowed)									
HUD Matrix Code	**Activity**	**LMA**	**LMC**	**LMH**	**LMJ**	**SBA**	**SBS**	**SBR**	**URG**
1	Acquisition of Real Property								
2	Disposition						N		
4	Clearance and Demolition								
04A	Cleanup of Contaminated Sites								
14F	Energy Efficiency Improvements	N	N		N				
14I	Lead Based Paint/Hazards Test/Abatement	N	N		N				
15	Code Enforcement		N	N	N		N		
16A	Residential Historic Preservation	N	N		N				N
16B	Non-Residential Historic Preservation			N					N
19E	CDBG Operation and Repair of Foreclosed Property		N		N	N	N	N	N

CHAPTER 6: PUBLIC FACILITIES, SPECIAL ASSESSMENTS AND PRIVATELY-OWNED UTILITIES

CHAPTER PURPOSE & CONTENTS

This chapter provides grantees with information on CDBG-eligible public facilities and improvement activities, special assessments, and privately owned utilities. This chapter also discusses how to determine the appropriate national objective category for these types of activities.

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6.1 Public Facilities and Improvements

Under the CDBG Program, grantees may use funds to undertake a variety of public facilities and public improvement projects. In general, public facilities and public improvements are interpreted to include all facilities and improvements that are publicly owned, or that are owned by a nonprofit and open to the general public. The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible public facilities activities ✓ Ineligible activities ✓ National objectives for public facilities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(2), Section 105(c) §570.201(c), §570.207, §570.208
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2, Chapter 3 ✓ CPD Notice 04-07

6.1.1 Eligible and Ineligible Activities

Eligible Activities

✓ The acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements are eligible activities under CDBG and can be carried out by a grantee,

subrecipient, or other nonprofit. Public facilities may only be owned by these types of entities.

- ✓ Eligible types of facilities and improvements include:
  - Infrastructure improvements (construction or installation) including, but not limited to streets, curbs, and water and sewer lines;
  - Neighborhood facilities including, but not limited to public schools, libraries, recreational facilities, parks, playgrounds; and
  - Facilities for persons with special needs such as facilities for the homeless or domestic violence shelters, nursing homes, or group homes for the disabled.
- ✓ Eligible costs associated with eligible activities may include:
  - Energy efficiency improvements;
  - Handicapped accessibility improvements (including improvements to buildings used for general conduct of government); and
  - Architectural design features and other treatments aimed at improving aesthetic quality (e.g., sculptures, fountains).
- ✓ If the assisted facility is owned by a nonprofit, the CDBG regulations stipulate that the facility must be open to the public during normal working hours.

Ineligible Activities

- ✓ The maintenance and repair of public facilities and improvements is generally ineligible (e.g., filling potholes, repairing cracks in sidewalks, mowing grass at public recreational areas or replacing street light bulbs).
- ✓ Operating costs associated with public facilities or improvements are ineligible unless part of a CDBG-assisted public service activity or eligible as an interim assistance activity.
- ✓ A public facility otherwise eligible for assistance under the CDBG program may be assisted with CDBG funds even if it is part of a multiple use building containing ineligible uses, if:
  - The public portion of the facility that is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and
  - The grantee 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.

6.1.2 National Objective

LMI Benefit National Objective

- ✓ CDBG-funded public facilities and improvements will typically be categorized under the LMI Benefit national objective as an Area Benefit activity.
  - Under the area benefit criteria, the public facility/improvement must benefit ***all*** residents of an area where at least 51 percent of the residents are LMI. The service area need not have coterminous boundaries with Census tract borders or other officially recognized boundaries, but must be primarily residential in nature.

  - If qualifying an activity under the Area Benefit criteria, records to keep include:
    - Boundaries of the service area;
    - Documentation that the area is primarily residential (e.g., zoning map); and
    - Income characteristics of households in the services area (Census/American Community Survey data).

✓ Public facilities funded by CDBG may sometimes qualify under the Limited Clientele criteria of the LMI national objective. The regulation stipulates that the facility benefit a specific targeted group of persons, of which at least 51 percent must be low- and moderate-income. This can be achieved by meeting one of the following criteria:

  - Serving at least 51 percent LMI, as evidenced by documentation and data concerning beneficiary family size and income;
  - Having income-eligibility requirements that limit the service to persons meeting the LMI income requirement, as evidenced by the administering agency's procedures, intake/application forms and other sources of documentation;
  - Serving a group primarily presumed to be LMI such as abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers; or
  - Being of such a nature and in a location that it may be concluded that the activity's clientele are LMI.

✓ Public facilities such as homeless shelters or group homes for persons with special needs are just two of the examples of public facilities that may qualify under the Limited Clientele criteria. The populations served by these facilities are populations that are presumed to be LMI persons or families.

✓ Public facilities or improvements can also qualify under the LMI housing national objective if the facility exclusively assists in the provision of housing to be occupied by LMI income households.

✓ If the grantee is undertaking public facilities or improvements under the LMI job creation and retention national objective category and more than one business will be served, the 51 percent LMI job requirement may be met by aggregating the jobs created or retained by affected businesses under the following criteria (§570.208(a)(4)(vi)(F):

  - If the CDBG cost per job created or retained is less than $10,000 per FTE, the grantee must ensure that 51 percent of the jobs created or retained by the businesses for which the facility/improvement is principally undertaken are available to or held by LMI persons.
  - If the CDBG cost per job created or retained is $10,000 or more per FTE, the grantee must ensure that 51 percent of the jobs created or retained by <u>all</u> businesses in the service area of the facility/improvement are available to or held by LMI persons. This includes all businesses, which as a result of the public facility/improvement, locate or expand in the service area between the date the activity is identified in the action plan and one year after completion of the facility/improvement. In addition, the assisted activity must comply with the public benefit standards found at 24 CFR 570.209(b).

- ✓ The nature of job creation public facility activities means that grantees must carefully plan these projects and track the businesses and jobs that result. Specifically:
  - It is important to determine the amount of CDBG funds that will be spent per job created/retained. Some communities limit the amount to less than $10,000 to keep things simple and minimize tracking to only the business(es) for which the improvement is undertaken (vs. any others that benefit within one year after completion).
- ✓ AND
  - The grantee should ensure that it has appropriate and enforceable legal documents in place running with the land and/or with each business that benefits from the improvement. This is particularly important if the cost per job will be more than $10,000 because national objective documentation must be obtained and maintained even if the businesses moved in after the facility/improvement was completed (up to one year).
- ✓ If the public facility serves a primarily residential area, it must meet the area benefit criteria even if it is also providing low and moderate income jobs.

Slum/Blight National Objective

- ✓ Public facilities and improvements and historic preservation activities that aid in the prevention or elimination of slums or blight in a designated area may qualify under the Slum/Blight national objective Area Basis. The activity must meet the following criteria in order to qualify:
  - The area in which the activity occurs must be designated as slum or blighted. The following tests apply:
    - The delineated area in which the activity occurs must meet a definition of a slum, blighted, deteriorated or deteriorating area under state or local law;
    - Additionally, the area must also meet either one of the two conditions specified below:
      - At least 25 percent of the properties throughout the area exhibit the following:
        (a) Physical deterioration of buildings/improvements;
        (b) Abandonment of properties;
        (c) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;
        (d) Significant declines in property values or abnormally low property values relative to other areas in the community; or
        (e) Known or suspected environmental contamination.
      - Public improvements throughout the area are in a general state of deterioration.
    - The activity must address one or more of the conditions that qualified the area;
    - Documentation must be maintained by the grantee on the boundaries of the area and the conditions that qualified the area at the time of its designation. The designation of an area as slum or blighted must be re-determined every 10 years for continued qualifications

- ✓ Public facilities or improvements may qualify under the Urban Renewal Completion criteria if the activities are located within an urban renewal project area or a Neighborhood Development Program area designated under Title 1 of the Housing Act of 1949 and the acquisition is necessary to complete the current plan.

Urgent Needs National Objective

- ✓ Public facilities or improvement actives may also qualify under the Urgent Needs national objective if the following qualifications are met:
  - The activity is designed to alleviate existing conditions that pose a serious and immediate threat to the health or welfare of the community;
  - The existing conditions are of recent origin or recently became urgent (generally, within the past 18 months);
  - The grantee is unable to finance the activity on its own; and
  - Other sources of funding are ***not*** available.

6.2 Special Assessments

Special assessments are used to recover the capital costs of a public improvement through a fee levied or a lien filed against a parcel of real estate, either as:

- ✓ A direct result of the benefit derived from the installation of a public improvement; or
- ✓ A one-time charge made as a condition of access to an improvement.

The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible Special Assessment Activities ✓ Ineligible Activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(c) §570.200(c), §570.208
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2, Chapter 3

6.2.1 Eligible and Ineligible Activities

Eligible Activities

- ✓ Special assessment activities under CDBG can be used to:
  - Recover capital costs of a public improvement; and/or
  - Pay for special assessments for public improvements not initially assisted with CDBG funds.
- ✓ In order to recover CDBG funds used to pay for all or part of the cost of a public improvement, special assessments may be imposed:

- To recover CDBG funds only against properties owned and occupied by non LMI persons (and such assessments are program income); or
- To recover non-CDBG monies, provided that CDBG funds are used to pay the special assessment on behalf of all properties owned and occupied by LMI persons. (CDBG funds do not have to be used to pay special assessments on behalf of properties owned/occupied by moderate- income residents if the grantee does not have sufficient CDBG funds to pay the assessments on behalf of all the LMI owner/occupants).

✓ CDBG funds may be used to pay for special assessments for public improvements not initially assisted with CDBG funds, provided:

- The installation of the public improvements was carried out in compliance with all applicable requirements (e.g., environmental, citizen participation and Davis-Bacon);
- The public improvement meets a national objective; and
- The CDBG funds are used to pay the special assessment on behalf of all LMI owner occupants (or for low-income owner/occupants only if there are not sufficient funds to pay for all low- and moderate-income owner occupants).

Ineligible Activities

✓ Special assessments are not taxes and the establishment of the value of real estate for the purpose of any type of taxes is ineligible.

✓ Periodic charges based on the use of a public improvement, such as water or sewer user charges, even if the charges include the recovery of all or some portion of the capital costs of the public improvement, are ineligible.

6.2.2 National Objective

LMI Benefit National Objective

✓ Special assessments will typically be categorized under the LMI Benefit national objective. The same criteria required for public facilities under the area benefit national objective category apply in the case of special assessments; therefore, refer to the section above for detailed guidance.

Slum/Blight National Objective

✓ Special assessments may also qualify under the Slum/Blight national objective. The same criteria required for public facilities under the slum/blight national objective apply in the case of special assessments; therefore, refer to the section above for detailed guidance.

Urgent Needs National Objective

✓ Special assessments may also qualify under the Urgent Needs national objective. The same criteria required for public facilities to be documented as an urgent need apply in the case of special assessments; therefore, refer to the section above for detailed guidance.

6.3 Privately-Owned Utilities

Privately owned utilities are those owned by a private company rather than a public agency and may be assisted undertaken with CDBG funds under certain conditions. The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible Activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(c) §570.201(l), 570.207, 570.208
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2, Chapter 3

6.3.1 Eligible Activities

Eligible Activities

- ✓ CDBG funds may be used by a grantee, subrecipient, and other for-profit and public entities to acquire; construct; reconstruct; rehabilitate; and install the distribution lines and related facilities for privately-owned utilities.
- ✓ A privately-owned utility refers to service that is publicly regulated and is provided through the use of physical distribution lines to private properties.
- ✓ Utilities include, but are not limited to, electricity, telephone, water, sewer, natural gas, and cable television.

6.3.2 National Objectives

LMI Benefit National Objective

- ✓ Privately-owned utility activities may qualify under the LMI benefit national objective. The same requirements for documentation as for public facilities apply; therefore, refer to the national objective section on public facilities for detailed guidance.

Slum/Blight National Objective

- ✓ Privately-owned utilities activities that aid in the prevention or elimination of slums or blight in a designated area may qualify under the slum/blight national objective. The same criteria for a public facility to meet this national objective apply; therefore, refer to the section above for detailed guidance.

Urgent Needs National Objective

- ✓ Privately-owned utilities may also qualify under the Urgent Needs national objective. The same criteria required for public facilities to be documented as an urgent need apply in the case of privately-owned utilities; therefore, refer to the section above for detailed guidance.

6.4 Summary of National Objective Options for Public Facilities, Special Assessments and Privately Owned Utilities

✓ The following chart summarizes the national objective options related to public facility activities. The text in each section above provides additional details for each specific type of activity. For a complete copy of the matrix codes and national objectives chart, please see the IDIS chapter of this manual.

National Objective Codes (N = Not Allowed)									
HUD Matrix Code	**Activity**	**LMA**	**LMC**	**LMH**	**LMJ**	**SBA**	**SBS**	**SBR**	**URG**
3	Public Facilities and Improvements (General)								
03A	Senior Centers	N		N					
03B	Handicapped Centers	N		N					
03C	Homeless Facilities (not operating costs)	N		N					
03D	Youth Centers	N		N					
03E	Neighborhood Facilities			N					
03F	Parks, Recreational Facilities			N	N				
03G	Parking Facilities			N					
03H	Solid Waste Disposal Improvements								
03I	Flood Drainage Improvements								
03J	Water/Sewer Improvements								
03K	Street Improvements								
03L	Sidewalks								
03M	Child Care Centers	N		N					
03N	Tree Planting	N							
03O	Fire Station/Equipment		N	N	N				
03P	Health Facilities			N					
03Q	Abused and Neglected Children Facilities	N		N					
03R	Asbestos Removal			N					
03S	Facilities for AIDS Patients (not operating costs)	N		N					
11	Privately Owned Utilities								

CHAPTER 7: PUBLIC SERVICES

CHAPTER PURPOSE & CONTENTS

This chapter covers the CDBG-eligible and ineligible public service activities as well as guidance on how to determine the appropriate national objective category for public services, and how to document compliance with the national objective. In addition, this chapter provides information on other Federal requirements for compliance as it relates to public services. This chapter also provides grantees with useful public service program design and project implementation information.

SECTION	TOPIC	PAGE
7.1	Eligible and Ineligible Public Service Activities	7-1
7.2	Public Services Cap	7-3
7.3	Documenting National Objectives	7-5

7.1 Eligible and Ineligible Public Service Activities

This section outlines activities that are eligible and ineligible public services under the CDBG program. The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible Public Services Activities ✓ Ineligible Activities
Regulatory/Statutory Citations	Section 105(a)(8) §570.201(e), §570.207
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2

7.1.1 Eligible Public Service Activities

✓ The CDBG regulations allow the use of grant funds for a wide range of public service activities, including, but not limited to:

- Employment services (e.g., job training);
- Crime prevention and public safety;
- Child care;
- Health services;
- Substance abuse services (e.g., counseling and treatment);
- Fair housing counseling;

- Education programs;
- Energy conservation;
- Services for senior citizens;
- Services for homeless persons;
- Welfare services (excluding income payments);
- Down payment assistance (also refer to Chapter 4); and
- Recreational services.

✓ CDBG funds may be used to pay for labor, supplies, and material as well as to operate and/or maintain the portion of a facility in which the public service is located. This includes the lease of a facility, equipment, and other property needed for the public service.

✓ To utilize CDBG funds for a public service, the service must be either:

- A new service; or
- A quantifiable increase in the level of an existing service <u>which has been provided by the grantee or another entity on its behalf through State or local government funds in the 12 months</u> preceding the submission of the grantee's Consolidated Plan Annual Action Plan to HUD.
  - 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 local government.

✓ This provision was put into place to ensure that localities did not use CDBG funds to replace local or state monies to fund essential services typically offered by the local government entity.

✓ Specifically, the public services provision applies in the following manner:

- If a service is new, it may be funded.
- If a service is existing, determine whether it was provided by or on behalf of the unit of local government with local or state funding.
- If it was not provided by or on behalf of the local government with funding from the local government, it may be funded,
- If it was provided by or on behalf of the local government with funding from the State or local government, grantees must determine whether the proposed service will be a quantifiable increase in the level of service. If it can be documented that the service is a quantifiable increase in the level of service, it may be funded.
- The regulations do not prohibit a grantee from continuing to provide funding to a CDBG-funded public service at the same or decreased level in subsequent program years.

7.1.2 <u>Ineligible Public Service Activities</u>

✓ The provision of "income payments" is an ineligible CDBG activity if these payments are provided as a grant.

- Income payments are payments to an individual or family, which are used to provide basic services such as food, shelter (including payment for rent, mortgage, and/or utilities) or clothing.
- However, such expenditures are eligible under the following conditions:
  - The income payments do not exceed three consecutive months; and
  - The payments are made directly to the provider of such services on behalf of an individual or family.
- Income payments that are provided as a loan are permissible within the public services cap.

✓ Political activities are ineligible.

7.2 Public Services Cap

The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section	✓ The public services cap ✓ Public services cap exceptions
Regulatory/Statutory Citations	§570.201(e), §570.207
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 2

✓ The total amount of CDBG funds **obligated** for public services activities must not exceed 15 percent of the annual grant allocation ***plus*** 15 percent of program income received during the prior program year.

- The only exception to this rule is for grantees that obligated more than 15 percent of their fiscal year 1982 or 1983 funds for public services.

✓ Public services carried out by subrecipients ***are subject to*** the 15 percent public services cap.

✓ Because the public services category covers numerous important activities but is limited by the 15 percent cap, grantees should make efforts to see if a service type activity meets another CDBG eligibility category. For example, removing graffiti from public buildings is a public service. However assisting private properties with graffiti removal may be better categorized as eligible property rehabilitation activities.

✓ In addition, the CDBG regulations offer flexibility in using CDBG for certain public services, particularly services designed to increase employment opportunities, ***outside*** of the 15 percent cap. The eligibility options include:

- Provision of assistance to microenterprises as a separate eligible activity. This includes technical assistance, business support services, and other similar services to owners of microenterprises or persons developing microenterprises;
- Certain job training and job placement services are considered to be an activity delivery cost if provided in connection with eligible economic development projects under 570.203;

- Job training, job placement and other employment support services that are carried out by a qualified Community-Based Development Organization (CBDO), as part of certain types of projects, and which are specifically designed to increase economic opportunities including peer support programs, child care, counseling, transportation and other similar services; and
- Any type of services carried out by a qualified CBDO, as part of certain types of projects, pursuant to a strategy as part in a HUD-approved NRSA.

✓ Economic development services carried out ***in connection with*** special economic development activities are eligible under that category (570.203) and do ***not*** count against the 15 percent cap. These services include:

- Outreach efforts to market available assistance;
- Screening of applicants;
- Reviewing and underwriting applications for assistance;
- Preparation of all necessary agreements;
- Management of assisted activities; and
- Screening/referral/placement of applicants for jobs generated by CDBG-eligible economic development activities, including training for those persons filling positions.

Public Services Cap Calculation Example

CDBG Entitlement grant amount	$1,000,000
Plus program income (prior year)	+ 100,000
Equals amount subject to cap	$1,100,000
Multiplied by 15%	x 0.15
Equals maximum funds that can be obligated for public services	$165,000

7.3 Documenting National Objectives

The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section	✓ LMI Benefit National Objective ✓ Slum/Blight National Objective ✓ Urgent Needs National Objective
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(c) §570.208
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Chapter 3

7.3.1 National Objective Summary Chart

✓ The following chart summarizes the national objective options related to public services. The text below provides additional details. For a complete copy of the matrix codes and national objectives chart, please see the IDIS chapter of this manual.

National Objective Codes (N = Not Allowed)									
HUD Matrix Code	**Activity**	**LMA**	**LMC**	**LMH**	**LMJ**	**SBA**	**SBS**	**SBR**	**URG**
5	Public Services (General)			N	N		N	N	
03T	Operating Costs of Homeless/AIDS patients programs	N		N	N		N	N	
05A	Senior Services	N		N	N		N	N	
05B	Handicapped Services	N		N	N		N	N	
05C	Legal Services			N	N		N	N	
05D	Youth Services	N		N	N		N	N	
05E	Transportation Services			N	N		N	N	
05F	Substance Abuse Services			N	N		N	N	
05G	Battered and Abused Spouses	N		N	N		N	N	
05H	Employment Training			N	N		N	N	
05I	Crime Awareness			N	N		N	N	
05J	Fair Housing Activities (Subject to Pub. Services Cap)			N	N		N	N	
05K	Tenant/Landlord Counseling	N		N	N		N	N	
05L	Child Care Services	N		N	N		N	N	
05M	Health Services			N	N		N	N	
05N	Abused and Neglected Children	N		N	N		N	N	
05O	Mental Health Services			N	N		N	N	
05P	Screening for Lead Based Paint/Lead Hazards	N		N	N		N	N	
05Q	Subsistence Payments	N		N	N		N	N	
05R	Homeownership Assistance (not direct)	N	N		N		N	N	
05S	Rental Housing Subsidies	N	N		N		N	N	
05T	Security Deposits	N	N		N		N	N	
05U	Housing Counseling								

7.3.2 LMI Benefit National Objective

- ✓ CDBG-funded public service activities are typically categorized under the LMI Benefit National Objective as either Area Benefit or Limited Clientele activities. As shown in exhibit 7-1 below, the distinguishing factor between the two categories is whether the service will be offered to ***all*** residents of a particular LMI income area ***or*** to a particular group of LMI residents in the entire community.
- ✓ Under the Area Benefit criteria, the public service must be available to ***all*** residents of an area where at least 51 percent of the residents are LMI. The area must be clearly delineated by the grantee and must be primarily residential.

- ✓ To document qualification of public service activities under this objective:
  - Maintain records of the boundaries of the service area;
  - Document that the area is primarily residential (e.g., zoning map); and
  - Document the income characteristics of households in the service area (i.e., Census/American Community Survey data).
- ✓ Limited Clientele activities benefit a specific targeted group of persons of which at least 51 percent must be LMI. In order to meet the LMI Limited Clientele criteria, the activity must:
  - Serve at least 51 percent LMI, as evidenced by documentation and data concerning beneficiary family size and income;
  - Have income-eligibility requirements which limit the service to persons meeting the LMI income requirement, as evidenced by the administering agency's procedures, intake/application forms, income limits, and other sources of documentation;
  - Serve a group primarily presumed to be LMI such as abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS and migrant farm workers; or
  - Be of such a nature and in a location that it may be concluded that the activity's clientele are LMI.

Exhibit 7-1
Determining if a Public Service Activity Qualifies
As an Area Benefit or Limited Clientele Activity

Issue for Consideration	If an Area Benefit Activity...	If a Limited Clientele Activity...
Who will the service be provided to?	All residents of a LMI area (i.e., area with at least 51 percent LMI residents)	A limited group of persons, either LMI or presumed to be LMI, regardless of where they live
Where will the service be provided?	In a particular neighborhood	Not specific; could be offered to more than one neighborhood or city- or county-wide
What are the income levels in the area where the service will be delivered?	At least 51 percent LMI residents in area	Not applicable; eligibility based on clients served (but generally at least 51% must be LMI)

7.3.3 Slum/Blight National Objective

- ✓ Public service activities that aid in the prevention or elimination of slums or blight in a designated area may qualify under the Slum/Blight National Objective (Area Basis). However, this category is rarely used for public service activities due to the fact that the activity must meet the following qualifying criteria:
  - The area in which the activity occurs must be designated as slum or blighted. The following tests apply:

- The delineated area in which the activity occurs must meet a definition of a slum, blighted, deteriorated or deteriorating area under state or local law;
- The area must also meet either one of the two conditions specified below:
  - At least 25 percent of the properties throughout the area exhibit the following:
    (a) Physical deterioration of buildings/improvements;
    (b) Abandonment of properties;
    (c) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;
    (d) Significant declines in property values or abnormally low property values relative to other areas in the community; or
    (e) Known or suspected environmental contamination.
  - Public improvements throughout the area are in a general state of deterioration.
- The activity must address one or more of the conditions that qualified the area
- Documentation must be maintained by the grantee on the boundaries of the area and the conditions that qualified the area at the time of its designation. The designation of an area as slum or blighted must be re-determined every 10 years for continued qualification

7.3.4 Urgent Needs

✓ It is possible for public service activities to qualify under this National Objective if the public service is designed to alleviate existing conditions that pose a serious and immediate threat the health or welfare of the community and following conditions are met:

- The conditions are of recent origin or recently became urgent (generally within the past 18 months);
- The grantee is unable to finance the activity on its own; and
- Other sources of funding are not available.

CHAPTER 8: ECONOMIC DEVELOPMENT & SECTION 108

CHAPTER PURPOSE & CONTENTS

This chapter covers economic development activities that are eligible for assistance under the CDBG Program. The chapter provides information on and the economic development underwriting guidelines and the public benefit standards requirements applicable to certain economic development projects. The Section 108 loan guarantee program is also reviewed.

SECTION	TOPIC	PAGE
8.1	Eligible and Ineligible Activities	8-1
8.2	Meeting and Documenting a National Objective	8-5
8.3	Underwriting Guidelines and Public Benefit Standards	8-9
8.4	Section 108 Loan Guarantee Program	8-12

8.1 Eligible and Ineligible Activities

✓ Creating economic opportunities and jobs are among the key CDBG activities funded by many grantees. This section highlights the ways that economic development projects can be funded under CDBG.

Key Topics in This Section	✓ Eligible Activities – Key ways to undertake economic development activities ✓ Ineligible Activities
Regulatory/Statutory Citations	Section 105(a)(2), Section 105(a)(4), Section 105(a)(14), Section 105(a)(15), Section 105(a)(17), Section 105(a)(19) §570.201(c), §570.201(o), §570.202, §570.203 (a), (b) and (c), §570.204
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities – Chapter 2

8.1.1 Eligible Activities

✓ The CDBG program recognizes several key ways that economic development may be undertaken.

✓ **Special economic development**. CDBG funds may be used to undertake certain economic development activities. These activities include:

– Acquiring, constructing, reconstructing, rehabilitating, or installing commercial or industrial buildings, structures, and other real property equipment and improvements, including

railroad spurs or similar extensions. These are economic development projects undertaken by nonprofit entities and grantees (public entities).

- Assisting a private, for-profit business. Assistance may include grants, loans, loan guarantees, and technical assistance; and
- Providing economic development services in connection with otherwise eligible CDBG economic development activities.

✓ **Economic development undertaken by community based development organizations (CBDOs).** These are activities designed to assist in neighborhood revitalization or community economic development and are carried out by an organization that qualifies as a CBDO under the regulations at 24 CFR Part 570.204. See chapter 2 for more information about CBDOs.

- In addition to meeting one of the organizational types listed above, the entity must be carrying out neighborhood revitalization, community economic development or energy conversation projects.

✓ **Technical assistance to businesses.** This activity involves providing technical assistance and training directly to businesses on topics such as business planning or accounting. This activity may be undertaken under several different eligibility categories, assuming that the activity will meet a national objective:

- As a part of a special economic development project;
- To the owner of a microenterprise;
- As a public service; and
- By a CBDO as a part of an eligible project.

✓ **Microenterprise development.** These are activities designed to foster the development, support, and expansion of microenterprise businesses.

- A microenterprise is defined as a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.
- A “person developing a microenterprise” refers to a person who has expressed an interest and who is, or after an initial screening process is expected to be, actively working toward developing a business that will be a microenterprise at the time it is formed.
- Eligible microenterprise activities include the provision of:
  - Grants, loans, loan guarantees and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;
  - Technical assistance, advice, and business services to owners of microenterprises and persons developing microenterprises;
  - General support to owners of microenterprises and persons developing microenterprises including child care, transportation, counseling and peer support groups; and
  - Training and technical assistance or other support services to increase capacity of grantees or subrecipients to carry out microenterprise activities.

- ✓ **Commercial rehabilitation.** These are activities that are designed to bring commercial structures up to code or improve their facades.
  - If the commercial structure is owned by a private, for-profit entity, the following limitations apply:
    - Rehabilitation is limited to the exterior of the building and the correction of code violations; and
    - Any other improvements are carried out under the special economic development activities category discussed above.
- ✓ **Public facilities and improvements.** These are public works that support economic development endeavors. Public works facilities and improvements include infrastructure projects such as off-site water, sewer, roads, drainage, railroad spurs and other types of public facilities or improvements.
- ✓ **Job training.** Job training involves providing skill building classes to employees or potential employees and can be an important part of an economic program. This activity can be undertaken:
  - As a part of a special economic development project;
  - As a public service;
  - By a CBDO as a part of an eligible project; or
  - As a part of microenterprise assistance package to the owner of a micro business for his or her employees.

8.1.2 Ineligible Activities

- ✓ Activities not described above are generally ineligible; however, Community Based Development Organizations (CBDOs) can undertake many otherwise ineligible activities when they retain direct and controlling involvement in a qualified project.
- ✓ The following restrictions apply when a CBDO undertakes an activity:
  - CBDOs may not carry out otherwise ineligible activities (i.e., general government buildings or expenses, or political activities); and
  - CBDOs cannot carry out special economic development activities that do ***not*** meet the grantee's underwriting guidelines for such projects ***and*** HUD's mandatory public benefit standards.
- ✓ CBDOs are authorized to carry out public services that exceed the 15 percent public services cap when the services are specifically designed to increase economic opportunities through employment support services such as counseling, child care, transportation, and similar services, and job training that is linked to job placement.

  NOTE*: There has been much confusion with regard to job-training and job-placement services under the provision at § 570.204(b)(2)(i). Job training is an eligible CBDO activity under community economic development at § 570.204(a)(2), which requires job training associated with a permanent job. Therefore, job training must be linked to a permanent job -- a job, which upon completion of the training, will be filled by the trainee. For this reason, job training linked to permanent jobs is more appropriately carried out under the provisions of*

§ 570.203(c), which is also not subject to the public service cap. HUD did not intend for CBDOs to train and generate a "pool" of trained applicants standing by and ready to fill unidentified jobs. Nonetheless, job-training services not linked to permanent jobs are eligible under the provisions of § 570.204(b)(2)(ii), which concerns services of any kind carried out within a HUD approved NSRA.

- ✓ CBDOs may also provide public services of any type outside of the public services cap if the services are undertaken as part of a HUD-approved Neighborhood Revitalization Strategy Area (NRSA).
- ✓ CBDOs may not carry out program administration or planning activities that would result in the grantee exceeding the 20 percent limit on such expenditures.
- ✓ Job pirating is prohibited under Section 588 of the Quality Housing and Work Responsibility Act of 1998. Job pirating refers to the use of federal funds to lure or attract a business and its jobs from one labor market to another.
- ✓ CDBG funds may not be used to assist for-profit businesses, including expansions, as well as infrastructure improvement projects or business incubator projects designed to facilitate business relocation IF:
  - The funding will be used to assist directly in the *relocation* of a plant, facility or operation; and
  - The relocation is likely to result in a significant loss of jobs in the labor market area from which the relocation occurs.
- ✓ The following are definitions to assist in determining if a business location falls under these provisions:
  - Labor Market Area (LMA): An LMA is an economically integrated geographic area where individuals can live and work within a reasonable distance or can readily change employment without changing their place of residence.
  - Operation: A business operation includes, but is not limited to, any equipment, production capacity or product line of the business.
  - Significant Loss of Jobs:
    - 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.
    - A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years of the provision of assistance to the business.
    - Notwithstanding the above definition, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.
- ✓ Before directly assisting a business with CDBG funds the grantee shall include appropriate language in the written agreement with the assisted business to ensure that no pirating has occurred. In addition to other programmatic clauses, the written agreement shall include:

- 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.
- If the assistance will not result in a relocation covered by this section, a written certification from the assisted business that neither it, nor any of its subsidiaries, have 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
- The agreement shall provide for reimbursement of any assistance provided to, or expanded on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

8.2 Meeting and Documenting a National Objective

✓ This section describes the national objectives that may be used for economic development activities.

Key Topics in This Section	✓ LMI Benefit – LMI Area Benefit – LMI Limited Clientele – Job Creation/Retention ✓ Slum/Blight
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(c) §570.208, §570.506
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities – Chapter 3

8.2.1 National Objective Summary Chart

✓ The following chart summarizes the national objective options related to economic development. The text below provides additional details. For a complete copy of the matrix codes and national objectives chart, please see the IDIS chapter of this manual.

		National Objective Codes (N = Not Allowed)							
HUD Matrix Code	**Activity**	**LMA**	**LMC**	**LMH**	**LMJ**	**SBA**	**SBS**	**SBR**	**URG**
14E	Rehab; Publicly or Privately-Owned Commercial/Industrial			N					
17A	CI Land Acquisition/Disposition			N					
17B	CI Infrastructure Development			N			N		
17C	CI Building Acquisition,			N					

	Construction, Rehabilitation								
17D	Other Commercial/Industrial Improvements			N					
18A	ED Direct Financial Assistance to For-Profits		N	N			N		
18B	ED Technical Assistance		N	N			N		
18C	Micro-Enterprise Assistance			N			N		

8.2.2 LMI Benefit National Objective

- ✓ Economic activities that benefit an LMI area may qualify under the Area Benefit category of the LMI benefit national objective. For example if the grantee is funding a grocery store in a neighborhood that is at least 51 percent LMI, the activity may qualify as an area benefit.
  - If this criterion is used to qualify the activity, the grantee must document the service area of the business and then demonstrate through Census/American Community Survey or survey data that 51 percent of the residents are LMI.
- ✓ Additionally, the LMI Limited Clientele category may be used to qualify certain economic development activities under the LMI Benefit national objective.
  - For example, microenterprise activities may be undertaken under the LMI Limited Clientele category if the owner of the business is LMI. If this criterion is used, then the grantee must document the income of the business owner.
  - Also, job training and placement or other employment support services such as peer counseling, child care and transportation may qualify under the LMI Limited Clientele category if at least 51 percent of the persons benefiting from the activity are LMI.
- ✓ Finally, economic activities designed to create or retain permanent jobs, at least 51 percent of which (computed on a full-time equivalent basis) will be made available to or held by LMI persons may qualify under the Job Creation or Retention category of the LMI Benefit national objective.
  - The following requirements must be met for jobs to be considered created or retained.
    - If grantees fund activities that ***create*** jobs, there must be documentation indicating that at least 51 percent of the jobs will be held by, or made available to, LMI persons.
    - For funded activities which ***retain*** jobs, there must be sufficient information documenting that the jobs would have been lost without the CDBG assistance and that one or both of the following applies to at least 51 percent of the jobs:
      - The job is held by a LMI person; or
      - The job can reasonably be expected to turn over within the following two years and steps will be taken to ensure that the job will be filled by, or made available to, a LMI person.
    - The following requirements apply for jobs to be considered available to or held by LMI persons.

- Created or retained jobs are only considered to be ***available*** to LMI persons when:
  - (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 grantee and the assisted business take actions to ensure that LMI persons receive first consideration for filling such jobs.

▫ Created or retained jobs are only considered to be ***held by*** LMI persons when the job is actually held by a LMI person.

– In determining whether a job is made available to or held by a LMI person, grantees may presume that a person is LMI if:

▫ He/she resides in a Census tract that meets certain requirements (see below); or

▫ He/she resides in a Census tract with at least 70 percent LMI persons; or

▫ The assisted business is located in an eligible Census tract (see below) ***and*** the job will be located within that same Census tract.

- An eligible Census tract is one that is located within a Federally-designated Empowerment Zone or Enterprise Community ***or*** a Census tract that:
  - (a) Has a poverty rate of at least 20 percent;
  - (b) Does not include part of a central business district (unless the Census tract has a poverty rate of at least 30 percent); and
  - (c) Evidences pervasive poverty and general distress by meeting at least one of the following criteria:
    - (i) All block groups in the Census tract have 20 percent or greater poverty rates;
    - (ii) The activity is undertaken in a block group with a 20 percent or greater poverty rate; or
    - (iii) HUD determines that the tract shows other signs of distress (e.g., crime, homelessness, deteriorated housing, etc.)

– For job training, job placement and other employment support services, the CDBG regulations provide certain circumstances in which these activities can be considered to meet the LMI limited clientele national objective ***even*** when the percentage of persons assisted is ***less*** than the 51 percent threshold. The special circumstances under which this is allowed are:

▫ Where job training or the provision of supportive services is used to assist businesses, the only use of CDBG funds in the activity is for the job training and/or supportive services; ***and***

▫ The proportion of the total cost of the job training or supportive services to be paid with CDBG funds is not greater than the proportion of the total number of assisted LMI persons.

- As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies.
- However, 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 such businesses are not otherwise assisted by CDBG funds.
- Additionally, where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses 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.

8.2.3 Slum/Blight National Objective

✓ Economic development activities, such as commercial rehabilitation, which aid in the prevention or elimination of slums or blight in a designated area may qualify under the Area Slum/Blight national objective.

- In order to qualify under this national objective category, the economic development activity must take place in an area that:
  - The designated area in which the activity occurs must meet the definition of a slum, blighted, deteriorated or deteriorating area under state or local law;
  - Additionally, the area must meet either one of the two conditions specified below:
    - Public improvements throughout the area are in a general state of deterioration; or
    - At least 25 percent of the properties throughout the area exhibit one or more of the following:
      (a) Physical deterioration of buildings/improvements;
      (b) Abandonment of properties;
      (c) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;
      (d) Significant declines in property values or abnormally low property values relative to other areas in the community; or
      (e) Known or suspected environmental contamination.
  - Documentation must be maintained by the grantee on the boundaries of the area and the conditions that qualified the area at the time of its designation. The designation of an area as slum or blighted must be re-determined every 10 years for continued qualifications.
- As stated above, qualified activities must address the identified conditions that contributed to the slum and blight.

✓ Under the Spot Basis category of the Slum/Blight national objective, activities such as acquisition, clearance and building rehabilitation may be undertaken.

- When rehabilitation is categorized under the Spot Basis category, it must meet the following requirements:

- The rehabilitation must eliminate specific conditions of blight or physical decay on a spot basis, i.e., not be located in a designated slum and blight area; and
- The rehabilitation must be limited to only those conditions that are detrimental to public health and safety.

8.3 Underwriting Guidelines and Public Benefit Standards

✓ Economic development project must demonstrate a sufficient benefit in return for the CDBG investment. This section highlights these requirements, as well as the voluntary underwriting standards.

Key Topics in This Section	✓ Guidelines and Objectives for Evaluating Project Costs and Financial Requirements ✓ Public Benefit Standards – Individual standards – Aggregate standards
Regulatory/Statutory Citations	Section 105 (a)(14) – (17) §570.209
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities – Chapter 2: Categories of Eligible Activities – Appendix B: Public Benefit Standards

8.3.1 Voluntary Project Guidelines

✓ HUD has established guidelines for selecting special economic development projects. The guidelines have two parts:

- 570.209 (a) - Guidelines and Objectives for Evaluating Project Costs and Financial Requirements, and
- 570.209 (b) - Standards for Evaluating Public Benefit.

✓ **Guidelines and Objectives for Evaluating Project Costs and Financial Requirements.** These underwriting guidelines are designed to assist grantees to select economic development projects that are financially viable and will result in the most effective use of CDBG funds.

- The use of these guidelines is ***voluntary***; however, grantees electing not to use the following guidelines are expected to conduct basic financial underwriting of projects funded under this eligibility category.
- There are six criteria that have to be evaluated
  - Project costs are reasonable;
  - All sources of project financing are committed;

- To the extent practicable, CDBG funds are not substituted for non-federal financial support;
- Project is financially feasible;
- To the extent practicable, the return of the owner's equity investment will not be unreasonably high; and
- To the extent practicable, CDBG funds are disbursed on a pro-rata basis with other finances committed to the project.

– These guidelines do not apply to public facilities or microenterprise activities.

8.3.2 Aggregate and Individual Public Benefit Standards

✓ **Standards for Evaluating Public Benefit.** The use of these standards is ***mandatory***. Grantees are responsible for ensuring that a minimum level of public benefit is obtained when CDBG funds are used for special economic development projects and when used for public facilities and improvements projects undertaken for economic development purposes. The standards have two levels: standards for individual activities and aggregate standards.

– **Standards for Individual Activities**—An activity is considered by HUD to provide ***insufficient*** public benefit and cann***ot*** be assisted with CDBG funds if:

- The amount of CDBG assistance exceeds $50,000 per full-time equivalent (FTE), permanent job (created or retained) ***or*** $1,000 per LMI person to which goods and services are provided by the activity;
- In addition, an activity would be considered to have an insufficient benefit if it consists of or includes:
  - General promotion of the community (as a whole);
  - Assistance to professional sports teams;
  - Assistance to privately-owned recreational facilities that serve a predominantly higher income clientele where the benefit to users clearly outweighs the benefit of jobs created or retained;
  - Acquisition of land for which a specific use has not been identified (i.e., land banking); or
  - Assistance to a for-profit business owner that is the subject of unresolved findings of noncompliance related to previous CDBG assistance.

– **Aggregate Standards**—Activities, in the aggregate, must either:

- Create or retain at least one FTE, permanent job per $35,000 of CDBG funds used; or
- Provide goods and services to an area where the number of LMI persons served by the assisted business amounts to at least one LMI person per $350 of CDBG funds used.
- Certain activities can be excluded from the aggregate standards (as discussed below and in 570.209(b)(2)(v)).

8.3.3 Applying the Public Benefit Standards

✓ As discussed previously, when CDBG funds are used for special economic development projects and/or public facilities and improvements projects undertaken for economic

development purposes, grantees must ensure that a minimum level of public benefit is obtained.

- ✓ Note: the public benefit standards do not apply to microenterprise assistance provided under 570.201(o).
- ✓ The individual ***and*** aggregate activity standards must be used as follows in order to make this determination.
- ✓ Applying the standards for ***individual*** activities:
  - If an activity both creates/retains jobs and provides goods/services to LMI residents of an area, the activity is ineligible only if it fails both standards (i.e. it must meet one);
  - The standards are applied to the number of jobs projected or LMI area residents at the time funds are obligated; and
  - If the activity is limited to job training/placement or employment services, the jobs assisted with CDBG are considered jobs created/retained for the purpose of applying the individual activity standards.
- ✓ Applying the ***aggregate*** standards:
  - Entitlement communities must apply the aggregate standards to all activities for which funds were first obligated during any given program year;
  - Grantees may elect to apply the standards to the creation/retention of jobs or to the provision of goods and services to LMI residents, but cannot count an activity under both standards;
  - If the activity is limited to job training/placement or other employment services, the jobs assisted with CDBG are considered as jobs created or retained when applying the aggregate standards;
  - The following activities may be excluded from the aggregate standards:
    - Jobs are provided exclusively for unemployed persons or participants of JTPA, JOBS or AFDC programs;
    - Jobs are provided predominantly for residents of public or Indian housing units;
    - Jobs are provided predominantly for homeless persons;
    - Jobs are provided predominantly for low-skilled, LMI persons and the business agrees to provide clear opportunities for promotion and economic advancement (e.g., provision of training);
    - Jobs are provided predominantly for persons residing in a Census tract with at least 20 percent of the residents in poverty;
    - Assistance is provided to businesses that operate in a Census tract with at least 20 percent of the residents in poverty;
    - The activity stabilizes or revitalizes a neighborhood that has at least 70 percent low- and moderate-income residents;
    - Assistance is provided to a CDFI that serves a predominantly LMI area;

- Assistance is provided to a CBDO that serves a neighborhood that has at least 70 percent LMI residents;
- Provides services or creates/retains jobs in a HUD-approved Neighborhood Revitalization Strategy Area; or
- With prior HUD approval, represents some other innovative approach with substantial benefits to LMI residents.

8.4 Section 108 Loan Guarantee Program

✓ Section 108 is a significant resource that can be used to create community and economic development projects. This section summarizes the Section 108 Program.

Key Topics in This Section	✓ Program Parameters ✓ The Loan Process ✓ Players and Their Roles ✓ Typical Uses of Section 108 ✓ Advantages of Using Section 108
Regulatory/Statutory Citations	24 CFR 570, Subpart M –Loan Guarantees
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities – Chapter 2: Categories of Eligible Activities – Appendix F: Making the Most of your CDBG Resources – Appendix G: Selling or Securitizing CDBG-funded Loans Using the Section 108 Program and Other Secondary Markets ✓ CPD Notice 01-10

✓ The Section 108 Program is a loan guarantee program, which enables CDBG grantees to borrow up to five times their annual entitlement grant.

– Entitlement communities pledge current and future CDBG funds as security for the loan. Non-entitlement communities may participate if their State is willing to provide the pledge of current and future CDBG funds.

– HUD acts as the guarantor of a 108 loan made from private market funds, promising investors that the loan will be repaid.

✓ Being able to borrow large sums of money helps grantees undertake large scale, capital-intensive projects and provides a mechanism for grantees to extend the impact of their CDBG Program.

✓ The section below provides an overview of Section 108 basics and its advantages.

8.4.1 Advantages to Using Section 108

✓ Grantees take on the risks of borrowing Section 108 funds because the program provides the following significant advantages:

- **Potential leverage**—A community has access to funds totaling up to five times its annual CDBG entitlement while retaining the use of its entitlement.
- **Avoid referendum**—Since Section 108 borrowing is not ordinarily a general obligation, the community can avoid a referendum and the Section 108 indebtedness does not affect the debt limit of the community.
- **Accelerate CDBG activities**—Instead of "paying as you go," communities can complete needed projects now by utilizing Section 108.
- **Spread costs over time**—The costs for projects can be spread out over long periods of time—the maximum loan term is 20 years. Long-term repayment schedules lessen the yearly debt burden.
- **Avoid private benefit restrictions**—Most state constitutions prohibit the use of tax-generated funds to benefit private interests. Since Section 108 generally encumbers federal entitlements and not tax revenue, communities can avoid this restriction.
- **Access funds at an AAA rate**—Despite the premium over Treasuries associated with Section 108 debt; the rate is approximately equal to what AAA-rated publicly held companies pay for its debt. Consequently, a third party borrower, who is typically non-rated and privately held, can access financing at significantly lower rates than would be otherwise be available to small businesses.
- **Access long-term funds at a fixed rate**—The fixed rate eliminates the risk of future rate changes to the community. Thus, the community is able to make long-term plans with certainty about its future obligations.

✓ These advantages are substantial enough that many communities have accepted the risks of Section 108 borrowing and successfully expanded their economic opportunities.

8.4.2 Program Parameters

✓ The following basic parameters apply to the Section 108 program:

- **Maximum loan amount**—Up to five times a community's annual CDBG entitlement.
- **Loan Terms**—Interest rates and repayment schedules can vary on a case-by-case basis, but the maximum loan term is 20 years.
- **Eligible Applicants**—Entitlement communities, non-entitlement communities that are assisted by State grantees, and non-entitlement communities eligible under the Small Cities Program.
- **Eligible Activities**—Eligible Section 108 activities are different than those under the regular CDBG program. Section 108 can fund the following activities (NOTE: consult the regulations for a more complete description of these requirements):
  - Acquisition;
  - Rehabilitation of publicly-owned property;
  - Clearance, demolition, removal and site preparation related to acquisition or rehabilitation;
  - Economic development activities;
  - Housing rehabilitation;

    - Payment of issuance and finance costs associated with 108 loans;
    - Relocation assistance necessitated by a 108 project;
    - Acquisition, construction, reconstruction, rehabilitation or installation of public facilities;
    - Site preparation, including construction, reconstruction, and installation of public and other site improvements, facilities and utilities (see the regulations for additional requirements).
- **Program Requirements**—With its origin derived from CDBG legislation, Section 108 is subject to CDBG requirements. The following criteria are the same for both CDBG and Section 108:
    - Compliance with national objectives;
    - Davis-Bacon labor standards;
    - Environmental review requirements;
    - Underwriting guidelines;
    - Compliance with the primary objective (i.e., 70 percent of expenditures benefit LMI persons);
    - Public benefit standards; and
    - CDBG certifications.
- **Ineligible Activities**—Several activities that are eligible under CDBG are not eligible under Section 108, including public services, payment of the non-Federal share of other Federal grant programs, and long-term planning.

8.4.3 Typical Uses of Section 108

✓ Although CDBG is more inclusive, the activities that are eligible under Section 108 are quite broad. Communities can finance: operating costs for businesses and developers; micro loan funds and Fortune 500 companies; machinery, equipment and working capital; and leasehold improvements, furniture and fixtures. While some of these categories may carry burdens relating to additional security, all are eligible.

✓ Examples of completed Section 108 projects include:

- Industrial expansion;
- Capitalization of a revolving loan fund;
- Construction of a neighborhood shopping center;
- Expansion of an accounting practice;
- Construction of a warehouse facility and industrial park;
- Funding a business incubator;
- Creation of a retail business;
- Constructing an office building; and
- Housing rehabilitation carried out by a nonprofit organization.

8.4.4 Players and Their Roles

✓ The typical Section 108 transaction has the following players:

- **Eligible Community**—The borrowing community incurs the ultimate risk of the Section 108 debt. If the community manages risk prudently and transfers the risk and cost to the third parties, the community can accelerate CDBG activities and achieve tremendous leverage. To secure Section 108 debt, the community must pledge future CDBG entitlements, program income, and provide additional security as HUD deems necessary.
- **HUD**—HUD reviews the community's application to see if the proposed activities comply with Section 108 regulations and are underwritten in a prudent manner. If the application is approved, HUD provides a 100 percent full faith and credit guarantee, which is the cornerstone of the program.
- **Underwriter**—The underwriter is a consortium of national brokerages, which sell the Section 108 notes to private investors. The underwriters receive a fee for their services. HUD competitively procures the underwriting services on a periodic basis.
- **Fiscal Agent**—The Fiscal Agent manages Level #1 transactions. It acts as a trustee for the investors and manages disbursements to communities and repayments from the project that are conveyed back to the investors.
- **Private Investors**—Private investors fall into two major groups: (1) individuals; or (2) institutions. The investors are buying paper, which has fixed rates and has nominal credit risk (due to the full faith and credit guarantee). The Section 108 notes are roughly equivalent to Treasury issues but carry a slight premium to Treasuries, ranging from one eighth of a percent in the shorter maturities to six tenths of a percent in the longer terms. To date, no investor has ever incurred a loss from buying a Section 108 note.
- **Third Party Borrowers**—If the community chooses, it can re-loan Section 108 proceeds to third party borrowers. The third party borrowers accept some portion of the risk and cost from the community. Section 108 can provide such borrowers with fixed-rate, long-term and reasonably priced financing that may be difficult to obtain conventionally.

8.4.5 The Loan Process

✓ The basic steps of a typical Section 108 transaction work as follows:

- The grantee applies to HUD for a Section 108 Loan Guarantee.
- The grantee pledges a portion of its current and future CDBG entitlement grants plus any needed additional security to ensure that the notes will be repaid in the event of a project default.
- Notes are sold to investors in a public offering to raise funds for the grantee's approved project.
- The community uses the funds raised by the sale of the notes to undertake the approved project directly or through a third party.
- The loan repayments are used to repay investors. Funds to repay the note can come from future CDBG funds, program income generated by the project, or other revenue sources that the grantee has available.

  - Depending on the type of project that is financed, grantees may have from one to 20 years to repay the Section 108 notes.

- ✓ In summary, Section 108 consists of two levels:
  - **Level # 1**—Eligible communities borrow money from private investors (which the financial underwriters find) and carry out the activity directly.
  - **Level # 2**—Eligible communities borrow money from private investors (which the financial underwriters find) and re-loan the funds to third parties (entrepreneurs, developers, nonprofits, etc.) who undertake eligible activities.
- ✓ The community assumes the ultimate risk of paying back the Section 108 notes.
  - The notes may be repaid with future CDBG grants; or
  - The community may transfer the risk and cost (interest) by lending Section 108 proceeds to third party borrowers. If the third party repays this loan the community may never have to dip into its CDBG funds to repay the notes. However, if the third party defaults, the community must repay the loan.
- ✓ To ensure the marketability of Section 108 notes, HUD provides a 100 percent full faith and credit guarantee to the private investors who purchase the notes at the public offering.
- ✓ To comply with the Credit Reform Act of 1992, HUD cannot rely solely on the pledge of future CDBG entitlement funds to repay the Section 108 loan. Accordingly, the community must prove to HUD that either:
  - The project being financed with Section 108 funds has sufficient collateral and satisfies sound underwriting; or
  - The community pledges other assets that provide additional security beyond CDBG funds to bridge any repayment shortfalls such as parking or tax increment financing (TIF) district revenues.

CHAPTER 9: OTHER ELIGIBLE ACTIVITIES

CHAPTER PURPOSE & CONTENTS

This chapter provides grantees with general information on other CDBG-eligible activities. The chapter covers:

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9.1 Interim Assistance

This section outlines activities that are eligible and ineligible interim assistance activities under the CDBG program. The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible Interim Assistance Activities ✓ Ineligible Activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(4), Section 105(c) §570.201(f), §570.207
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities ♦ Chapter 2, Chapter 3

9.1.1 Eligible and Ineligible Activities

Eligible Activities

✓ CDBG funds may be used to provide interim assistance where:

- Immediate action is necessary to stop physical deterioration until something permanent can be done; or
- Emergency conditions threaten the public health and safety.

- ✓ When immediate action is necessary to stop physical deterioration until something permanent can be done, certain activities are allowed on an interim or temporary basis. Under these circumstances:
  - The grantee must determine that:
    - Immediate action is necessary to stop the deterioration; and
    - Permanent improvements will be carried out as soon as possible.
  - Acceptable activities include:
    - Repairing streets, sidewalks, parks, playgrounds, publicly owned utilities and public buildings; and
    - Special garbage, trash, and debris removal, such as neighborhood cleanup campaigns.
- ✓ Where emergency conditions threaten the public health and safety, some activities are allowed on an interim or temporary basis in order to alleviate the threatening conditions. Under these circumstances:
  - The Chief Executive Officer of the grantee must determine that:
    - The situation is emergency in nature; and
    - The situation requires immediate attention.
  - The following activities are allowed:
    - Repairing streets, sidewalks, publicly owned utilities and public buildings (but not parks and playgrounds);
    - Special garbage, trash, and debris removal, such as neighborhood cleanup campaigns;
    - The clearance of streets including snow removal and similar activities; and
    - The improvement of private properties.

Ineligible Activities

- ✓ Regular activities of local government, such as curbside collection of garbage or trash, are NOT eligible CDBG activities. However, a specially planned community trash or cleanup campaign may be an eligible CDBG activity under the interim assistance category.
- ✓ The repair of parks and playgrounds is not an eligible activity under alleviating emergency conditions threatening the public health and safety.

9.1.2 National Objectives

LMI Benefit National Objective

- ✓ Interim assistance qualifies under the LMI area benefit national objective if the activities benefit all persons in a primarily residential area where at least 51% of persons (or less if the upper quartile applies) benefiting from the activities are LMI persons.

Slum/Blight National Objective

- ✓ Interim assistance activities may qualify under the Slum/Blight Area national objective if the activities are carried out in a designated slum or blighted area or under the Slum/Blight spot national objective if the activity is outside of a designated Slum/Blight area and meets the criteria at 570.208(b)(2).

Urgent Needs National Objective

- ✓ Interim assistance activities may also qualify under the Urgent Needs national objective if the activities are designed to alleviate existing conditions (of recent origin or recent urgency) that the grantee certifies as posing a serious and immediate threat to the health or welfare of the community where the grantee is unable to finance the activity on its own and other sources of funds are not available.

9.2 Relocation

This section outlines activities that are eligible and ineligible relocation activities under the CDBG program. The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible Relocation Activities ✓ Ineligible Activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(11), Section 105(c) §570.201(i),
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities ♦ Chapter 2, Chapter 3

9.2.1 Eligible Activities

- ✓ CDBG funds may be used for relocation payments and other assistance to displaced persons, including:
  - Individuals,
  - Families,
  - Businesses,
  - Nonprofit organizations, and
  - Farm operations.
- ✓ CDBG funds may be used for permanently and temporarily relocated persons where:
  - Required under the provisions of §570.606 of the regulations; or
  - Determined by the grantee to be appropriate under the provisions of §570.606(d).
- ✓ Grantees are required to comply with:

  - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (49 CFR part 24); and
  - Section 104(d) and the residential antidisplacement and relocation assistance plan (24 CFR part 42, subpart B).

✓ On an optional basis, grantees may use CDBG funds for relocation payments and assistance to persons displaced by an activity not subject to the requirements described above, including:

  - Payments and other assistance for temporary relocation; and
  - Payments and assistance at levels higher than those required.

✓ Unless optional payments and assistance are made pursuant to State or local law, grantees may make such payments and assistance only after a written determination documents that such payments and assistance are appropriate. In addition, grantees must adopt a written policy, available to the public, stating the relocation payments and assistance it elects to provide. The written policy must also stipulate for equal payments for all displaced persons in similar circumstances.

9.2.2 National Objectives

✓ The requirements of compliance with national objectives, with regard to relocation activities depend on the nature of the relocation assistance. Relocation assistance can be a required or voluntary activity, depending on the type of activity that prompts the need for relocation.

  - Where relocation assistance is required by the Uniform Act or the CDBG statute, the relocation activity qualifies as meeting the LMI national objective only if the acquisition or rehabilitation that prompts the required relocation also qualifies under the LMI national objective.
  - Where relocation assistance is voluntary, the initial activity causing the displacement and subsequent need for relocation is not required to meet the same national objective as the relocation itself. Relocation payments could meet a national objective based on the purpose of the re-use of the property or on the income of the recipients of the relocation assistance. The classification is the grantee's discretion.

9.3 Loss of Rental Income

This section outlines activities that are eligible and ineligible rental income activities under the CDBG program. The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible Loss of Rental Income Activities ✓ Ineligible Activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(6), Section 105(c) §570.201(j),
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities ♦ Chapter 2, Chapter 3

9.3.1 Eligible Activities

- ✓ CDBG funds may be used to compensate property owners for the loss in rental income incurred while temporarily holding housing units to be used for the relocation of individuals and families displaced by CDBG-assisted activities.
- ✓ According to statutory requirements related to displacement, certain replacement housing must be made available to displaced persons. If a displaced household requires a unique type of housing that is not widely available, it may be necessary for the grantee to hold an existing available unit for a short period until the displacement occurs.

9.3.2 National Objectives

- ✓ Compliance with national objectives of this activity is directly associated with the national objective(s) met by the related underlying relocation activity.
  - If the activity resulting in the relocation assistance to the displaced household qualified on the basis of benefit to LMI persons, then paying the housing owners for losses incurred in holding units for those displaced persons also qualifies as benefiting LMI persons, even if the displaced household itself is not LMI.
  - If the relocation assistance to displaced persons qualified under the Slum/Blight or Urgent Needs national objectives, then paying housing owners for losses incurred in holding units for those displaced persons also would qualify under Sum/Blight or Urgent Needs, as applicable.

9.4 Technical Assistance

This section outlines activities that are eligible and ineligible technical assistance activities under the CDBG program. The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible Technical Assistance Activities ✓ Ineligible Activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(19), Section 105(c) §570.201(p)
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities ♦ Chapter 2, Chapter 3

9.4.1 Eligible Activities

- ✓ CDBG funds may be used for the 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.
  - Prior to providing the assistance, grantees must determine:
    - The eligibility of the activity for which the capacity is to be built; and

- Whether it is likely that a national objective will be met once the public or nonprofit entity has received the technical assistance and undertakes the activity. This is especially important because the technical assistance will only meet a national objective IF the associated neighborhood revitalization or economic development activity will meet a national objective.

✓ Technical assistance activities that are related to building capacity for neighborhood revitalization and economic development are not subject to the 20% administrative cap.

✓ Capacity building for public or private entities (including grantees) for other purposes may be eligible under administration (subject to the 20% cap).

9.4.2 National Objectives

✓ Prior to providing the technical assistance, the grantee must determine that there is a reasonable expectation that a national objective can be met once the entity receiving the assistance undertakes the activity.

✓ To determine whether compliance with a national objective is a reasonable expectation, prior to funding the assistance, the grantee should review the following factors:

- 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 entities' expected clientele.

9.5 Special Activities by CBDOs

This section outlines activities that are eligible and ineligible activities undertaken by a community based development organization (CBDO) under the CDBG program. The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible CBDO Activities ✓ Ineligible Activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)(15), Section 105(c) §570.204, 570.207
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities ♦ Chapter 2, Chapter 3

9.5.1 Eligible and Ineligible Activities

Eligible Activities

✓ Grantees may provide CDBG funds as grants or loans to qualified CBDOs (see Chapter 2 for a discussion of eligible CBDO entities) to carry out the following types of projects:

- Neighborhood Revitalization: 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 local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographic designation; or the entire jurisdiction of a unit of general local government which is under 25,000 population.
- Community Economic Development: Includes activities that increase economic opportunity, primarily for persons of LMI, or that stimulate or retain businesses or permanent jobs, including projects that include one or more such activities that are clearly needed to address the lack of affordable housing accessible to existing or planned jobs and those activities specified at 24 CFR 91.1(a)(1)(iii).
- Energy Conservation: Includes activities that address energy conservation, principally for the benefit of the residents of the grantee's jurisdiction.

Ineligible Activities

✓ Special activities by CBDOs do not include:

- Buildings for the general conduct of government, general government expenses, and political activities (activities described in §570.207(a) as ineligible).
- Provision of public services that do not meet the requirements of §570.201(e), or that would exceed the dollar limitations described under §570.201(e)(1) and (2) unless the regulations otherwise provide that the services are exempt from the cost limitation. (Reference §570.204(b)(2))
- Provision of assistance for special economic development activities (see §570.203) that do not comply with the Public Benefit requirements (see §570.209).
- Planning and administrative activities (eligible under §570.205 or §570.206) which would result in the grantee exceeding the 20% cost limitation on such activities, unless the regulations specifically provide that the activity is exempt from that cost limitation. (Reference §570.204(b)(4))

9.5.2 National Objectives

✓ CBDOs carry out activities primarily eligible under other categories, as well as activities not otherwise eligible under Subpart C of the CDBG regulations. For these activities, refer to the applicable sections of this manual as well as the national objectives, Chapter 3.

9.6 Other Miscellaneous Activities

This section outlines other activities that are eligible under the CDBG program. The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section	✓ Eligible Activities ✓ Ineligible Activities
Regulatory/Statutory Citations	Section 101(c), Section 104(b), Section 105(a)21, Section 105(a)(9), Section 105(a)(10), Section 105(c) §570.201(g), §570.201(h), §570.201(q), §570.207
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities – Chapter 2, Chapter 3

9.6.1 Assistance to Institutions of Higher Education 570.201(g)

✓ Grantees may provide assistance to institutions of higher education (e.g., secondary schools or higher) when the grantee determines that such an institution has a demonstrated capacity to carry out activities that fall under one or more of the basic eligibility categories.

9.6.2 Payment of Non-Federal Share 570.201(g)

✓ This provision allows CDBG funds to be applied by a grantee to the non-Federal share of a Federal grant-in-aid. According to the specific statute and regulations for that program, grantees must first establish whether or not such funds are allowed to be applied.

9.6.3 Urban Renewal Completion 570.201(h)

✓ The cost of completing an urban renewal project funded under Title I of the Housing Act of 1949 is eligible. However, please note that this eligibility category exclusively relates to projects funded under this terminated HUD program and not other activities. In addition, this statutory and regulatory section does not add additional types of eligible activities. Rather, it specifies that grantees may complete Urban Renewal projects to the extent that this activity falls under one of the other eligible CDBG activities specified elsewhere in the regulations and statute.

9.6.4 National Objectives

✓ National objectives related to the miscellaneous activities described above depend on the activity being carried out. Refer to the national objectives chapter of this manual.

9.7 Summary of National Objective Options for Other Eligible Activities

- ✓ All CDBG activities must meet a national objective in order to be eligible to use CDBG funds. This requires that all activities qualify as meeting one of the three national objectives of the program and meet specific tests for benefiting LMI persons, preventing or eliminating slums or blight and 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.
- ✓ The following chart summarizes the national objective options related to other eligible activities discussed in this chapter. The text in each section above provides additional details for each specific type of activity. For a complete copy of the matrix codes and national objectives chart, please see the IDIS chapter of this manual.

National Objective Codes (N = Not Allowed)									
HUD Matrix Code	**Activity**	**LMA**	**LMC**	**LMH**	**LMJ**	**SBA**	**SBS**	**SBR**	**URG**
6	Interim Assistance		N	N	N			N	
7	Urban Renewal Completion					N	N		N
8	Relocation								
9	Loss of Rental Income								
19D	CDBG Assistance to Institutes of Higher Education								

CHAPTER 10: REVITALIZATION AREAS

CHAPTER PURPOSE & CONTENTS

This chapter provides detailed information on Neighborhood Revitalization Strategy Areas (NRSA). Topics covered include:

SECTION	TOPIC	PAGE
10.1	Background	10-1
10.2	Benefits	10-2
10.3	Preparing and Submitting a Neighborhood Revitalization Strategy	10-3
10.4	Funding the NRSA	10-5
10.5	HUD Review, Approval, and Monitoring	10-5
10.6	Amending the NRSA	10-7
10.7	Local Target Areas	10-7

10.1 Background

- ✓ Grantees may designate local target areas for revitalization. There are no HUD rules concerning the designation of such areas; however, additional guidance is provided at the end of this chapter.
- ✓ The Federal Register published on January 5, 1995 authorized entitlement grantees to develop comprehensive approaches to address economic development and housing needs in a designated neighborhood within their community. This approach is referred to as a NRSA.
  - This chapter highlights the requirements for developing and submitting a NRSA to the local HUD Field Office for approval.
  - The CDBG State and Small Cities Program also has a provision for a similar plan known as a Community Revitalization Strategy.
- ✓ NRSA requests are submitted as a part of, or as an amendment to, a grantee's Consolidated Plan.
- ✓ The following is a summary of applicable statutory and regulatory citations and other reference materials available from HUD:

Regulatory/Statutory Citations	§91.215 (e) (2) §570.208 (a) (1) (vii) and (d) (5) (i) §570.208 (a) (3) and (d) (5) (ii) §570.209 (b) (2) (v) (L) and (M) §570.204 (b) (ii)
Other Reference Materials on This Topic	✓ CDBG Guide to National Objectives and Eligible Activities ♦ Appendix E ✓ CPD Notice 96-01

10.2 Benefits

- ✓ Communities with approved NRSAs are offered enhanced flexibility in undertaking economic development, housing, and public service activities with their CDBG funds.
- ✓ This flexibility is designed to promote innovative programs in economically disadvantaged areas of the community.
- ✓ Areas of enhanced regulatory flexibility include:
  - Job creation or retention effort focused on the selected neighborhood may be classified as meeting the LMI area benefit national objective requirements.
    - Businesses that receive such assistance need not track the specific income of newly hired employees to demonstrate LMI benefit.
    - This provision reduces the administrative burden to the business and is intended to provide an incentive to businesses to participate in the community's job creation/retention programs.
  - Aggregation of housing units for which CDBG funds are obligated during each program year and treat them as a single structure.
    - 51 percent of total number of units must be occupied by LMI households.
    - This permits grantees greater flexibility in applying the LMI housing national objective criteria for the housing category.
    - In turn, grantees have flexibility in providing housing to residents of the NRSA neighborhood.
    - NOTE: The flexibility to aggregate housing units assisted does not change the requirement that homeownership assistance provided under 570.201(n) must be provided only to LMI households.
  - Economic development activities carried out in the NRSA may be excluded from the aggregate public benefit standards.
    - This reduces recordkeeping requirements.
    - This affords greater flexibility in selecting and implementing economic development activities, and reduces the amount and scope of information that grantees must collect and document regarding its programs.

  - Note, however, that projects are still subject to the individual/project public benefit standards.
- All public services offered within the NRSA ***and*** carried out as part of qualified projects under the NRSA ***by a CBDO*** are exempt from the public services cap.
  - This permits grantees to offer a more intensive level of services within the approved community, as needed to stimulate revitalization.
  - This flexibility includes job training and other employment related services and as such, it can provide an important foundation for economic opportunity for neighborhood residents.

10.3 Preparing and Submitting a Neighborhood Revitalization Strategy

✓ The written NRSA must be complete and include each of the key items discussed below.

10.3.1 Neighborhood and Demographic Criteria

✓ The submission must fully describe the geographic area to be covered by the NRSA. The areas covered must be contiguous: no checkerboard areas across the community!

- The selected area must be primarily residential.
- The area must contain a high percentage of LMI households.

✓ The percentage of LMI residents within the neighborhood must be equal to:

- 70 percent of the total population in the selected area (if the grantee's upper quartile is greater than 70 percent LMI);
- The upper quartile percentage (if the grantee's upper quartile is greater than 51 percent, but less than 70 percent LMI in the total population); or
- 51 percent of the total population (if the grantee's upper quartile percentage is less than 51 percent).

10.3.2 Community Consultation

✓ The written submission must outline the process used by the community to develop the NRSA. The NRSA must be developed in consultation with members of the community, including:

- Residents of the area;
- Owners/operators of businesses in the area;
- Local financial institutions;
- Non-profit organizations; and
- Community groups.

✓ When describing the consultation process, it is important to describe the methods used by the community to provide outreach to the types of groups noted above and how the needs and concerns of the consulted parties were incorporated into the NRSA.

10.3.3 Assessment

- ✓ In this section of the NRSA, the grantee must assess the area selected.
- ✓ First, the grantee must assess the ***economic conditions*** of the proposed NRSA. This analysis might include a discussion of such topics as:
  - Levels of unemployment;
  - Numbers of businesses located within the area, including: numbers of service facilities such as grocery stores, drug stores, gas stations, etc.; and the number of people employed by such businesses;
  - Access to capital (or lack thereof) in order to form businesses in the area;
  - Housing needs of residents in the area including: rents; home prices; and housing quality; and
  - Current availability of economic development or other community services within the area.
- ✓ Next, the NRSA must describe the ***opportunities*** for economic development improvement within the neighborhood. This analysis might include a discussion of such topics as:
  - Unmet demand for specific types of facilities or services (such as the need to create/foster a lending institution within the neighborhood);
  - Community organizations that are ready and available to assist with economic development efforts;
  - Skills or services that are currently unused or underutilized within the community; and
  - Visionary or fledgling projects unable to take root in the NRSA due to lack of funding.
- ✓ Finally, the NRSA must describe the ***problems*** that the community is likely to face as it implements programs in this neighborhood. This discussion might cover such common problems as:
  - Hesitation from private sources (such as area banks) to invest in the area;
  - Community opposition to certain types of development activities (NIMBY sentiments);
  - Inexperience of local community groups or organizations; and
  - Crime and/or security concerns at project sites.

10.3.4 Economic Empowerment

- ✓ This section describes actions the grantee will undertake to increase economic opportunities within the NRSA.
- ✓ The NRSA must discuss the activities that will be undertaken to create meaningful jobs for unemployed LMI residents of the area. This discussion should be realistic and indicate how the grantee plans to accomplish this objective.
- ✓ The NRSA must also highlight how the plan will promote revitalization of the neighborhood. In other words, what the NRSA is really going to do to help turn the neighborhood around and promote economic opportunity for residents.

10.3.5 Performance Measures

- ✓ Finally, the NRSA must set goals and anticipated results for the implementation of the plan. These results must be described in measurable terms. Grantees are expected to report on their progress toward these measurable outcomes.
- ✓ Measurable outcomes may cover such areas as physical improvements, social initiatives, and economic empowerment. Examples may include:
  - Create 25 new businesses;
  - Achieve five percent increase in employment;
  - Open two new job training centers;
  - Reduce families on welfare by five percent;
  - Attract new community lending institution to the neighborhood;
  - Formation of a community business association; and
  - Offer ten training seminars to teach area residents about small business start-up.

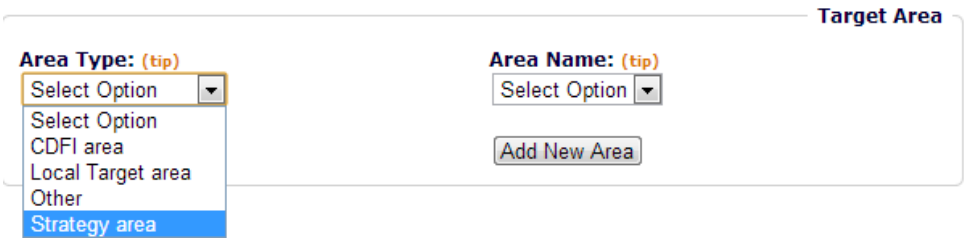
10.4 Funding the NRSA

- ✓ Grantees do not need to commit specific ***future*** funds for use in the NRSA at the time that the NRSA is submitted.
  - For example, the grantee is not required to commit a portion of its fiscal year (FY) 2011 CDBG funds to the revitalization initiatives in the NRSA submitted in 2009.
- ✓ After approval of the NRSA, the grantee's subsequent Action Plans ***must*** describe the HUD formula program resources that may be used to achieve the NRSA goals.
  - Also, each year after the initial NRSA submission, the grantee must identify in its Action Plan for that year the measurable outcomes it expects to achieve during the year for the NRSA.

10.5 HUD Review, Approval, and Monitoring

- ✓ As noted above, the NRSA request is submitted with the Consolidated Plan to HUD for review and approval or is submitted as an amendment to an existing plan.
  - The Consolidated Plan already includes detailed information about the community and its residents. If this Consolidated Plan information is also used to describe the NRSA, it need not be duplicated. The grantee may simply reference other parts of the Consolidated Plan or other documents that HUD already has in its possession.
  - If the grantee has already submitted its Consolidated Plan for a given year, the NRSA request may be undertaken as an amendment to the plan.
- ✓ Once approved, the NRSA remains in effect for the term designated by the grantee in the NRSA. If the grantee wishes to extend the NRSA beyond the original time frame, it must advise HUD in its subsequent Consolidated Plan submission.
- ✓ As applicable, HUD will approve the NRSA at the same time it approves the Consolidated Plan. NOTE: HUD will not withhold its approval of the Consolidated Plan if all else is acceptable and the NRSA piece is not in order.

- ✓ CAREFUL: HUD must expressly state in writing its approval of the NRSA. It cannot be assumed that approval of the Consolidated Plan is also an approval of the NRSA.
- ✓ HUD's review of NRSAs will emphasize:
  - The grantee's capacity to undertake this effort;
  - The likelihood that the plan will achieve its revitalization goals; and
  - The extent to which the NRSA effectively coordinates public and private resources.
- ✓ HUD will only approve NRSAs that seek to achieve measurable results:
  - Creation of meaningful economic opportunities for residents; and
  - Opportunities must be created within the time frame of the Consolidated Plan (generally a five-year period).
  - The NRSA is not required to fully revitalize a neighborhood during the Consolidated Plan period, but the grantee must demonstrate significant, measurable results.
- ✓ Grantees must report to HUD, and HUD will monitor the progress against the established outcomes each year.
  - The Integrated Disbursement and Information System (IDIS) provides a way for NRSAs to be set up and identified within the system (e.g., Chatham Revitalization Area). On Setup Detail Page 1 of Activity Setup, there is a section labeled "Target Area".
    - To add a new area, the grantee can select "Strategy Area" as the Area Type and click the "Add New Area" button. The grantee will need to name the NRSA and enter the HUD Approval Date for the NRSA. Each NRSA only needs to be added once to the system.
    - To identify an activity associated with an NRSA once the area has been added, the grantee can select "Strategy Area" as the Area Type and then select the specific NRSA from the Area Name field.



  - IDIS also provides a mechanism for tracking and reporting data within the NRSA. IDIS report PR14 provides a list of CDBG-assisted activities in an NRSA. In addition, the PR84 provides a list of performance measurement data collected within NRSAs.
- ✓ Consequences for lack of performance include:
  - If performance is lacking, HUD may suspend or withdraw the NRSA approval.
  - CDBG Program flexibilities would then be withdrawn until, and unless, the grantee can submit an acceptable revised NRSA.

- Grantees should consult with their CPD field office representative often when developing the requested NRSA. The CPD staff can provide insight about the types of information to be submitted. In addition, HUD can provide technical assistance on how to analyze appropriate data.

10.6 Amending the NRSA

- ✓ Grantees may amend their strategies. These amendments would follow the Consolidated Plan amendment process found in 24 CFR 91.505.
- ✓ This amendment may occur when:
  - Conditions that existed at the time of the NRSA submission have changed substantially, or
  - When the grantee has determined that the originally approved NRSA has not been effective and a different approach is needed.
- ✓ A NRSA may also be amended if HUD suspends or withdraws its approval of the NRSA because the outcomes have not been achieved.
- ✓ NOTE: Some grantees will be submitting a new Consolidated Plan soon. At the time of the new plan, grantees with NRSAs can either:
  - Renew the term of their NRSA commensurate with the five year Consolidated Plan term;
  - Submit the prior NRSA with a statement that there is no change in the NRSA; or
  - Submit an amended NRSA.

10.7 Local Target Areas

- ✓ Many CDBG grantees decide to take a locally targeted approach to the investment of their CDBG funds to focus on neighborhood revitalization and set up specific target areas in their community. The use of such target areas is acceptable, but only HUD-approved NRSAs may benefit from the flexibilities discussed above in Section 10.2, Benefits.
  - Grantees may offer special incentives or additional funding may be provided by the grantee in target neighborhoods. For example, a community may run a city-wide homeowner rehabilitation program with a self-imposed cap of $35,000 maximum assistance per unit. In a target area, the community may decide to raise the cap to $45,000 for investment.
  - These target areas do not have specific criteria like NRSAs. These areas do not need to be specifically approved by their HUD Field Office; however, these areas are typically included as part of the grantee's Consolidated Plan and Annual Action Plan.
  - The Integrated Disbursement and Information System (IDIS) provides a way for local target areas to be set up and identified within the system (e.g., Blueberry Hill Area). On Setup Detail Page 1 of Activity Setup, there is a section labeled "Target Area".
  - To add a new area, the grantee can select "Local Target Area" as the Area Type and click the "Add New Area" button. The grantee will need to name the target area and specify the type (Housing, Commercial, Comprehensive, or Other). Each target area only needs to be added once to the system.

- To identify an activity associated with a local target area once the area has been added, the grantee can select “Local Target Area” as the Area Type and then select the specific local target area from the Area Name field.
- IDIS also provides a mechanism for tracking and reporting data within local target areas. IDIS report PR14 provides a list of CDBG-assisted activities associated with each local target area. In addition, the PR84 provides a list of performance measurement data collected for each local target area.

CHAPTER 11: FINANCIAL MANAGEMENT

CHAPTER PURPOSE & CONTENTS

This chapter provides an overview of all of the requirements applicable to the financial management of the CDBG Program. Administrative and planning costs including those costs that are eligible under other categories of eligibility will be covered. CDBG policies and rules regarding pre-award costs, float funded activities, revolving funds, lump sum draw downs and program income will be detailed. Finally, financial management requirements that pertain to accounting systems, allowability of costs, audits, tracking, and use of program income and pre-award costs limitations will be discussed.

SECTION	TOPIC	PAGE
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11.1 Administrative and Planning Costs

Key Topics in This Section	✓ Examples of administrative costs ✓ Examples of planning costs ✓ Charging staff cost under administrative and planning costs
Regulatory/Statutory Citations	Section 105(a)(13), Section 105(a)(12) §570.201(p), §570.205, §570.206, §570.208
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities – Chapter 2 ✓ CPD Notice 92-19

11.1.1 Eligible Administrative Activities

- ✓ CDBG funds can be used for administration and planning activities.
  - Examples of administration activities include:
    - General management, oversight and coordination;
      - Providing local officials and citizens with information about the CDBG program;
      - Preparing budgets and schedules;
      - Preparing reports and other HUD-required documents;
      - Monitoring program activities;
    - Fair Housing activities;
    - Indirect costs; and
    - Submission of applications for Federal programs;
- ✓ With respect to determining the amount of staff costs to charge to program administration, grantees have two options:
  - Include the entire salary, wages and related costs of each person whose ***primary*** responsibility involves program administration assignments (e.g., executive director position); or
  - Determine the *pro rata* share of each person's salary, wages and related costs whose job includes ***any*** program administration assignments.
- ✓ Any costs and time charged must be documented through the appropriate means (i.e., invoices, receipts, time and attendance records, etc.). The documentation must be kept on file and will be reviewed at financial monitoring.

11.1.2 Eligible Planning Activities

- ✓ Examples of planning activities include:
  - Comprehensive plans;
  - Community development plans (including the Consolidated Plan);
  - Functional plans (for housing; land use and urban environmental design; economic development; open space and recreation; energy use and conservation; floodplain and wetlands management; transportation; utilities; historic preservation; etc.);
  - Other plans and studies (e.g., small area and neighborhood plans; capital improvements program plans; individual project plans; general environmental; urban environmental design; historic preservation studies; etc.); and
  - Policy planning, management and capacity building activities.
- ✓ A detailed description of planning and capacity building activities is located at §570.205 of the regulations.
- ✓ CDBG assistance may also be used to fund activities intended to improve grantee capacity (including subrecipients) to plan and manage programs and activities.

- ✓ Funds used under this category (by the grantee or subrecipient) are subject to the statutory limitation on planning and administrative costs.
- ✓ Capacity building eligible under the category of Technical Assistance (which was discussed in Chapter 9) not subject to the planning and administration cap.
- ✓ Under this category, CDBG funds may not be used for the following activities:
  - Engineering, architectural and design costs related to a specific project; or
  - Other costs of implementing plans.
  - These costs may be eligible as a part of an eligible project/activity.

11.1.3 National Objectives for Administrative and Planning Activities

- ✓ CDBG funds expended for administration, planning and capacity building costs are considered to address the national objectives for the CDBG program as a whole; therefore, no documentation of compliance is required.

11.1.4 Costs that are Eligible under Other Categories

- ✓ The costs of carrying out an activity include not only goods and services provided by third parties, such as construction contractors, but also include the costs incurred by the grantee or subrecipient in connection with the use of its own staff and other resources to carry out the activity. For example, if a grantee's employees underwrite economic development loans that are to be made with CDBG funds, the portion of their salaries spent on this function can be treated as costs of carrying out the activity. This is important because these costs are not subject to the limitation on the use of CDBG funds to pay planning and administrative costs.

Calculating Program Administration and Direct Costs Example

In Smithville's Housing Department, the Rehab Loan Officer is primarily responsible for marketing and outreach of the rehab loan program, application intake and review, and underwriting and preparing of loan packages for approval by a loan committee. These functions are directly related to the rehab loan program and eligible as program delivery costs. However, the Rehab Loan Officer also contributes information for Smithville's Consolidated Plan and annual performance report, and occasionally assists with Fair Housing activities. The Rehab Loan Officer maintains time distribution records documenting the time spent on activity delivery and general program administration. The time distribution records indicate that 80 percent of the Rehab Loan Officer's time is spent on activity delivery and 20 percent is spent on program administration. Consequently, the salary and related costs of the Rehab Loan Officer position will be charged on a pro rata share basis between the rehab loan program (80 percent) and program administration (20 percent).

  - As discussed in Chapter 4, Housing Activities, under 570.201(k), CDBG funds may be used to pay costs for a broad list of services in support of the HOME program and such costs are not subject to the CDBG planning and administration cap.

- ✓ Additionally, §570.206 also provides that CDBG funds may be used to pay for program administration of the HOME program but these administrative costs are counted toward the CDBG administrative cap.

11.2 Planning and Administrative Cap

Key Topics in This Section	✓ Calculating the cap ✓ Determining compliance with the cap
Regulatory/Statutory Citations	§570.200(g), §570.205, §570.206
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities – Chapter 2

- ✓ Planning and administration costs are capped at 20 percent of the sum of grant plus program income that is received during the program year. See the chart below on Calculating the Planning and Administrative Costs Cap.

Calculating the Planning and Administrative Costs Cap

Total entitlement grant amount	$1,000,000
Surplus from Urban Renewal	-
Program income received by grantee and its subrecipients	$50,000
Total: the basis for calculating the cap	$1,050,000
Multiplied by 20 percent	x 0.20
Maximum dollar level that may obligated and charged to Planning and Capacity Building and Program Administration	$210,000

* NOTE: This example is for illustrative purposes only.

- ✓ Grantees will be considered to be in compliance if total obligations charged under planning and administration during the most recently completed program year are no greater than 20 percent of the sum of the entitlement grant for the program year, and the program income received during that program year by the grantee and its subrecipients.
- ✓ See chart below on Determining Compliance with the Planning and Administrative Costs Cap for specific steps in determining compliance.

Determining Compliance with the Planning and Administrative Costs Cap

Total costs under Planning and Administration for the program year	$150,000
Add unliquidated obligations for planning and administration activities, as of the end of the program year	$35,000
Subtract unliquidated obligations for planning and administration activities, as of the end of the preceding program year	($20,000)
Net obligations for planning and administration during the program year	$165,000
Compare to maximum dollar level calculated above to determine planning and administrative cost cap	$210,000

* NOTE: This example is for illustrative purposes only.

11.3 Pre-Award Costs

Key Topics in This Section	✓ Requirements ✓ Waivers
Regulatory/Statutory Citations	§570.200(h)
Other Reference Materials on This Topic	

- ✓ Under certain conditions, CDBG grantees and their subrecipients may incur costs prior to the effective date of the CDBG grant agreement with HUD. The grantee or subrecipient may then pay those costs (including reimbursing itself if it used its own funds to pay the costs) after the effective date of the grant agreement, provided that it complies with the pre-award regulations at 24 CFR §570.200(h).
  - 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.
- ✓ The CDBG regulations were revised in 1995 to offer more flexibility to grantees in incurring pre-award costs. Previously, the regulations limited the types of costs that could be incurred. Since the change in 1995, grantees can incur any eligible cost provided it meets certain conditions:
  - The activity for which the costs are being incurred is included in a consolidated plan action plan, an amended consolidated plan action plan, or a Section 108 loan guarantee application ***prior*** to the costs being incurred;
  - Citizens are advised of the extent to which these pre-award costs will affect future grants;
  - The costs and activities funded are in compliance with the CDBG regulations and the environmental review requirements;

- 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;
- 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
- The total amount of pre-award costs to be paid during any program year is no more than 25% of the grant amount for that year or $300,000, whichever is greater.

✓ An example of the flexibility that this provision offers to grantees: a grantee constructs a large public improvement using a mix of current year CDBG funding and proceeds from a local bond issuance. The grantee uses a portion of its CDBG funding from the subsequent program year to pay off the local indebtedness without requesting the prior approval of HUD (provided the construction meets the applicable requirements and the amount of the pre-award costs does not exceed the above limitation).

✓ Upon the written request of the grantee, the HUD field office may authorize payment of pre-award costs for activities that do not meet the above requirement for a two-year payback or where the total amount exceeds 25% of the grant amount. (NOTE: An exception to any of the other criteria requires a waiver.)

- The factors HUD will consider in granting exceptions to the period of repayment or the dollar threshold include:
  - Whether granting the authority would result in a significant contribution to the goals and purposes of the CDBG program;
  - Whether failure to grant the authority would result in undue hardship to the grantee or beneficiaries of the activity;
  - Whether granting the authority would not result in a violation of a statutory provision or any other regulatory provisions;
  - Whether circumstances are clearly beyond the grantee's control; and
  - Any other relevant considerations.
- The HUD review begins at the Field Office level, but when a waiver is necessary, it is referred to the Assistant Secretary's office.

11.4 Float-Funded Activities

Key Topics in This Section	✓ Description of purpose ✓ Requirements
Regulatory/Statutory Citations	§570.301
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for Entitlement Communities

✓ CDBG grantees have a line of credit that covers the amount of CDBG funds that are available for the grantee to expend. The grantee's Consolidated Plan establishes how these funds will be used.

- ✓ Sometimes, however, activities take longer to get started than initially anticipated and funds for undertaking these planned activities remain in the grantee's line of credit. Under this circumstance, HUD permits grantees to use a financing technique called float funding.
- ✓ Under the float funding provision (at 570.301), the grantee uses the amount of funds available in the line of credit to fund an alternate eligible activity with the assumption that these funds will be repaid by the alternate activity and then used to fund the originally planned activity.
  - For example, assume that a grantee plans to use $500,000 of CDBG funds to build a new community center. However, it will take two years to conduct the environmental review, have an architect design the building, and finally initiate the construction. So, much of that $500,000 is just sitting in the grantee's line of credit. Meanwhile, the grantee receives an application from a developer for a housing project which needs $300,000 in financing. The financing will be provided under a short term rehabilitation loan that will be taken out with the proceeds from the equity syndication of low income housing tax credits over the next year. However, the grantee has already allocated all of its available CDBG funds to various eligible projects. So, it makes a CDBG float loan to the developer, using $300,000 of the $500,000 planned for the community center. When the equity from syndication of the tax credits is received, the float loan is repaid. The program income derived from the repayment is then available to finance the community center.
- ✓ All float-funded activities must meet all of the same requirements that apply to all other CDBG activities. In addition, the following requirements must be met:
  - Float funded activities should generate sufficient program income to permit the originally planned activity to be carried out.
  - This program income must be received within 2.5 years from the time of obligation for the float-funded activity.
  - Extensions to this repayment period are considered new float-funded activities.
- ✓ The float-funded activity must be included in the Action Plan for the current year or the Action Plan must be amended.
  - The ***full amount*** of the projected program income from the float-funded activity must be shown as a source of program income in the Action Plan covering the activity, regardless of whether the income is expected in a future program year.
  - The Action Plan must also clearly describe:
    - How it will eliminate/amend activities should the float-funded project fail to produce the needed program income; or
    - The grantee's commitment to obtain an irrevocable line of credit from a commercial lender for the full amount of the float-funded activity; or
    - How the grantee will transfer general local funds to the CDBG line of credit within 30 days to cover any default or shortfall; or
    - Any other method that the grantee will use to secure timely return of the amount of float funding. HUD must approve these other methods in writing.

11.5 Revolving Funds

Key Topics in This Section	✓ Description of purpose ✓ Requirements
Regulatory/Statutory Citations	24 CFR Subpart J –Grant Administration
Other Reference Materials on This Topic	

- ✓ Revolving loan funds are specifically allowed within the CDBG program. Many CDBG grantees use revolving funds in conjunction with single family rehabilitation programs, as well as for other activities such as microenterprise loans.
- ✓ A revolving fund is a separate fund (independent of other CDBG program accounts) set up for the purpose of carrying out specific activities. These activities generate payments to the account for use in carrying out the same types of activities.
- ✓ Program income that is held in a revolving fund does not have to be used before grant funds are drawn down for a different type of CDBG project. However, program income in a revolving fund must be used before additional grant funds are drawn down for revolving fund activities.
- ✓ Requirements of CDBG-funded revolving funds include:
  - Revolving funds must be held in interest bearing accounts; and
  - Interest earned on revolving fund balances must be remitted to the U.S. Treasury not less than annually. (NOTE: Interest paid by borrowers of CDBG-funded loans made from the revolving fund is considered program income and subject to the CDBG program income requirements.)

11.6 Lump Sum Draw Downs

Key Topics in This Section	✓ Description of lump sum draw down purpose ✓ Requirements
Regulatory/Statutory Citations	§570.513
Other Reference Materials on This Topic	

- ✓ Grantees may draw down funds from HUD in a lump sum to establish a rehabilitation fund in one or more private financial institutions for the purpose of financing eligible rehabilitation activities. The reason grantees may want to establish such a fund is to receive benefits (described below) from the lending institution with which it places the lump sum.
- ✓ The regulations governing lump sum draw downs, which are located at 570.513, stipulate that:

- The fund may be used in conjunction with various rehabilitation financing techniques, including loans, interest subsidies, loan guarantees, loan reserves, or other uses approved by HUD.
- The fund may not be used for making grants, except when grants are made to leverage non-CDBG funds.

✓ Lump sum draw downs are subject to the following limitations:

- Deposits to a rehabilitation fund cannot exceed the grant amount that the grantee reasonably expects will be required based on either the prior level of rehabilitation activity or rehabilitation staffing and management capacity during the period specified in the agreement to undertake activities;
- No grant funds may be deposited under this section solely for the purpose of investment, notwithstanding that the interest or other income is to be used for the rehabilitation activities; and
- Rehabilitation program administrative costs and the administrative costs of the financial institution may not be funded through lump sum draw down.

✓ The following standards apply to all lump sum draw downs of CDBG funds for rehabilitation:

- Grantees must execute a written agreement with one or more private financial institutions for the operation of the rehabilitation fund.
  - The agreement must specify:
    - The obligations and responsibilities of the parties;
    - The terms and conditions on which CDBG funds are to be deposited and used or returned;
    - The anticipated level of rehabilitation activities by the financial institution;
    - The rate of interest and other benefits to be provided by the financial institution in return for the lump sum deposit;
    - The agreement must provide that the rehabilitation fund may only be used for authorized activities during a period of no more than two (2) years; and
    - Such other terms as are necessary for compliance with the provisions of this section.
  - The lump sum deposit shall be made only after the agreement is fully executed.
  - Upon execution of the agreement, a copy must be provided to the HUD Field Office for its record and use in monitoring. Modifications made during the term of the agreement must also be provided to HUD.
- The CDBG regulations include time limits on the use of funds deposited:
  - The use of funds for rehabilitation financing assistance must start (i.e., the first loan must be made, subsidized or guaranteed) within 45 days of the deposit; and
  - Substantial disbursements from the fund must occur within 180 days of the receipt of the deposit.

- Deposited funds or program income derived from deposited funds may be used to subsidize or guarantee repayments of rehab loans made with non-CDBG funds ***but*** the rehabilitation activity would be considered to be CDBG-assisted and subject to the requirements applicable to the type of activity undertaken. (NOTE: The repayment of the non-CDBG funds is not considered program income.)
- The private financial institution receiving the lump sum deposit must provide specific consideration to the grantee in exchange for such deposits. The minimum requirements for such benefits are as follows:
  - Grantees shall require the financial institution to pay interest on the lump sum deposit;
  - The interest rate paid by the financial institution shall be no more than three points below the rate on one year Treasury obligations at constant maturity;
  - When an agreement sets a fixed interest rate for the entire term of the agreement, the rate should be based on the rate at the time the agreement is executed;
  - The agreement may provide for an interest rate that would fluctuate periodically during the term of the agreement, but at no time shall the rate be established at more than three points below the rate on one year Treasury obligations at constant maturity;
- In addition to the payment of interest, at least one of the following benefits must be provided by the financial institution:
  - Leverage of the deposited funds so that the financial institution commits private funds for loans in the rehabilitation program in an amount substantially in excess of the amount of the lump sum deposit;
  - Commitment of private funds by the financial institution for rehabilitation loans at below market interest rates, at higher than normal risk, or with longer than normal repayment periods; or
  - Provision of administrative services in support of the rehabilitation program by the participating financial institution at no cost or at lower than actual cost.
- Interest earned on lump sum deposits and payments on loans made from such deposits is considered program income. During the period of the agreement, program income must be used for rehabilitation activities in accordance with the requirements covering the rehabilitation fund.
- Grantees must provide the HUD field office with written notification of the amount of funds to be distributed to a private financial institution before the distribution occurs.

11.7 Timely Expenditure of Funds

✓ A very important concept in administering CDBG activities is planning for the timely expenditure of funds. This section highlights those rules.

Key Topics in This Section	✓ Timely expenditure of CDBG funds
Regulatory/Statutory Citations	§570.902
Other Reference Materials on This Topic	✓ Ensuring CDBG Subrecipient Timeliness - Guidelines for Grantee Selection, Management, and Oversight in the Community Development Block Grant Program • http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12898.pdf ✓ Keeping CDBG Funds Moving Guidelines for managing your overall Community Development Block Grant Program in a timely manner • http://www.hud.gov/offices/cpd/communitydevelopment/library/keepfundsmoving.pdf ✓ Methods for Improving Timely Performance for the State Community Development Block Grant Program • http://www.hud.gov/offices/cpd/communitydevelopment/library/statetimeliness.pdf

✓ Timeliness refers to how quickly the grantee is able to commit and expend CDBG funds. Since federal program budgets are tight all across the government and since there is a huge need for community development programs, it is vital that CDBG grantees make every effort to quickly use their funds.

✓ The entitlement program rule for timeliness is that 60 days prior to the end of the program year, a grantee cannot have more than 1.5 times its annual allocation sitting in its line of credit at the U.S. Treasury.

For example, if the grantee has a $2 million dollar CDBG allocation, they may not have any more than $3 million in their CDBG account in IDIS.

✓ If the grantee chronically has more than 1.5 times its grant in its line of credit, HUD can withhold future grants until the grantee effectively spends its existing resources.

11.8 Program Income

Key Topics in This Section	✓ Definition ✓ Remittance of excess program income
Regulatory/Statutory Citations	§570.504
Other Reference Materials on This Topic	

✓ **Program Income Defined:** Program income is the gross income received by the grantee and its subrecipients directly generated from the use of CDBG funds.

– Program income includes:

- Proceeds from the sale or lease of property purchased or improved with CDBG funds;
- Proceeds from the sale or lease of equipment purchased with CDBG funds;
- Gross income from the use or rental of real or personal property acquired, constructed or improved by the grantee (or a subrecipient), less costs incidental to the generation of income;
- Payments of principal and interest on loans made using CDBG funds;
- Proceeds from the sale of loans or obligations secured by loans made with CDBG funds;
- Interest earned on program income pending its disposition (NOTE: interest earned on CDBG funds held in revolving loan funds is not program income and must be remitted to the U.S. Treasury at least annually); and
- Funds collected through special assessments on properties not owned and occupied by LMI households in order to recover the CDBG portion of a public improvement.

– Program income does not include:

- Income earned from the investment of initial proceeds of a grant advance from the U.S. Treasury; interest earned on loans or other forms of assistance with CDBG funds that are used for activities that are determined by HUD to be ineligible; interest earned on the investment of amounts reimbursed to the program account prior to the use of the reimbursed funds for eligible activities;
- Any income received in a single program year by the grantee *and* its subrecipients, that does not exceed $25,000;
- Income generated by certain Section 108 activities (refer to 570.500(a)(4)(ii));
- Proceeds from subrecipient fundraising activities;
- Funds collected through special assessments to recover non-CDBG outlays of public improvements; and
- Proceeds from the disposition of real property by a subrecipient or the grantee, that was acquired or improved with CDBG funds, when the disposition occurs after the time period specified in 570.503(b)(7) for subrecipient-owned property (generally five years after the expiration of the subrecipient agreement) or the time period required under 570.505 for grantee-owned property.

– The calculation of the amount of program income for the grantee's CDBG program as a whole (comprising activities carried out by the grantee and its subrecipients) shall exclude payments made by subrecipients of principal and/or interest on CDBG-funded loans received from grantees if such payments are made using program income received by the subrecipient.

✓ **Remittance of Program Income:** The CDBG regulations require that, at the end of each program year, a grantee must determine whether it has excess program income on hand and return any excess to its line of credit. Excess program income is calculated by:

1. Assessing the aggregate amount of program income held by the grantee ***and*** its subrecipients.
2. Subtracting the following from the aggregate amount:
   - Any funds needed for immediate cash needs (i.e., needed within the next 30 days to pay outstanding bills);
   - Revolving loan fund balances;
   - Lump sum draw down balances; and
   - Cash or investments held as security for Section 108 loan guarantees.
3. Any amount remaining after the deductions that is in excess of one-twelfth of the grantee's most recent entitlement grant must be remitted to the grantee's line of credit as soon as practicable after the excess amount is determined.

Sample Calculation for Remittance of Program Income

Amount of program income held by grantee and subrecipients:	$380,000
Less:	
Immediate cash needs (bills to be paid within 30 days)	($20,000)
Revolving loan fund balance:	($180,000)
Lump sum draw down:	($0)
Cash held as Section 108 security:	($0)
Balance:	$180,000
Annual CDBG entitlement:	$2,400,000
1/12 annual entitlement:	$200,000
Amount to be remitted to line of credit:	$0

No funds to be remitted because program income balance does not exceed 1/12 of annual entitlement.

11.9 Uniform Administrative Requirements

Key Topics in This Section	✓ Cost Principles – Cost reasonableness – Cost allowability – Cost allocation – Indirect costs ✓ Standards for Financial Management Systems – Internal controls – Budget controls – Accounting controls – Cash management ✓ Audits

	– Type/level of audit required – Scope of audits – Auditor selection/procurement – Audit costs – Audit review and resolution
Regulatory/Statutory Citations	§570.502, §84, §85
Other Reference Materials on This Topic	✓ 2 CFR Part 225 (formerly OMB Circular A-87) ✓ OMB Circular A-133 ✓ 2 CFR Part 230 (formerly OMB Circular 122) ✓ 2 CFR Part 220 (formerly OMB Circular A-21)

- ✓ The CDBG regulations require that grantees and subrecipients that are governmental entities or public agencies adhere to certain administrative requirements. These requirements include:
  - **2 CFR Part 225 (formerly OMB Circular A-87 "Cost Principles for State, Local and Indian Tribal Governments")**—These regulations establish requirements and standards for determining allowable costs under Federal grants.
  - **Specific provisions of 24 CFR Part 85** (see 570.502(a))—These regulations set forth uniform requirements for financial management systems, reports, and records and grant close-outs for grantees of Federal grant funding.
- ✓ Non-profit subrecipients are required to comply with the following uniform administrative requirements:
  - **2 CFR Part 230 (formerly OMB Circular A-122 "Cost Principles for Non-Profit Organizations" or, for institutions of higher education, OMB Circular A-21 "Cost Principles for Educational Institutions")**—These regulations establish the requirements for determining allowable costs under grants, contracts and other agreements with nonprofit organizations.
- ✓ **Specific provisions of 24 CFR Part 84** (see 570.502(b))—These regulations set forth uniform requirements for nonprofit organizations, including financial management systems, property standards, procurement standards, reporting, and record keeping. NOTE: 24 CFR Part 84 implements OMB Circular A-110.
- ✓ In addition, local governments ***and*** nonprofit organizations are required to comply with **OMB Circular A-133 "Audits of Institutions of States, Local Governments and Nonprofit Institutions".**

11.9.1 Cost Principles

Cost Allowability

- ✓ The regulations found at 2 CFR Part 225 (formerly OMB Circulars A-87 for state and local governments) and the regulations found at 2 CFR Part 230 (formerly A-122 for nonprofits) details the basic rules for determining whether a cost is allowable.

- ✓ To be allowable under CDBG (and other federal programs), a cost must meet the following general criteria:
  - Be necessary and reasonable for proper and efficient performance and administration of the federal award;
  - Be allocable to the federal award under the provisions of the OMB circulars (see below);
  - Be authorized or not prohibited under state or local laws or regulations;
  - Conform to any limitations or exclusions set forth in the OMB circulars, federal laws, terms and conditions of the federal award, or other governing regulations as to types or amounts of cost items;
  - Be consistent with policies, regulations and procedures that apply uniformly to both federal awards and other activities of the governmental unit;
  - Be accorded consistent treatment; a cost may not be assigned to the CDBG program as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the program as an indirect cost;
  - Be determined in accordance with generally accepted accounting principles;
  - Not be included as a cost or used to meet cost sharing or matching requirements of any other federal award in either the current or a prior period, except as specifically provided by federal law or regulation;
  - Be the net of applicable credits (that is, any credits such as discounts or price adjustments must be deducted from the total costs charged); and
  - Be adequately documented.
- ✓ The OMB circulars also contain a "selected" list of costs that are allowable or unallowable. However, the fact that an item of cost is not included does not mean it's unallowable. Rather the cost's allowability is determined by reference to the basic guidelines.

Cost Allocation

- ✓ As mentioned previously, costs charged to CDBG must also be allocable to the CDBG program. A cost is allocable if it:
  - Is treated consistently with other costs incurred for the same purpose in like circumstances (i.e., grantees/subrecipients must treat costs consistently for all grant programs); and
    - Is incurred specifically for the CDBG program;
    - Benefits both the CDBG program and other work and can be distributed in reasonable proportion to the benefits received; or
    - Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.
- ✓ Any costs allocable to a particular federal award or cost objective (such as CDBG) may not be charged to other federal awards to overcome funding deficiencies, to avoid restrictions imposed by law or the terms of the federal award, or for other reasons.

Indirect Costs – 2 CFR Part 225 (formerly OMB Circular A-87 for State and Local Governments)

- ✓ The regulations found at 2 CFR Part 225 (formerly OMB Circular A-87) requires that governmental entities support indirect costs with a cost allocation plan or an indirect cost proposal prepared in accordance with the circular. Indirect costs should be allocated in a manner which will result in the grant program bearing its fair share of total indirect costs.
  - A **central service cost allocation plan** is required if the local government has indirect costs resulting from centralized services that will be charged to federal awards.
    - A central service cost allocation plan, for the purposes of local governments, refers to a description of a process whereby services provided on a centralized basis (e.g., motor pools, computer centers, purchasing and accounting services) can be identified and assigned to benefited departments/agencies (e.g., the department/agency administering the CDBG program) on a reasonable and consistent basis.
    - Refer to Appendix C of 2 CFR Part 225 (formerly Attachment C of OMB Circular A-87 for additional information).
  - An **indirect cost proposal** is required if the local government has indirect costs resulting from centralized services that will be charged to federal awards and other indirect costs originating in various departments/agencies carrying out federal awards.
    - An indirect cost proposal is the documentation prepared by a governmental entity to substantiate its request for the establishment of an indirect cost rate. This rate, expressed in percentage terms, is applied to direct costs in order to determine the amount of reimbursement a grantee can obtain for indirect costs.
    - For instructions on preparing indirect cost proposals, refer to Appendix E of 2 CFR Part 225 (formerly Attachment E of OMB Circular A-87).

Indirect Costs – 2 CFR Part 230 (formerly OMB Circular A-122 - Nonprofits)

- ✓ In accordance with the regulations found at 2 CFR Part 230 (formerly OMB Circular A-122), there are three methods nonprofits are required to utilize for allocating indirect costs. Each method is applicable to certain specific circumstances.
  - Simplified allocation method:
    - Used when a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree.
    - The indirect cost rate is calculated by separating the organization's total costs for the base period (e.g., fiscal year) as either direct or indirect, and dividing the total allowable indirect costs by an equitable distribution base (total direct costs, direct salaries or other equitable distribution base).
  - Multiple allocation base method:
    - Used when major functions benefit in varying degrees from indirect costs.
    - Costs are separated into distinct groupings, and each grouping is then allocated to benefiting functions by means of a base which best measures relative benefits. An indirect cost rate must be developed for each grouping.

- Direct allocation method:
  - This method may be used for those nonprofits that treat all costs as direct costs *except* general administration and general expenses.
  - These joint costs are prorated individually as direct costs to cost objectives using a base most appropriate to the particular cost being prorated. The base must be established in accordance with reasonable criteria and must be supported by current data.

✓ Indirect cost rates determined through one of the three prescribed methods must be submitted to and approved by the federal agency that provides the largest dollar value of funds to the nonprofit.

✓ A written agreement is executed between the nonprofit and the approving federal agency signifying the approval of the proposed indirect cost rate.

11.9.2 Standards for Financial Management Systems

✓ In accordance with 24 CFR parts 85 and 84, grantees and subrecipients of CDBG funds must have financial management systems in place that comply with the following standards:

- Provide effective control over and accountability for all funds, property and other assets;
- Identify the source and application of funds for federally-sponsored activities, including records and reports that:
  - Verify the "reasonableness, allowability and allocability" of costs; and
  - Verify that funds have not been used in violation of any of the restrictions or prohibitions that apply to the federal assistance (through the use of budget controls and adequate accounting records).
- Permit the accurate, complete and timely disclosure of financial results in accordance with HUD reporting requirements or, for subrecipients, grantee reporting requirements.
- Minimize the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by the grantee or subrecipient.

Internal Controls

✓ Internal controls are the combination of policies, procedures, job responsibilities, personnel and records that together create accountability in an organization's financial system and safeguard its cash, property and other assets.

✓ Through its system of internal controls, an organization can ensure that:

- Resources are used for authorized purposes and in a manner consistent with applicable laws, regulations and policies;
- Resources are protected against waste, mismanagement or loss; and
- Information on the source, amount and use of funds are reliable, secured and up-to-date and that this information is disclosed in the appropriate reports and records.

✓ The basic elements of an internal control system include:

- An organizational chart setting forth the actual lines of responsibility of personnel involved in financial transactions.
- Written definition and delineation of duties among key personnel involved in financial transactions.
- An accounting policy and procedures manual that includes:
  - Specific approval authority for financial transactions and guidelines for controlling expenditures;
  - A set of written procedures for recording of transactions; and
  - A chart of accounts.
- Adequate separation of duties so that no one individual has authority over a financial transaction from beginning to end. In other words, one person should not have responsibility for *more than one* of the following functions:
  - Authorization to execute a transaction.
  - Recording of the transaction.
  - Custody of the assets involved in the transaction.
- Hiring policies ensuring that staff qualifications are commensurate with job responsibilities.
- Control over assets, blank forms and confidential documents so that these types of documents are limited to authorized personnel only.
- Periodic comparisons of financial records to actual assets and liabilities (i.e., reconciliation). In cases where discrepancies are found, corrective action must be taken to resolve such discrepancies.

Budget Controls

✓ Recipients and subrecipients of CDBG funds must have procedures in place to compare and control expenditures against approved budgets for CDBG-funded activities.

✓ A grantee or subrecipient must:

- Maintain in its accounting records (see below) the amounts budgeted for eligible activities;
- Periodically compare actual obligations and expenditures to date against planned obligations and expenditures, and against projected accomplishments for such outlays; and
- Report deviations from budget and program plans, and request approval for budget and program plan revisions.

Accounting Records

✓ Recipients and subrecipients of CDBG funds are required to have accounting records that sufficiently identify the source and application of CDBG funds provided to them.

- ✓ To meet this requirement, an organization's accounting system should include at least the following elements:
  - **Chart of accounts** - This is a list of account names and the numbers assigned to each of the account names. The names provide a description of the type of transactions that will be recorded in each account (e.g., an account titled "cash" denotes that only transactions affecting cash should be recorded in that account). The account number is required by most accounting software programs and is assigned to an account name to group similar types of accounts. For example, all asset accounts will begin with a "#1" and all liability accounts will begin with a "#2". A typical chart of accounts will generally include the following categories: assets, liabilities, net assets/fund balance, revenues and expenses.
  - **Cash receipts journal** - A cash receipts journal documents, in chronological order, when funds were received, in what amounts and from what sources.
  - **Cash disbursements journal** - A cash disbursements journal documents, in chronological order, when an expense was incurred, for what purpose, how much was paid and to whom it was paid.
  - **Payroll journal** - A payroll journal documents payroll and payroll related benefit expenses on salaries and benefits, including distinguishing between categories for regulatory purposes.
  - **General ledger** - A general ledger summarizes, in chronological order, the activity and financial status of all the accounts of an organization. Information is transferred to the general ledger after it is entered into the appropriate journal. Entries transferred to the general ledger should be cross-referenced to the applicable journal to permit the tracing of any financial transaction.
- ✓ All journal entries must be properly approved and supported by source documentation. Documentation must show that costs charged against CDBG were:
  - Incurred during the effective period of the agreement with HUD or, for subrecipients, with the grantee;
  - Actually paid out (or properly accrued);
  - Expended on eligible items; and
  - Approved by the appropriate official(s) within the organization.
- ✓ Source documentation must explain the basis of the costs incurred and the actual dates of the expenditure. For example:
  - Source documentation for payroll would include employment letters, authorizations for rates of pay and benefits and time and attendance records.
  - Source documentation on supplies would include purchase orders or purchase requisition forms, invoices from vendors, canceled checks made to vendors, and information on where the supplies are stored and the purpose for which they are being used.
- ✓ Recipients and subrecipients of CDBG funds must ensure that their accounting records include reliable, up-to-date information on the sources and uses of CDBG funds, including:

- Amount of federal funds received;
- Current authorization of funds;
- Obligations of funds;
- Unobligated balances;
- Assets and liabilities;
- Program income; and
- Actual expenditures broken down by the grant program and year for which the funds are derived and the activity on which the funds were used.

Cash Management

✓ Recipients and subrecipients are required to have procedures in place to minimize the amount of time that elapses between receipt of CDBG funds and the actual disbursement of those funds.

✓ This requirement is intended to curtail unnecessary drawdowns of CDBG funds and minimize the cost of financing the CDBG program by the federal government.

✓ There are three general methods available to transfer CDBG funds from the U.S. Treasury to grantees (or from the grantee to a subrecipient):

- **Reimbursement method** - The reimbursement method entails a transfer of grant funds to the grantee (or subrecipient) based on actual expenditures of the grantee prior to the receipt of CDBG funds. This method would only be used for CDBG grantees when HUD has imposed such payment method as a remedy for failure to comply with applicable requirements.
- **Cash advance method** - The cash advance method involves the transfer of CDBG funds to the grantee (or subrecipient) to meet obligations before actual cash disbursements have been made. This is the method used to fund most CDBG grantees.
- **Working capital method** - The subrecipient is advanced cash to meet its estimated disbursements for an initial period. After the initial period, the subrecipient will receive cash on a reimbursement basis. This method is used when the subrecipient lacks sufficient working capital. Note, however, that this method cannot be used if the reason for using it is the unwillingness or inability of the grantee to provide timely advances to the subrecipient to meet the subrecipient's actual cash disbursement.

✓ Requirements concerning cash management include the following:

- Recipients (and subrecipients) must include accurate information in drawdown requests.
- Funds drawn down erroneously must be returned. (This includes funds drawn down under the cash advance method where the expenditure of funds is delayed.)
- Disbursement of funds must occur in a timely manner. While there is no explicit time period, the general rule is that payment must take place within three business days of deposit of CDBG funds. If payment takes longer than three business days, written justification should be maintained in the files.

- If grant advances are placed in an interest-bearing account, interest income must be remitted to the U.S. Treasury. (However, interest amounts up to $100 per year may be retained by the grantee for administrative expenses.)
- Program income (other than program income deposited in a revolving fund) must be disbursed prior to the drawdown of additional funds from the Treasury (or, in the case of subrecipients, from the grantee).
- Program income in a revolving fund must be disbursed for the activity for which the fund was established before additional requests are made for new CDBG funds.

11.9.3 Audit Requirements

Type/Level of Audit Required

✓ States, local government and nonprofit organizations are required to comply with **OMB Circular A-133** "Audits of States, Local Governments and Non-profit Organizations".

✓ The type/level of audit required by the OMB circulars is based on the amount of federal financial assistance expended by an organization in any given year.

- CDBG grantees and subrecipients that expend $500,000 ($750,000 beginning Dec. 2014) or more in a year in Federal awards must have an audit conducted in accordance with **OMB Circular A-133** except when they elect to have a program-specific audit conducted
  - A **program audit** is an audit of one federal program (such as CDBG). A program-specific audit is allowed when the grantee or subrecipient expends federal awards under only one federal program.
  - A **single audit** is an audit that includes both an entity's financial statements and its federal awards (from all applicable federal programs).
- If a grantee or subrecipient expends less than $500,000 ($750,000 beginning Dec. 2014) a year in federal awards, it is exempt from the audit requirements for that year; however, records must be available for review or audit by appropriate officials of the federal agency, pass-through entity and the Government Accountability Office.

Scope of Audits

✓ Audits performed for grantees and subrecipients of federal funds must be performed by an independent auditor in accordance with Government Auditing Standards and must be conducted in accordance with the OMB circulars.

✓ Specifically, the audit will cover three areas:

- Financial statements;
- Internal control; and
- Compliance with applicable laws and regulations.

Audit Reports

✓ Following the completion of the audit, an audit report must be prepared. The audit report must contain at least the following:

- An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole;
- A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs;
- A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the grantee or subrecipient complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs; and
- A schedule of findings and questioned costs that includes a summary of the auditor's results, findings relating to the financial statements which are required to be reported in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States, and findings and questioned costs for Federal awards.

✓ The audit must be completed and report submitted to the Federal clearinghouse designated by OMB within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period. The grantee or subrecipient shall make copies available for public inspection.

✓ Copies of audit reports must be kept on file for a minimum of three years from the date of submission to the Federal clearinghouse designated by OMB.

✓ The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the grantee or subrecipient, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period.

- If there are unresolved audit issues at the end of this three-year period, the grantee or subrecipient should notify the auditor in writing to extend the retention period.

Auditor Selection/Procurement

✓ In arranging for audit services, grantees and subrecipients must follow the procurement standards found in 24 CFR Part 85 or 84, as applicable.

✓ Whenever possible, grantees and subrecipients shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

Audit Costs

- ✓ The costs of audits made in accordance with the applicable regulations are allowable charges to federal assistance programs.
- ✓ These charges can be treated as either a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars.
- ✓ The cost of any audit under OMB Circular A-133 not conducted in accordance with this part is unallowable. The cost of auditing a non-Federal entity which has Federal awards expended of less than $500,000 (750,000 beginning Dec. 2014) per year and is thereby exempted from having an audit conducted under this part is also not allowable. However, this does not prohibit a CDBG grantee from charging Federal awards for the cost of limited scope audits to monitor its subrecipients, provided the subrecipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by the CDBG grantee and address only one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

Pass-through Responsibilities

- ✓ The CDBG grantee, as a “pass-through entity” under OMB Circular A-133, must perform the following actions with respect to its subrecipients:
  - Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, and name of Federal agency. When some of this information is not available, grantee shall provide the best information available to describe the Federal award.
  - Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the grantee.
  - Monitor the activities of subrecipients as necessary to ensure that CDBG funds are used for authorized purposes in compliance with laws, regulations, and the provisions of the subrecipient agreement and that performance goals are achieved.
  - Ensure that a subrecipient expending $500,000 ($750,000 beginning Dec. 2014) or more in Federal awards during the subrecipient’s fiscal year has met the audit requirements of OMB Circular A-133 for that fiscal year.
  - Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.
  - Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.
  - Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

11.10 Change of Use

Key Topics in This Section	✓ Change of use requirements
Regulatory/Statutory Citations	§570.503, §570.505
Other Reference Materials on This Topic	

- ✓ The standards described in this section apply to real property within the grantee's control (including activities undertaken by subrecipients) that was acquired or improved, in whole or in part, using CDBG funds in excess of $25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after final close-out of the grant from which assistance to the property was provided.
- ✓ A grantee 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 grantee provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:
  - 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
  - The grantee determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify as meeting a National Objective, it may retain or dispose of the property for the changed use if the grantee's CDBG program is reimbursed 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.
  - Following the reimbursement of the CDBG program, the property no longer will be subject to any CDBG requirements.

CHAPTER 12: IDIS ONLINE AND CDBG

CHAPTER PURPOSE & CONTENTS

This chapter summarizes the key objectives, functions, data entry, and reporting requirements of the Integrated Disbursement and Information System (IDIS) Online. This chapter will not cover in detail all of the requirements of IDIS Online, but is meant to be a survey of various areas related to compliance and accurate reporting of accomplishments.

SECTION	TOPIC	PAGE
12.1	Overview of IDIS Online	12-1
12.2	Data Entry	12-3
12.3	Reporting	12-8

12.1 Overview of IDIS Online

✓ The Integrated Disbursement and Information System (IDIS) Online is the management information system used for all four CPD formula programs: CDBG, the HOME Investment Partnerships program, Emergency Solutions Grants (ESG), and Housing Opportunities for Persons with AIDS (HOPWA). The system is accessed through the HUD website and is secured by HUD-issued user IDs and passwords. The information entered into IDIS Online is instantly available to HUD. HUD aggregates the data at the national level to demonstrate program results and benefits of the four CPD formula grant programs.

✓ The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Objectives of IDIS Online ✓ Use of IDIS Online Throughout the Program Year
Other Reference Materials on This Topic	✓ OneCPD IDIS - https://www.onecpd.info/idis (links to training, reports, etc.)

12.1.1 Objectives of IDIS Online

✓ There are two key objectives of the Integrated Disbursement and Information System (IDIS) Online:

– First, it enables grantees to draw down CDBG funds.

– Second, IDIS Online is a data collection and reporting tool grantees use to record the results of CDBG-funded activities. IDIS Online is where all the data you collect on CDBG activities is reported to HUD, including the CPD Performance Measurement data elements.

- ✓ IDIS Online is the mechanism HUD uses to disburse grant funds to its CPD formula grantees. When a grantee is awarded a grant, the funds stay at the U.S. Treasury until the grantee is ready to expend the funds. When the grantee is ready to spend the grant funds, it uses IDIS Online to request a drawdown of its funds. Once the request is processed, the funds are wire-transferred, or disbursed, to the grantee's bank account. It is important to note that IDIS Online is a reporting system and not an accounting system. Local accounting systems must be used in addition to IDIS Online to ensure proper management of funds.
- ✓ IDIS Online also provides grantees with a mechanism to describe the projects and activities that used CDBG funds. The information captured by IDIS Online helps demonstrate to HUD that the activity was eligible and met a national objective. The system also collects accomplishment and performance measurement data and, therefore, plays an important role in the CPD Performance Measurement Initiative. By having all grantees use the system, the data are collected in a standard format that enables HUD to easily aggregate the data at a national level. IDIS Online collects, consolidates, and reports data on the results of CDBG-funded activities.

12.1.2 Use of IDIS Online throughout the Program Year

- ✓ The annual planning cycle can be divided into a planning phase at the start of the program year, a delivery phase, and a reporting phase at the end of the program year. At each phase, the grantee will perform different tasks in IDIS Online. While the tasks listed below are not exclusive to any phase, this is the order they are usually encountered.
  - Start of the Program Year: At the beginning of each program year a grantee submits an Action Plan to HUD. Grantees now have the option of submitting the Action Plan electronically through IDIS Online. The Action Plan contains a list of proposed projects that the grantee intends to undertake to meet the goals and objectives in their Strategic Plan. The grantee enters those projects in IDIS Online. Projects form the organizational framework for a grantee's IDIS Online information. Within the organizational framework of the projects, a grantee will provide more detailed data by adding one or more activities for each project into IDIS Online.
  - Program Year – Implementation: Throughout the program year the grantee will incur expenses and use IDIS Online to request drawdowns from its grant funds to pay for these expenses. The grantee will also use IDIS Online to report the receipt and use of program income. The grantee's primary focus as IDIS Online users and/or program staff is to ensure that data are accurate and that accomplishments are reported at least once a year. However, it is strongly recommended that data is reported as frequently as possible. If a grantee waits until the end of the year to enter data, not only will the workload be heavy at that point, but also there is an increased chance of errors in data entry due to the passage of time. Updating more frequently also provides HUD with more current data it can use to respond to various requests from stakeholders.
  - End of the Program Year – Reporting: At the end of the program year, the grantee will use IDIS Online to enter accomplishment data and performance measures and indicate which activities have been completed. Once the information is entered, the grantee can use IDIS Online to print out standardized reports that contain information that must be included in their annual report.

12.2 Data Entry

✓ Grantees must enter data on the activity level in the following steps: setting up, funding, drawing, and completing/reporting accomplishment data. Consistency of reporting on IDIS Online activities is crucial, and policies and procedures must be incorporated into day-to-day program management. The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Data Entry ✓ Key Data Fields ✓ Common IDIS Online Errors to Avoid
Regulatory/Statutory Citations	§570.507
Other Reference Materials on This Topic	✓ OneCPD IDIS – https://www.onecpd.info/idis ✓ OneCPD Ask A Question (for technical assistance requests): https://www.onecpd.info/ask-a-question/

12.2.1 Data Entry

✓ Grantees must enter data on several different levels within IDIS Online.

- **Projects**: A grantee will add a new project in IDIS Online for each project included in the Action Plan, unless that project is a continuation of one from previous years and has already been entered into IDIS Online. This ensures that there is a parallel structure between the Action Plan, IDIS Online, and the CAPER reports that will be generated from IDIS Online. Projects mainly serve an organizational purpose and do not capture detailed information. Projects only capture enough data to give HUD an understanding of how the proposed use of funds is eligible. Detailed data are captured at the activity level.
- **Activities**: To draw down funds and to capture detailed program related accomplishment data, a grantee will set up at least one activity under each project. Activities are the basic building blocks in IDIS Online. All funds are expended and all program accomplishments are reported at the activity level. For example, an economic development loan program must demonstrate that each business assisted with CDBG met a national objective on its own. In this case, each loan should be reported as a separate activity in IDIS Online. A project may have one or more activities.
- **Activity Funding**: Once the basic data are entered for an activity into IDIS Online, the grantee can commit CDBG funds to the activity. This commitment process ensures that a grantee does not budget more money than what is available. Once funds are committed to one activity, those funds are shown as unavailable for all other activities.
- **Drawdowns**: A drawdown is a request for payment against a grantee's line of credit. Grantees create a voucher in IDIS Online to draw down funds. Grantees draw funds as required to pay for work that has occurred for an activity. Once the grantee creates and approves a drawdown voucher in IDIS Online, HUD will process the voucher request and wire-transfer the requested amount to the grantee in two to three business days.

12.2.2 Key Data Fields

- ✓ The combination of an activity's matrix code, national objective, and accomplishment type play a key role in determining the type of accomplishment data required for the activity. It is important to note that not all combinations are allowed. The reference document entitled "Guidance for Reporting CDBG Accomplishments in IDIS" provides guidance on what combinations are allowed. An updated version of this document based upon IDIS Online is at the end of the chapter as Exhibit 12-1.

Matrix Codes

- ✓ The matrix code indicates how the activity is eligible under CDBG regulations. It is an important data element that grantees must know at the beginning of the program year. The matrix code generally identifies the purpose for which assistance was provided and determines the type of accomplishment units that should be reported.
- ✓ Assigning correct matrix codes and national objectives to activities is important, not only in recording the eligibility of activities, but also in accurately reporting accomplishment data.

IDIS matrix code examples:

- ✓ 03A - Senior Centers
- ✓ 03C - Homeless Facilities (not operating costs)
- ✓ 14A - Rehab single unit residential
- ✓ 18C – Micro-enterprise assistance

- ✓ When HUD aggregates accomplishment data to the national level to fulfill reporting requirements to Congress or provide requested information, data in IDIS Online are generally aggregated by matrix code. Therefore, grantees across the country must be consistent in uniformly applying matrix codes to activities.
- ✓ Grantees should choose the most specific code that relates to the activity they are funding. Grantees should avoid using general matrix codes when more specific codes have been provided, such as public services as 05, versus 05U for housing counseling (please note that this is a relatively new code).
- ✓ One of the most common errors in the use of matrix codes in IDIS Online is to use the matrix codes for Homeownership Assistance, 13 and 05R, for activities that solely provide housing counseling. Homeownership Assistance activities provide financial assistance to homebuyers and may provide housing counseling services for those homebuyers. However, the accomplishment data required for these activities are the number of households receiving financial assistance, not the number receiving housing counseling. In the Accomplishment Detail screens for these activities, HUD asks, of those homebuyers receiving assistance, how many received housing counseling, but that is the only place the number of households receiving housing counseling is reported for Homeownership Assistance Activities.
- ✓ Grantees should check with HUD if they are unsure about the choosing the most appropriate IDIS matrix code.
- ✓ A copy of the current IDIS matrix codes is attached to this chapter.

National Objectives

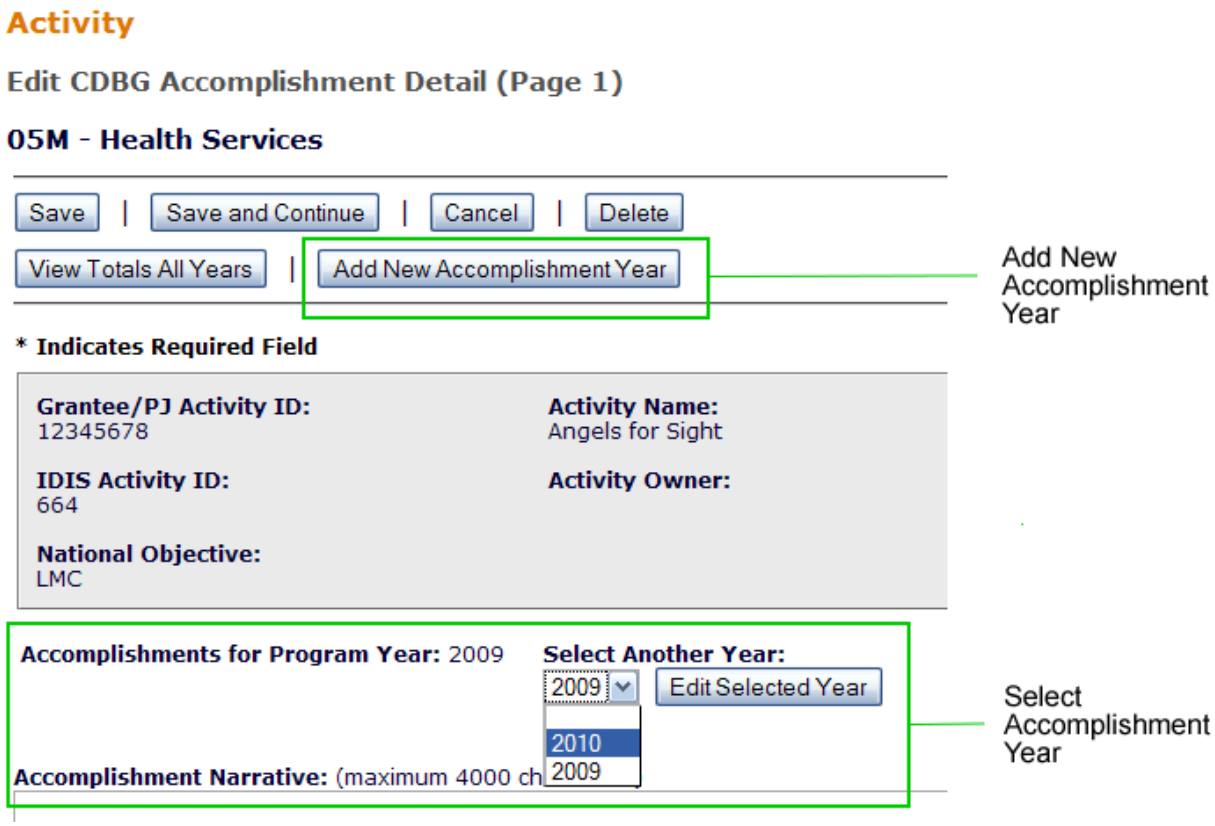
- ✓ All CDBG-assisted activities, except for planning and administrative activities subject to the grantee's administrative cap, must meet a national objective. One of the key functions of IDIS Online is to demonstrate how the activity met a national objective. It is important to note that national objectives will require different types of data to demonstrate compliance. Therefore,

the IDIS Online data collection screens will change depending on the national objective selected. Grantees are encouraged to preview all of the data collection screens for the selected national objective at the beginning of the year to understand what type of data is required.

- ✓ There are three national objectives under CDBG, including:
  - Benefit to LMI persons (e.g., area benefit, limited clientele, jobs, and housing).
  - Prevent or eliminate slums and blight on an area or spot basis (note that the Urban Renewal approach to Slums and Blight is used by entitlements but is not applicable to the state program).
  - Meet an urgent need.
- ✓ In addition, a minimum of 70% of the grantee's CDBG program expenditures must meet the LMI benefit national objective.

Report Year / Program Year

- ✓ All accomplishment data reported in IDIS Online is assigned to a specific year. IDIS Online uses two terms, Report Year and Program Year, interchangeably throughout the screens; the two terms are synonymous.
- ✓ It is up to the grantee to ensure that accomplishments are reported under the correct year. When a CDBG activity is open for more than one program year, the grantee must add a new program year on CDBG Accomplishment Detail (Page 1) by clicking the "Add New Accomplishment Year" button. All of the data reported on Accomplishment Detail (Page 1) and Accomplishment Detail (Page 2) refer to a specific program year.
- ✓ To the extent possible, the system will verify the accuracy of accomplishment information. For example, the system will compare the total beneficiaries reported in the Race/Ethnicity section to the total beneficiaries reported in the Income Levels section. If they do not equal, the system will display an error and will not allow the user to save the data until the error is corrected.



12.2.3 Common IDIS Online Errors to Avoid

✓ HUD has published guidance for grantees which addresses the types of common errors encountered and identifies the steps that should be taken to correct them – or prevent them in the first place. An updated version of this document, Guidance for Improving the Quality of CDBG Accomplishment Data in IDIS Online, may be found at the end of this chapter.

✓ In general, grantees should avoid the following common IDIS Online errors:

- **Data entry is late and data is inconsistent across activities.**
- **Information is incomplete**. It is important to note that missing, inaccurate, and incorrect data result in reports that present a misleading—and sometimes negative—picture of program accomplishments. Incorrect IDIS Online data reflect unfavorably on the CDBG program because HUD cannot accurately report on program performance. Incomplete data results in an undercounting of CDBG achievements which results in minimizing the program contributions to meeting the community development needs of LMI persons.
- **Accomplishment Information is duplicated.** Grantees should ensure that accomplishment information is not duplicated across multiple activities.
- **Leveraged funds data is missing or inaccurate**. Ensure that all leveraged funds are entered on the *correct* line on CDBG Setup Detail (Page 2). The CDBG amount on this screen is a protected field. Several grantees, unable to enter their CDBG funds on this line, have entered their CDBG funding amount on the Section 108 line, even though they do not have a 108 loan guarantee. This has resulted in inaccurate leveraging data for the CDBG program.

- **Beneficiary income data is inaccurate.** Some grantees, solely to minimize data entry, report the income level of all the beneficiaries of an activity as "moderate." This practice conveys the impression in reports that CDBG grantees are ignoring the program's legislative mandate to assist extremely low- and low-income persons and households. Report income level data in the appropriate categories, including extremely low, low, moderate, and non-low/moderate on CDBG Accomplishment Detail (Page 1).
- **Income level data for presumed benefit activities is missing**. The Income Levels data on CDBG Accomplishment Detail (Page 1) must be completed for presumed benefit activities, even though grantees are not required to obtain income records for those beneficiaries. The CDBG program has provided guidance for reporting Income categories that should be used for presumed benefit groups.
  - However, if a grantee believes that another income level is more appropriate for any presumed benefit group in their community, the grantee should use that income category, rather than those suggested by HUD.
- **Counts of jobs created/retained are inaccurate**. In a given program year, do not report the same jobs under more than one activity. Do not report the same jobs in multiple program years. In other words, only report one job, one time. Report all the jobs created/retained; do not report only the LMI jobs or the total population of a jurisdiction.
- **Accomplishment data is missing for activities tracking activity delivery costs.** Ensure that accomplishments are reported for Economic Development activities (18*) tracking only activity delivery costs and Rehabilitation Administration (14H) activities where CDBG funds are used only to run loan or grant programs and funds other than CDBG are used to actually carry out the activity.
- **For reasons of privacy, grantees should not use the names of persons/households receiving assistance in the Activity Name field.** This problem most often occurs in housing rehabilitation activities.
- **Enter the correct address.** When entering an address for an activity, except for administrative activities, specify the activity's physical location, not P.O. boxes or the address of the government agency administering the activity, in the Address/Location field. For administrative activities, enter the address of the organization administering the activity.
- **Grantees should report on only one assisted business for each activity that provides direct financial assistance to businesses.** Set up a separate activity for each business receiving direct economic development assistance under matrix code 18A or 18C. If more than one business is reported in a single activity, the CDBG program cannot determine whether each business has met a national objective.

12.3 Reporting

✓ The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ IDIS Online Reports ✓ Grantee Reports
Regulatory/Statutory	§570.507

Citations	
Other Reference Materials on This Topic	✓ OneCPD IDIS User Guide: ✓ https://www.onecpd.info/resource/2533/idis-online-reports-user-guide/ ✓ Guidance for Reporting CDBG Accomplishments and Performance Measurement in IDIS: - https://www.onecpd.info/resource/3085/guidance-for-reporting-cdbg-accomplishments-performance-measures-idis/

12.3.1 IDIS Online Reports

✓ Grantees can run a variety of reports in IDIS Online to ensure data is accurate and complete for their activities. IDIS Online includes a new, more intuitive reporting module that allows the user to quickly generate readable reports.

✓ Grantees should review the following key CDBG reports at least annually and more often as possible.

- **The PR03: Grantee Performance Report** provides comprehensive information about each CDBG activity which was open and had draws during a program year.
- **The PR06: Summary of Consolidated Plan Projects for Program Year ####** tracks progress in implementing projects identified in the action plan.
- **The PR23: Summary of Accomplishments** presents data on CDBG activity counts and disbursements. It also contains data on CDBG accomplishments. This report satisfies the specific CDBG public participation requirements to show the number of persons served for public services and the number of public facilities and improvement projects assisted and completed.
- **The PR26: CDBG Financial Summary Report** provides information on the CDBG resources available and expenditures incurred for a specified program year. The expenditures are summarized to determine the percent expended for LMI, planning/ administration, and public service activities.
- **The PR:59: PR59: CDBG Activities at Risk Dashboard** displays all the activities which are at-risk or pending at-risk by the grantee. At risk includes: Open Activities Without Draws for more than 12 Months, Open Activities Without Accomplishments* for more than 3 Years, and Open Activities Without Accomplishments* and at least 80% Drawn. Pending At-Risk includes: Open Activities Without Draws for more than 9 Months, Open Activities Without Accomplishments* for more than 2 Years and 9 Months, and Open Activities Without Accomplishments* and at least 66% Drawn.

✓ In addition there are performance measurement reports now available within IDIS Online.

- **The PR83: CDBG Performance Measures Report** displays all CDBG performance data by objective and outcome for public facilities/improvements, public service, housing, homeless, and economic development activities for a particular program year.
- **The PR84: CDBG Strategy Area, CDFI, and Local Target Area Report** displays CDBG performance measurement data for these areas.

- **The PR85: Housing Performance Report** displays a summary of Housing Units rehabbed and Dollars expended by Objective and Outcome. These data are for activities completed during a selected program year.

Exhibit 12-1: Guidance for Improving the Quality of CDBG Accomplishment Data in IDIS Online

HUD uses IDIS Online data on a regular and ad hoc basis to report to entities that evaluate and fund the CDBG Program, including Congress, the Office of Management and Budget, the General Accounting Office, the Office of the Inspector General, as well as other stakeholders. Missing, inaccurate, and incorrect data result in reports that present a misleading—and sometimes negative—picture of program accomplishments. Incorrect IDIS Online data reflect unfavorably on the CDBG program because HUD cannot accurately report on program performance accomplishments.

While many data errors can be prevented by system edits, others cannot. As an example, consider CDBG matrix codes. IDIS Online cannot require users to input the correct code (e.g., 03D instead of 03 for the construction of a youth center).

This guidance addresses the types of errors that edits cannot prevent and identifies the steps that should be taken to correct them – or prevent them in the first place. For more detailed guidance, download the latest version of the "Guidance on Reporting CDBG Accomplishments in IDIS Online/Sample Accomplishment Reports" https://www.onecpd.info/resource/3085/guidance-for-reporting-cdbg-accomplishments-performance-measures-idis/

Problem	Solution
Timely reporting of accomplishment data. When accomplishment data are not entered on a regular basis, the CDBG program does not have up-to-date information on what has been achieved. This results in undercounting the program's accomplishments. This is due, in part, to the infrequent entry of data in IDIS Online by some grantees.	Enter accomplishment data as frequently as possible. Annual reporting is required and HUD has encouraged grantees to enter accomplishments on a quarterly basis, but the value of more frequently reporting of accomplishments cannot be overemphasized. The only exception to quarterly/annual reporting is public facilities, which should not be reported until the facility is complete.
Incorrect matrix codes When CDBG aggregates IDIS Online data to the national level, it is generally by matrix code. Therefore, grantees across the country must be consistent in uniformly applying matrix codes to activities.	Grantees should review all matrix codes to ensure they are accurate. However, the most common problems when selecting the matrix code for an activity are: • Codes 03 and 05: Avoid these "general" public facility and public service matrix codes. Use the most specific 03* or 05* code that accurately describes how CDBG funds are being used. • Code 05U, Housing Counseling: Use this new matrix code for housing counseling provided as an independent public service (i.e., not as part of another eligible housing activity). • Code 05R, Homeownership Assistance (not direct): Use this matrix code when downpayment assistance is provided as a public service. If housing counseling is

Problem	Solution
	provided to those applying for downpayment assistance, the counseling is considered part of the homeownership program. Note that under the low/mod national objective, assistance under this category must meet the housing national objective. Therefore, unless the assistance is provided by a CBDO or 105(a)(15) in a NRSA/CRSA, it is subject to the public service cap and only low/mod income households may be assisted. But if provided by a CBDO in a NRSA, housing units for which CDBG funds are obligated in a program year may be aggregated and treated as a single structure for purposes of meeting the housing national objective (i.e., only 51% must be occupied by low/mod households). • Code 13, Direct Homeownership Assistance: Use this matrix code when low- and moderate-income households are provided homeownership assistance as authorized under 105(a)(24). Types of homeownership assistance eligible under this category: subsidize interest rates and mortgage principal; finance acquisition of housing occupied by low/mod households; acquire mortgage guarantees; provide up to 50% of downpayment; and pay reasonable closing costs. If housing counseling is provided to households receiving homeownership assistance, the counseling is considered part of the homeownership program. • Code 14H, Rehab Administration: This code is to be used for the costs of running a rehab program — i.e., activity delivery costs associated with actual rehabilitation activities. It is *not* to be used for costs unrelated to running a rehab program, such as tenant/landlord counseling, planning and development of research studies on foreclosures, etc. (Note: if costs under this matrix code are for a housing rehab program, the correct low/mod national objective is LMH, *not* LMA.)
Missing or inaccurate leveraged funds data	Ensure that all leveraged funds are entered on the *correct* line in the Funding Sources on the CDBG Setup Detail (Page 2). The CDBG Funds field is protected from input because it is populated by the system once CDBG funds are committed through the Activity Funding option. **Do not** enter the amount of CDBG funds in the Section 108 Loan Guarantee field on the CDBG Setup Detail. Grantees should delete CDBG amounts that have been entered in the Section 108 field *unless* the amount entered does represent Section 108 loan proceeds received for

Problem	Solution
	the activity.
Inaccurate beneficiary income data on the Accomplishment Detail screen on (Page 1). Some grantees, solely to minimize data entry, report the income level of all the beneficiaries of an activity as "moderate." This practice conveys the impression in reports that CDBG grantees are ignoring the program's legislative mandate to assist extremely low- and low-income persons and households.	Report income level data in the appropriate categories (extremely low, low, moderate, and non-low/moderate) on the Accomplishment Detail screen on (Page 1).
Inaccurate counts of jobs created and retained Analysis of the jobs data indicates that some grantees are reporting the same jobs multiple times.	Follow these guidelines to avoid overcounting/duplication of jobs: • In a given program year, do not report the same jobs under more than one activity. This type of double-counting often occurs when activity delivery costs are tracked in a separate activity. When this is the case, the job creation and retention information should not be completed for the activity tracking the activity delivery costs. Grantees should instead associate this activity to the activity where the jobs are reported by entering "Y" in the "Will accomplishments be reported at another activity?" field on the CDBG Setup Detail (Page 1) screen. • Do not report the same jobs in multiple program years. • Report only the number of jobs created/retained; do not report on the LMI population or the total population of a jurisdiction.
Missing or incomplete Performance Measurement (PM) data	In addition to completing the Accomplishment Detail screens, be sure to fill in the applicable special attributes fields (e.g., Colonia, Brownfield Activity, Historic Preservation Area, Strategy Area) on the CDBG Setup Detail (Page 1) screen. Review the PR83, PR84, and PR85 reports to determine the general level of Performance Measurement data that has been input.
Activity name on the Add/Edit Activity screen and Address data on the CDBG Setup Detail (Page 1) screen.	For reasons of privacy, grantees should not use the names of assisted persons/households as the Activity Name. Except for administrative activities, specify the activity's physical location (no P.O. boxes) in the Address field. For administrative activities, enter the address of the organization administering the activity.

Problem	Solution
Missing income level data for presumed benefit activities The Income Levels data on the CDBG Accomplishment Detail (Page 1) screen must be completed for presumed benefit activities, even though grantees are not required to obtain income information for those beneficiaries.	Report the number of persons benefiting under the following income categories unless there is information to support reporting them under a different income category: Abused children — Extremely low income Battered spouses — Low income Severely disabled adults — Low income Homeless persons — Extremely low income Illiterate adults — Low income Persons with AIDS — Low income Migrant farm workers — Low income Elderly — If assistance is to acquire, construct, convert, and/or rehabilitate a senior center or to pay for providing center-based senior services, report the beneficiaries as moderate income If assistance is for other services (not center-based), report the elderly beneficiaries as low income If an activity serves a combination of these groups, identify the number in each group and report those numbers under the appropriate income levels.
Economic Development (18*) activities reporting more than one business assisted The fact that the “Assistance to Businesses” fields allows grantees to report more than one business assisted does not mean that assistance to individual businesses under 570.203(b) [matrix code 18A] and 570.201(o) [matrix code 18C] may be aggregated in one activity. Unless the assisted activity is one identified at 570.208(a)(4)(vi) or 570.483(b)(4)(vi) for which job aggregation is allowed, each business assisted under matrix code 18A and 18C must be reported	Set up a separate activity for each business receiving direct economic development assistance under matrix code 18A or 18C.

Problem	Solution
separately.	
Missing accomplishment data for activity delivery cost activities with a matrix code of 18* or 14H	Ensure that accomplishments are reported for Economic Development (18*) and Rehab. Admin (14H) activity delivery cost activities, i.e., activities where CDBG funds are used to run loan/grant programs, ***if*** CDBG is not used to make the loans/grants. (If CDBG is also used to make the rehab or economic development loans/grants, grantees should answer "Y" in the "Will accomplishments be reported at another activity?" field on the CDBG Setup Detail (Page 1) screen.)

IDIS Matrix - CDBG Eligibility Activity Codes and National Objectives

Matrix Code Key		National Objective Codes (N = Not Allowed)														
Code	Eligible Activity	LMA	LMAFI	LMASA	LMC	LMCMC	LMCSV	LMH	LMHSP	LMJ	LMJFI	LMJP	SBA	SBS	SBR	URG
01	Acquisition of Property - 570.201(a)					N	N				N					
02	Disposition - 570.201(b)					N	N				N			N		
03	Public Fac. & Impvm'ts - 570.201(c)					N	N									
03A	Senior Centers	N				N	N	N	N							
03B	Handicapped Centers	N				N	N	N	N							
03C	Homeless Facilities (not operating costs)	N				N	N	N	N							
03D	Youth Centers	N				N	N	N	N							
03E	Neighborhood Facilities					N	N	N	N							
03F	Parks, Recreational Facilities		N	N		N	N	N	N	N		N				
03G	Parking Facilities					N	N	N	N							
03H	Solid Waste Disposal Improvements					N	N									
03I	Flood Drainage Improvements					N	N									
03J	Water/Sewer Improvements					N	N									
03K	Street Improvements					N	N									
03L	Sidewalks					N	N									
03M	Child Care Centers	N				N	N	N	N							
03N	Tree Planting					N	N		N							
03O	Fire Station/Equipment		N	N	N	N	N	N	N	N		N				
03P	Health Facilities					N	N	N	N							
03Q	Abused and Neglected Children Facilities	N				N	N	N	N							
03R	Asbestos Removal					N	N	N	N							
03S	Facilities for AIDS Patients (no op'ting costs)	N				N	N	N	N							
04	Clearance, Demo, Remediate - 570.201(d)					N	N				N					
04A	Cleanup of Contaminated Sites					N	N				N					
05	Public Services - 570.201(e)		N	N		N		N	N	N	N	N		N	N	
03T	Operating Costs Homeless/AIDS Patients	N	N	N		N	N	N	N	N	N	N		N	N	
05A	Senior Services	N	N	N		N		N	N	N	N	N		N	N	
05B	Handicapped Services	N	N	N		N		N	N	N	N	N		N	N	
05C	Legal Services		N	N		N		N	N	N	N	N		N	N	
05D	Youth Services	N	N	N		N		N	N	N	N	N		N	N	
05E	Transportation Services		N	N		N		N	N	N	N	N		N	N	
05F	Substance Abuse Services		N	N		N		N	N	N	N	N		N	N	
05G	Battered and Abused Spouses	N	N	N		N		N	N	N	N	N		N	N	
05H	Employment Training		N	N		N		N	N	N	N	N		N	N	
05I	Crime Awareness		N	N		N		N	N	N	N	N		N	N	
05J	Fair Housing Activities - Subject to Public Service Cap		N	N		N		N	N	N	N	N		N	N	
05K	Tenant/Landlord Counseling	N	N	N		N		N	N	N	N	N		N	N	
05L	Child Care Services	N	N	N		N		N	N	N	N	N		N	N	
05M	Health Services		N	N		N		N	N	N	N	N		N	N	
05N	Abused and Neglected Children	N	N	N		N		N	N	N	N	N		N	N	
05O	Mental Health Services		N	N		N		N	N	N	N	N		N	N	
05P	Screening for Lead Based Paint/Lead Hazards	N	N	N		N		N	N	N	N	N		N	N	
05Q	Subsistence Payments - 570.207(b)(4)	N	N	N		N		N	N	N	N	N		N	N	
05R	Homeownership Assistance (not direct)	N	N	N	N	N				N	N	N		N	N	
05S	Rental Housing Subsidies	N	N	N	N	N				N	N	N		N	N	
05T	Security Deposits	N	N	N	N	N				N	N	N		N	N	
05U	Housing Counseling	N	N	N		N	N	N	N	N	N	N	N	N	N	N
05V	Neighborhood Cleanups		N	N	N	N		N	N	N	N	N		N	N	
05W	Food Banks		N	N		N		N	N	N	N	N		N	N	
06	Interim Assistance - 570.201(f)		N	N	N	N	N	N	N	N	N	N			N	
07	Urban Renewal Completion - 570.201(h)					N	N				N		N	N		N
08	Relocation - 570.201(i)					N	N				N					
09	Rental Income Loss - 570.201(j)					N	N				N					
11	Privately Owned Utilities - 570.201(l)					N	N				N					
12	Construction of Housing - 570.201(m)	N	N	N	N	N	N			N	N	N		N		
13	Homeownership Direct - 570.201(n)	N	N	N	N	N	N			N	N	N	N	N	N	N

Matrix Code Key		National Objective Codes (N = Not Allowed)														
Code	Eligible Activity	LMA	LMAFI	LMASA	LMC	LMCMC	LMCSV	LMH	LMHSP	LMJ	LMJFI	LMJP	SBA	SBS	SBR	URG
14A	Rehab; Single-Unit Res. - 570.202	N	N	N	N	N	N			N	N	N				
14B	Rehab; Multi-Unit Residential	N	N	N	N	N	N			N	N	N				
14C	Public Housing Modernization	N	N	N	N	N	N			N	N	N				
14D	Rehab; Other than Public-Owned Residential Blds	N	N	N	N	N	N			N	N	N				
14E	Rehab. Pub./Pvt.-Comm'/Indust' - 570.202(a)(3)					N	N	N	N		N					
14F	Energy Efficiency Improvements	N	N	N	N	N	N			N	N	N				
14G	Acquisition for Rehabilitation	N	N	N	N	N	N			N	N	N				
14H	Rehabilitation Administration - 570.202(b)(9)					N	N				N					
14I	Lead-Based Paint Abtm't - 570.202(f)	N	N	N	N	N	N			N	N	N				
14J	Housing Svc's - HOME Prog. - 570.201(k)	N	N	N	N	N	N			N	N	N	N	N	N	N
15	Code Enforcement - 570.202(c)		N	N	N	N	N	N	N	N	N	N		N		
16A	Residential Historic Preservation	N	N	N	N	N	N			N	N	N				N
16B	Non-Residential Historic Preservation					N	N	N	N		N					N
17A	ED Acquisition by Recipient - 570.203(a)					N	N	N	N							
17B	CI Infrastructure Development					N	N	N	N					N		
17C	CI Building Acq., Construction, Rehabilitation					N	N	N	N		N					
17D	Other Commercial/Industrial Improvements					N	N	N	N		N					
18A	ED Assistance to For-Profits - 570.203(b)				N	N	N	N	N		N			N		
18B	ED Administration & TA - 570.203(c)				N	N		N	N		N			N		
18C	Micro-Enterprise Assist. - 570.201(o)						N	N	N		N			N		
19C	Nonprofit Capacity Building - 570.201(p)															
19D	Assist. Higher Educ. Inst. - 570.201(q)															
19E	Operation and Repair of Foreclosed Property		N	N	N	N	N			N	N	N	N	N	N	N
19F	Planned Repayments of Sec.108 Loans	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
19G	Unplanned Repayments of Sec.108 Loans	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
19H	State CDBG Technical Assistance to Grantees	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
20	Planning-Ent. Com'ties - 570.205	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
20A	State Planning															N
21A	General Program Admin. - 570.206	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21B	Indirect Costs	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21C	Public Information	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21D	Fair Housing Activity (subject to Admin. cap)	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21E	Submissions or Applications for Federal Programs	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21H	CDBG Funding of HOME Admin.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21I	CDBG Funding of HOME CHDO Operating Costs	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21J	State Administration Costs	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
22	Unprogrammed Funds	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
23	Tornado Shelters - Private Mobile H Parks		N	N	N	N	N	N	N	N	N	N	N	N	N	N
24A	Payment of interest on Section 108 loans	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
24B	Payment of costs of Section 108 financing[1]															
24C	Debt service reserve - Section 108	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N

Footnote 1: Regarding Matrix code 24B, Payment of costs of Section 108 Financing. The use of either grant or loan funds for the payment of fees associated with a Section 108 loan is treated as payment of activity delivery costs; therefore, any 24B activity should be linked to the corresponding activity funded with the Section 108 Loan for the purposes of reporting National Objective and accomplishments

Objective Key		Entitlements	States
LMA	Low- and moderate-income (Low/Mod) Area Benefit	570.208(a)(1)	570.483(b)(1)
LMAFI	Low/Mod Area Benefit CDFI	570.208(d)(6)(i)	570.483(e)(4)
LMASA	Low/Mod Area Benefit NRSA	570.208(d)(5)(i)	570.483(e)(5)
LMC	Low/Mod Limited Clientele	570.208(a)(2)	570.483(b)(2)
LMCMC	Low/Mod Limited Clientele Microenterprise Development	570.208(a)(2)(iii)	570.483(b)(2)(iv)
LMCSV	Low/Mod Limited Clientele, Job Service Benefit	570.208(a)(2)(iv)	570.483(b)(2)(v)
LMH	Low/Mod Housing	570.208(a)(3)	570.483(b)(3)
LMHSP	Low/Mod Housing, CDFI or NRSA	570.208(d)(5)(ii) & (d)(6)(ii)	570.483(e)(5)
LMJ	Low/Mod Job Creation or Retention	570.208(a)(4)	570.483(b)(4)
LMJFI	Low/Mod Job Creation/Retention, Public Facility/Improvement	570.208(a)(4)(vi)(F)	570.483(b)(4)(vi)(F)
LMJP	Low/Mod Job Creation or Retention, Location Based	570.208(a)(4)(iv)(B)	570.483(b)(4)(iv)(B)
SBA	Slum and Blight Area	570.208(b)(1)	570.483(c)(1)
SBS	Slum and Blight Spot	570.208(b)(2)	570.483(c)(2)
SBR	Slum and Blight Urban Renewal/Planning Activities (States)	570.208(b)(3)	570.483(c)(3)
URG	Urgent Needs	570.208(c)	570.483(d)

CHAPTER 13: PERFORMANCE MEASUREMENT, REPORTING, RECORDKEEPING AND MONITORING

CHAPTER PURPOSE & CONTENTS

This chapter provides grantees with an overview of three primary aspects of ensuring and documenting compliance with program rules and requirements—monitoring, reporting and recordkeeping.

SECTION	TOPIC	PAGE
13.1	Performance Measurement	13-1
13.2	Reporting	13-4
13.3	Recordkeeping	13-7
13.4	Monitoring	13-15

13.1 Performance Measurement

The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	Objectives Outcomes Indicators
Regulatory/Statutory Citations	Section 104(b)(4), Section 104(e) §570.507, §570.900
Other Reference Materials on This Topic	Federal Register Notice, March 7, 2006 Performance Measurement website: http://www.hud.gov/offices/cpd/about/performance/

13.1.1 Background Overview

Performance measurement is an organized process for gathering information to determine how well programs and activities are meeting established needs and goals.

- ✓ The performance measurement system was developed to enable HUD and CPD grantees to use a standardized methodology and system to measure the outcomes of CDBG and the other CPD formula grant programs, HOME, ESG and HOPWA.
- ✓ For grantees, the system provides a framework for classifying activities in their Consolidated Plans and for reporting specific data elements. The information provided by grantees will enable HUD to report on the outcomes of the four CPD formula grant programs nationally.

- ✓ There are three main components to the CPD Outcome Performance Measurement System:
  - Objectives;
  - Outcomes; and
  - Indicators.

13.1.2 Objectives

Objectives closely mirror the statutory objectives of each program. The objectives are framed broadly to capture the range of community impacts that occur as a result of program activities. The CPD Outcome Performance Measurement System offers three possible objectives for each activity.

- ✓ **Creating Suitable Living Environments** relates to activities that are designed to benefit communities, families, or individuals by addressing issues in their living environment. This objective relates to activities that are intended to address a wide range of issues faced by LMI persons, from physical problems with their environment, such as poor quality infrastructure, to social issues such as crime prevention, literacy, or elderly health services.
- ✓ **Providing Decent Housing** covers the wide range of housing activities that could be undertaken with CDBG funds. This objective focuses on housing activities where the purpose is to meet individual family or community housing needs. It does not include programs where housing is an element of a larger effort to make community-wide improvements, since such programs would be more appropriately reported under Suitable Living Environments.
- ✓ **Creating Economic Opportunities** applies to activities related to economic development, commercial revitalization, or job creation.

13.1.3 Outcomes

The program outcome helps further refine the grantee's objective and is designed to capture the nature of the change or the expected result of the objective that a grantee seeks to achieve. Outcomes correspond to the question "What is the **type** of change the grantee is seeking? Or what is the expected result of the activity?" The CPD Outcome Performance Measurement System provides three outcomes:

- ✓ **Availability/Accessibility** applies to activities that make services, infrastructure, public services, public facilities, housing, or shelter available or accessible to LMI people, including persons with disabilities. In this category, accessibility does not refer only to physical barriers, but also to making the basics of daily living available and accessible to LMI people where they live.
- ✓ **Affordability** applies to activities that provide affordability in a variety of ways to LMI people. It can include the creation or maintenance of affordable housing, basic infrastructure hook-ups, or services such as transportation or day care. Affordability is an appropriate objective whenever an activity is lowering the cost, improving the quality, or increasing the affordability of a product or service to benefit a low-income household.
  - **Example #1:** A low interest loan program might make loans available to LMI microenterprise businesses at 1% interest, which is far below the market rate. This program lowers the cost of the loan, enabling entrepreneurs to start businesses. As a result, the program makes financing more affordable.

- **Example #2:** A subsidized day care program that provides services to LMI persons/families at lower cost than unsubsidized day care.

✓ **Sustainability** applies to activities that are aimed at improving communities or neighborhoods, helping to make them livable or viable by providing benefit to persons of LMI or by removing or eliminating slums or blighted areas, through multiple activities or services that sustain communities or neighborhoods.

13.1.4 Indicators

There are four common indicators that are relevant for most activities. The system requires the grantee to report on these data elements for nearly all program activities.

✓ Amount of money leveraged from other Federal, state, local, and private sources, per activity.

✓ Number of persons, households, businesses, units or beds assisted, as appropriate.

✓ Income levels of persons or households by: 30 percent, 50 percent or 80 percent of area median income.

- For CDBG activities that benefit an area, the data reported for that activity will need to show the total number of persons served and the percentage of LMI individuals served.

✓ Race, ethnicity, and disability data for activities that currently report these data elements.

- Under CDBG, race/ethnicity data is required only when the activity is specifically undertaken to directly benefit persons or households, such as job creation activities or housing rehabilitation. Race and ethnicity data is **not** required for activities under the CDBG LMI area benefit, slum/blight, or urgent need national objectives.

In addition to the common indicators that are used for all program activities, there are 18 major activity-specific indicator categories as shown in Exhibit 13-1 at the end of this chapter.

13.1.5 Performance Measurement Wrap Up

To ensure compliance, grantees and their subrecipients have action steps they will need to take when using CPD Outcome Performance Measurement System:

✓ Determine the intent (or goals) of their program activities;

✓ Include objectives and outcomes in Consolidated Plans, Action Plans and performance reports;

✓ Select objectives and outcomes;

✓ Collect applicable data on objectives and outcomes;

✓ Record objectives and outcomes in IDIS;

✓ Collect indicator data from internal program administration staff and subrecipients; and

✓ Report on indicators in IDIS.

Data must be reported at least annually within IDIS, but grantees are encouraged to report as often as possible.

Performance Measurement indicator data that must be reported in IDIS is collected depending upon the matrix code and national objective chosen. IDIS screens ask all the pertinent

information that grantees need to collect and provide within the system. **Complete and accurate data reporting is critical to the success of the CDBG program. Missing and or incorrect information from grantees results in national data that is flawed.**

In addition there are new performance measurement reports now available within IDIS.

- ✓ **The PR83: CDBG Performance Measures Report** displays all CDBG performance data by objective and outcome for public facilities/improvements, public service, housing, homeless, and economic development activities. The grantee and field office versions of this report display all performance measurement data entered for a particular program year.
- ✓ **The PR84: CDBG Strategy Area, CDFI, and Local Target Area Report** displays CDBG activity performance data by CDBG Strategy Area, CDFI, and Local Target Area.
- ✓ **The PR85: Housing Performance Report** covers data for activities completed during a selected program year.

Grantees can use these IDIS reports to track their progress toward meeting performance measurement requirements.

- ✓ Assess what data is complete where collection of data is occurring with the right level of detail and determine where additional data must be collected and from which subrecipients; and
- ✓ Amend applications, procedures, and guidelines to better address performance measurement requirements.

See the chapter on IDIS for further information.

13.2 Reporting Requirements

The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	CAPER Requirements CAPER Submission and Review
Regulatory/Statutory Citations	Section 104(e) §570.507, §570.502, §570.503
Other Reference Materials on This Topic	Memorandum from CPD Assistant Secretary, February 18, 1998 ✓ Consolidated Plan website: http://www.hud.gov/offices/cpd/about/conplan/

13.2.1 Background and Overview

- ✓ The CDBG regulations require grantees to submit an Annual Performance Report to HUD within 90 days of the close of a grantee's program year. This is in accordance with the Consolidated Plan regulations at 24 CFR Part 91 (provided in the Appendix).
  - Prior to the 1996 Consolidated Plan program year, grantees submitted a Grantee Performance Report (GPR). The report is called the Consolidated Annual Performance and Evaluation Report (CAPER).

- The Performance Report incorporates not only the old GPR, but also the reporting requirements for the CDBG Program, HOME, Housing Opportunities for Persons with AIDS (HOPWA) and Emergency Shelter Grants (ESG) programs. Requirements discussed below apply to ***all*** of these programs, except where noted as CDBG-specific requirements.

✓ Annual reports are used to meet three basic purposes:

- Provide HUD with necessary information to assess each grantee's ability to carry out its programs in compliance with applicable regulations and requirements;
- Provide information necessary for HUD to report to Congress; and
- Provide grantees with an opportunity to describe its program achievements with their citizens.

13.2.2 CAPER Requirements

✓ Grantees are required to use the Integrated Disbursement and Information System (IDIS) to comply with current reporting requirements.

- To initiate annual reporting, grantees should update all current activities in IDIS to include all required financial and performance information.
- The IDIS report, PR06, Summary of Consolidated Plan Projects, should be used to inform the narrative component below. This report summarizes commitment and disbursements by Action Plan projects.

Narrative Components

✓ Each grantee's CAPER must include narrative statements that address the following:

- Assessment of Three- to Five-Year Goals and Objectives: addresses the grantee's progress toward meeting their strategic plan and high priority needs;
- Affirmatively Furthering Fair Housing: describes efforts toward this area including an analysis of impediments to fair housing choice, summary of impediments, and actions taken;
- Affordable Housing: evaluates progress toward meeting its objectives toward the provision of affordable housing by income level;
- Continuum of Care: evaluates progress toward meeting its objectives toward homeless and special needs populations;
- Other Actions indicated in the Grantee's Strategic and Action Plans: includes actions such as overcoming barriers to affordable housing and community development activities, improving public housing initiatives, reducing and eliminating lead based paint hazards, and efforts to reduce the number of persons living below the poverty line.
- Leveraging Resources: describes other public and private resources used toward the provision of affordable housing and community development activities;
- Citizen Comments: describes any public comments received in regard to the program; and
- Self-evaluation: focuses on results on programs and projects funded by the grantee and their impact on their community.

✓ In addition, CDBG grantees must submit a narrative statement addressing the following issues:

- The relationship of the use of CDBG funds to priorities, needs, goals and specific objectives identified in the Consolidated Plan;
- Nature and reasons for any changes in program objectives;
- Efforts of the grantee to carry out planned activities described in its Action Plan;
- If applicable, why the use of CDBG funds did not meet one of three national objectives;
- Activities involving acquisition, relocation and displacement;
- Economic development activities not resulting in jobs held by LMI persons;
- Presumed limited clientele activities;
- Activities generating program income;
- Rehabilitation activities; and
- If applicable, progress against Neighborhood Revitalization Strategy Area benchmarks.

Financial Reports

✓ In addition to the narrative elements, grantees are required to provide certain financial reports to citizens in order to satisfy the requirements of 24 CFR 91.520. These reports are:

- Summary of Accomplishments Report—data on CDBG activity counts and disbursements by priority need categories;
- Consolidated Annual Performance and Evaluation Report—progress in implementing projects identified in a grantee's Action Plan;
- Financial Summary Report—obligations and expenditures for the program year and determines the percentages of funding for LMI activities, planning and administration, and public services;
- Summary of Activities—status, accomplishments, and expenditures for each activity open during the program year;
- Rehabilitation Activities—each housing rehabilitation activity along with the amount expended, completed LMI units and occupied LMI units; and
- Hard copies of the above-listed financial reports do ***not*** have to be provided to the HUD Field Office as part of the CAPER submission. Copies should be retained by the grantee, however, to document program year accomplishments and other information.

13.2.3 CAPER Submission and Review

✓ Prior to submitting a CAPER, grantees must make the report available to the public for examination and comment for a period of at least 15 days.

✓ CAPERs must be received by the HUD Field Office no later than 90 days after the close of the grantee's Consolidated Plan program year.

✓ HUD will review the grantee's Performance Reports and determine if they are satisfactory. If a satisfactory report is not submitted, HUD may:

- Suspend funding until a satisfactory report is submitted; or

- Withdraw and reallocate funding if HUD determines, after notice and opportunity to comment, that the grantee will not submit a satisfactory report.

✓ Following submission, grantees must make copies of the report submitted to HUD available for examination by the public upon request. The copies made available must include a summary of comments received as a result of the public participation process.

13.3 Recordkeeping Requirements

The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	General Administrative Financial Project/Activity National Objectives Determining and Documenting Income Records on Subrecipients Record Retention Access to Records
Regulatory/Statutory Citations	Section 104(e); (a)(2)(D) and (a)(3)(b) §570.506, §570.508
Other Reference Materials on This Topic	CDBG Guide to Eligible Activities and National Objectives, Chapters 2 & 3 *Managing CDBG: A Guidebook for CDBG Grantees on Subrecipient Oversight*

13.3.1 Overview

✓ Accurate recordkeeping is crucial to the successful management of CDBG-funded activities. Insufficient documentation is likely to lead to monitoring findings, and these findings will be more difficult to resolve if records are missing, inadequate or inaccurate.

✓ To assess strengths and weaknesses in this area, grantees should think about the following:

- Is there a clearly defined process for acquiring, organizing, storing, retrieving, and reporting information about CDBG-funded activities?
- How can the documentation and reporting systems be strengthened to meet the HUD requirements?
- Who is responsible for the majority of the recordkeeping and reporting tasks, and are they properly trained and supported?
- How can standardized procedures and the removal of duplicative records streamline the recordkeeping and reporting process?
- What types of records and reports could be automated (i.e., computerized) that are not now?

13.3.2 General Administrative

- ✓ Grantees must maintain files and records that relate to the overall administration of the CDBG program. These records will include the following:
  - Consolidated Plan submission to HUD, which includes the application, program descriptions, certifications, etc.;
  - Executed grant agreement;
  - Description, geographic location and budget of each funded activity;
  - Eligibility and national objective determinations for each activity;
  - Personnel files;
  - Property management files;
  - HUD monitoring correspondence;
  - Citizen participation compliance documentation;
  - Fair Housing and Equal Opportunity records;
  - Lump sum agreements;
  - Environmental review records; and
  - Documentation of compliance with other Federal requirements (e.g., Davis-Bacon, Uniform Relocation Act, and Lead-Based Paint).

13.3.3 Financial

- ✓ Financial recordkeeping is one of the primary areas subject to HUD reviews and one in which inadequate recordkeeping can lead to serious problems.
- ✓ Financial records to be maintained include:
  - Chart of accounts;
  - Manual on accounting procedures;
  - Accounting journals and ledgers;
  - Source documentation (purchase orders, invoices, canceled checks, etc.);
  - Procurement files (including bids, contracts, etc.);
  - Real property inventory;
  - Bank account records (including revolving loan fund records, if applicable);
  - Draw down requests;
  - Program Income records and reports;
  - Payroll records and reports;
  - Financial reports;
  - Audit files; and
  - Relevant financial correspondence.

- ✓ Oftentimes, the financial functions of grantee CDBG program operations are often handled by staff with accounting skills, but not necessarily with a CDBG program background, or are shared with staff from other departments outside of the administering agency.
- ✓ To ensure proper financial recordkeeping and reporting, grantees should help their financial staff understand:
  - What information needs to be kept and why;
  - When that information should be collected and how often;
  - How the information should be acquired, organized and stored;
  - How the information should be reported; and
  - How long the records must be kept.

13.3.4 Project/Activity

- ✓ For each type of activity undertaken, the grantee should determine what data must be maintained in individual case files and establish a system for ensuring that every file contains the necessary information.
- ✓ The list will vary from activity to activity, but each project/activity file should include the following documentation:
  - Eligibility of the activity;
  - Evidence of having met a national objective (see below);
  - If applicable, subrecipient agreement;
  - Any bids or contracts;
  - Characteristics and location of the beneficiaries;
  - Compliance with special program requirements, including environmental review records;
  - Budget and expenditure information (including draw requests); and
  - The status of the project/activity.

13.3.5 National Objectives

LMI Area Benefit

- ✓ Grantees must maintain the following records regarding LMI areas qualifying under the area benefit national objective:
  - Boundaries of the service area (including maps);
  - Income characteristics of families and unrelated individuals in the service area; and
  - Data showing that the area qualifies under the exception rule if the percent of LMI persons in the service area is less than 51 percent. [24 CFR 570.208(a)(1)(ii)]
- ✓ An exhibit follows this chapter provides a shortened version of what records to maintain depending upon national objective chosen.

LMI Limited Clientele

✓ The grantee must maintain the following records regarding limited clientele activities:

- Documentation showing that the activity is designed for and used by a segment of the population presumed by HUD to be LMI persons; or
- Documentation describing how the nature and, if applicable, the location of the activity establishes that it is used predominantly by LMI persons; or
- Data showing the size and annual income of the family of each person receiving the benefit and that at least 51% of those served are LMI; or
- Data showing that the activity is a special project removing accessibility barriers in the limited cases described above.

LMI Housing

✓ Grantees must maintain the following records on housing activities:

- 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 LMI households after assistance;
- The total cost of the activity, including both CDBG and non-CDBG funds; and
- For each unit occupied by a LMI household, the size, ethnicity and income of the household.
- For rental housing only:
  - 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 LMI households pursuant to criteria established and made public by the grantee.
- For each property acquired on which there are no structures, evidence of commitments ensuring that the criteria in §570.208(a)(3) will be met when the structures are built.
- Where applicable, records documenting that the activity qualified under the exception criteria for new construction of non-elderly, multi-unit housing.

LMI Job Creation/Retention

✓ Records to be maintained for job creation activities are differentiated by whether the grantee will document whether the jobs will be ***available*** to LMI persons or whether LMI persons will hold the jobs.

✓ Where the grantee chooses to document that at least 51 percent of the jobs will be ***available*** to LMI persons, documentation for each assisted business shall include a copy of a written agreement, containing:

- A commitment by the business that it will make at least 51 percent of the full-time equivalent (FTE) jobs available to LMI persons and will provide training for any of those jobs requiring special skills or education;

- A listing by job title of the permanent jobs to be created, indicating which jobs will be available to LMI persons, which jobs require special skills or education, and which jobs are part-time;
- A description of the actions to be taken by the grantee and business to ensure that LMI persons receive first consideration for these jobs; and
- A listing by job title of the permanent jobs filled, which jobs were available to LMI persons, as well as a description of how first consideration was given to such persons for these jobs. The description should include what type of hiring process was used; names of LMI persons interviewed for a particular job; and which LMI interviewees were hired.

✓ Where the grantee chooses to document that at least 51 percent of the jobs will be ***held by*** LMI persons, documentation for each assisted business should include a copy of a written agreement, containing:

- A commitment by the business that at least 51 percent of the permanent jobs on a full-time equivalent (FTE) basis will be held by LMI persons;
- A listing by job title of the permanent jobs to be created (identifying which are part-time, if any);
- A listing by job title of the permanent jobs filled and which jobs were initially held by LMI persons; and
- For each LMI person hired, information on the size and annual income of the person's family prior to the time the person was hired for the job, or evidence the person qualifies as presumed to be LMI based upon location of the business or the person's residence.

✓ For benefit based on job retention, the following documentation must be kept:

- Evidence that, in the absence of CDBG assistance, the jobs would be lost;
- For each business assisted, a listing by job title of permanent jobs retained, indicating which of those jobs are part-time and (where it is known) which are held by LMI persons at the time the assistance is provided;
- Where applicable, identification of any of the retained jobs (other than those known to be held by LMI persons) which are projected to become available to LMI persons through job turnover within two years of the time CDBG assistance is provided, and information on how the turnover projections were calculated;
- For each retained job claimed to be held by a LMI person, information on the size and annual income of the person's family or evidence that the person may be presumed to be LMI based on the location of the business or the person's residence; and
- For jobs claimed to be available to LMI persons based on job turnover: a description covering the items required for "available to" jobs identified above; a listing of each job that has turned over to date, indicating which of those jobs were either taken by, or made available to LMI persons; and a description of how "first consideration" was given to LMI persons for those jobs.

Slum/Blight Area Basis

✓ Records to be maintained for area-wide slum and blight activities include:

- Boundaries of the area.

- Description of the conditions that qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the qualifying criteria (i.e., in accordance with 570.208(b)(1), the area meets a definition of a slum, blighted, deteriorated or deteriorating area under state or local law).
- How the assisted activity addressed one or more of the conditions that contributed to the deterioration of the area.
- For each residential rehabilitation activity:
  - Local definition of "substandard" that must be at least as stringent as the Housing Quality Standards (HQS) used in the Section 8 Housing Assistance Payment Program—Existing Housing;
  - Pre-rehabilitation inspection report describing the deficiencies in each structure to be rehabilitated; and
  - Details and scope of CDBG-assisted rehabilitation, by structure.

Slum/Blight Spot Basis

✓ Records to be maintained for spot elimination of slum and blight:

- A description of the specific condition of blight or physical decay treated; and
- For rehabilitation carried out under this category, a description of the structure, including:
  - The specific conditions detrimental to public health and safety that were identified; and
  - Details and scope of the CDBG-assisted rehabilitation, by structure.

Slum/Blight Urban Renewal

✓ Records to be maintained for slum/blight urban renewal activities:

- A copy of the HUD approved Urban Renewal Plan in effect at the time the CDBG activity is carried out, including maps and supporting documentation.

Urgent Need

✓ Records to be maintained for urgent need activities include:

- Documentation concerning the nature and degree of seriousness of the condition requiring assistance;
- Evidence that the grantee certified that the CDBG activity was designed to address the urgent need;
- Information on the timing of the development of the serious condition; and
- Evidence confirming that other financial resources to alleviate the need were not available.

13.3.6 Determining and Documenting Income

✓ Annual income is the gross amount of income anticipated by all adults in a family during the 12 months following the effective date of the determination.

- ✓ To calculate annual income, the grantee may choose among three definitions of income, listed below.
  - Annual income as defined in accordance with 24 CFR Part 5.609) (formerly called "Section 8" ;
  - Adjusted gross income as defined for purposes of reporting under IRS Form 1040 (long form) for Federal individual income tax purposes; and
  - Annual income as defined for reporting under the Census long form for the most recent available decennial Census.
- ✓ Grantees must determine annual income for a person, family or a household only for direct benefit activities only. Direct benefit activities include activities such as homeownership assistance or receipt of public services. Please note that income documentation should be collected for these activities, but it is not a requirement that third party verification (e.g., verification of employment) be obtained; however, this method may be a best practice. Income verification forms may be used to document income.
  - Family: grantees need documentation for all national objectives except for LMI housing.
  - Household: grantees need documentation necessary for LMI housing.
- ✓ Grantees do not need to determine income eligibility for the following national objectives: area benefit, presumed limited clientele, slum/blight, or urgent need.
- ✓ Grantees must ensure that applicants to their programs and activities are treated equitably. For this reason, the same income definition must be used within a particular program or activity.
  - For example, if a grantee decides to use the Section 8 definition of annual income for its homebuyer program, it must use this definition for all applicants to the homebuyer program. It may not use the Census definition for one applicant and the Section 8 definition for another applicant.
- ✓ To determine if program applicants are income-eligible, grantees have several options:
  - Obtain evidence that the household/person assisted qualified under another program having income qualification criteria at least as restrictive as that used in the definitions of LMI household/person, such as Job Training Partnership Act (JTPA) and welfare programs; or
  - Obtain evidence that the assisted person is homeless; or
  - Obtain a verifiable certification from the assisted person that his/her family income does not exceed the applicable income limit; or
  - Obtain a referral from a state, county or local employment agency or other entity that agrees to refer individuals it determines to be LMI persons based on HUD's criteria and agrees to maintain documentation supporting these determinations.

13.3.7 Records on Subrecipients

- ✓ As discussed previously, grantees are responsible for ensuring that subrecipient activities are carried out in compliance with all applicable program requirements and that the performance of subrecipients in on track with objectives set forth by the grantee. The following is an overview of the types of records that must be maintained by grantees for each funded subrecipient activity:

- Subrecipient application;
- Written agreement;
- Financial statements and records;
- Audits;
- Progress reports;
- Draw down requests (with source documentation, including invoices, purchaser orders, etc.); and
- Monitoring reports and correspondence.

✓ While grantees maintain certain records pertaining to subrecipient activities, subrecipients must also maintain detailed records on its organization, financial and administrative systems and the specific CDBG-funded project or activity.

13.3.8 Record Retention Period

✓ Under the uniform administrative requirements of the CDBG regulations, grantees and subrecipients are required to retain CDBG records for a period of not less than four years. For subrecipients, the record retention period begins from the date of submission of the CAPER in which the specific activity is reported on for the final time rather than from the date of submission of the final expenditure report for the award. (NOTE: Prior to 1995, the retention period was three years.)

✓ The change to a four year retention period in 1995 means the CDBG requirements are consistent with Consolidated Plan regulations, which require that grantees maintain information and records relating to the jurisdiction's Consolidated Plan and the use of funds under the programs covered by the Consolidated Plan, including CDBG, for a period of not less than five years.

13.3.9 Access to Records

✓ HUD and the Comptroller General of the United States, or their authorized representatives, have the right to access grantee and subrecipient program records. This right is not limited to the retention period (discussed above).

✓ Requirements regarding public access to records include:

- CDBG grantees are required to provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable state and local laws regarding privacy and confidentiality; and
- The Consolidated Plan regulations require that grantees provide citizens, public agencies and other interested parties with reasonable and timely access to information and records relating to the jurisdiction's Consolidated Plan and the use of assistance under the programs covered by the Consolidated Plan. (NOTE: This requirement must be made a part of grantee's Citizen Participation Plans.)

13.4 Monitoring of Program Performance

Monitoring of program performance is a key element of CDBG grantee management and oversight responsibilities. The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	Program Monitoring Project Monitoring Corrective Actions
Regulatory/Statutory Citations	Section 105(a)(12)(B)(v) §570.206 §570.503
Other Reference Materials on This Topic	*Managing CDBG: A Guidebook for CDBG Grantees on Subrecipient Oversight*

13.4.1 Overview

- ✓ Grantees are responsible for managing the day-to-day operations of their CDBG Program and ensuring that CDBG funds are used in keeping with program requirements. Implementation of CDBG activities by other entities (subrecipients, CBDOs, CDFIs, etc.) does not relieve grantees of this responsibility.
- ✓ Monitoring is the primary tool that CDBG grantees use to ensure that CDBG projects are being carried out in accordance with program requirements. Monitoring is a review of program or project performance and compliance. There are several types of monitoring:
  - **Administrative and Financial monitoring** ensures that the grantee and subrecipient are administering the program properly (i.e., using funds from authorized sources, tracking funds, using proper methods of recordkeeping, and managing finances appropriately).
  - **Program monitoring** ensures the operations and management of subrecipients for efficiency, effectiveness, compliance, etc. This kind of monitoring focuses on overall program performance of subrecipients.
  - **Project monitoring** ensures that projects are in compliance with CDBG and other Federal standards. This kind of monitoring focuses on the compliance of an individual project.
- ✓ The three primary goals of monitoring are to:
  - Ensure production and accountability;
  - Ensure compliance with CDBG and other federal requirements; and
  - Evaluate organizational and project performance.
- ✓ The regulations require that the performance of each subrecipient receiving CDBG funds must be reviewed by grantees at least annually. Good practice suggests that:
  - Any entity receiving CDBG funds for an eligible project must be monitored to ensure compliance with applicable program requirements.

- More frequent reviews may be appropriate based on the length and complexity of the activity being undertaken and the experience and capacity of the subrecipient.

13.4.2 Entities that are Monitored

✓ Grantees award CDBG funds to a variety of subrecipients. Subrecipients (sometimes referred to as "subgrantees") are entities that are **provided** CDBG funds by a grantee **for their use** in carrying out agreed-upon, eligible activities. There are four basic kinds of subrecipients:

- **Governmental agencies** are public agencies, commissions, or authorities that are **independent** of the grantee's government (for example, a public housing authority or a park district). Grantee public agencies undertaking CDBG assisted activities are subject to the same requirements as are applicable to subrecipients (§570.501(a)).
- **Private non-profits** are usually, but not always, corporations, associations, agencies, or faith-based organizations with non-profit status under the Internal Revenue Code (Section 501(c)(3)), usually with a board of directors and an executive director in charge of daily administration. Examples of private non-profits include private social services agencies (such as those providing job training or counseling, or day care providers), community development corporations, faith-based housing development groups, and operators of homeless shelters.
- **Private, for-profit entities** can qualify subrecipients when facilitating economic development by assisting microenterprises under the provisions of 24 CFR S70.201(o).
- **Community Based Development Organizations** (CBDOs) authorized under §570.204 to carry out special activities such as economic development or new housing construction are not subrecipients unless so designated by the grantee.

13.4.3 Monitoring Plans and Risk Assessments

✓ Monitoring should not be a "one-time event." To be an effective tool for avoiding problems and improving performance, monitoring must involve an on-going **process of planning, implementation, communication, and follow-up.**

✓ Grantees should develop a monitoring plan at least annually at the beginning of each program year. This allows grantees to match their available resources for monitoring with the needs and capacity of subrecipients. A monitoring plan may include the following:

- Objectives of the monitoring plan;
- Standardized procedures for reporting by subrecipients;
- Standardized procedures for review and monitoring;
- How risk areas will be identified and addressed;
- Frequency of meetings, monitoring reviews and inspections;
- Pre-monitoring preparation;
- Use and scheduling of staff and other resources for monitoring;
- CDBG program and project portfolio;
- Monitoring "checklists"; and

- Sample monitoring letters.

✓ Since grantees do not have enough staff to monitor all their subrecipients as frequently and thoroughly as they would like every year, they need to decide which subrecipients are most likely to have the most serious problems and ensure they devote extra attention to them. Grantees should ensure the monitoring plan is appropriate to their performance tracking capabilities and rotate the subrecipients selected for in-depth monitoring.

✓ For programs and projects, grantees should perform a risk assessment to identify which subrecipients require comprehensive monitoring. High-risk subrecipients include those that are:

- New to the CDBG program;
- Experiencing turnover in key staff positions or a change in goals or direction;
- Encountering complaints and/or bad press;
- Previous compliance or performance problems including failure to meet schedules, submit timely reports, or clear monitoring or audit findings;
- Carrying out high risk activities (e.g., economic development); and
- Undertaking multiple CDBG-funded activities for the first time.

✓ A sample set of risk indicators and assessment areas are presented in Exhibit 13-3. This can be used to develop a risk assessment protocol where grantees can award points to various assessment areas to make priorities within their monitoring system.

✓ For experienced subrecipients that are successfully carrying out activities, grantees could plan a more narrowly focused monitoring effort to examine areas where the regulations have changed, new activities that are being undertaken, or program aspects that led to problems in the past.

✓ However, comprehensive monitoring reviews should be conducted periodically, even for subrecipients with strong past performance. Even the most effective and efficient subrecipients can neglect their responsibilities if grantees do not hold them accountable.

13.4.4 Administrative and Financial Monitoring

Grantees must monitor subrecipients on administrative and financial requirements for accounting standards, cost principles, and procurement.

✓ **Accounting Standards**: Ensure compliance with 24 CFR 84.21−28. The subrecipient adheres to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

✓ **Cost Principles**: Ensure compliance with 2 CFR Part 230 (relocated OMB Circulars A-122, “Cost Principles for Non-Profit Organizations”) or 2 CFR Part 220 (relocated A-21, “Cost Principles for Educational Institutions,”) as applicable. These regulations shall be applied for all costs incurred whether charged on a direct or indirect basis.

✓ **Procurement**: Ensure compliance with the current grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the grantee upon

termination of the written agreement. Unless specified otherwise within the written agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40−48.

13.4.5 Program Monitoring

- ✓ Program monitoring encompasses two different areas of review. First, grantees must monitor compliance with their CDBG funded programs to ensure they meet program eligibility, objectives, and goals. Often this type of monitoring is done in the following manner:
  - Compare programs funded to the Consolidated Plan. Check to see if programs are listed among the grantee's strategies to address community development needs.
  - Compare programs funded to the national objectives and eligible activities of the CDBG program.
  - If program is not listed or is ineligible, the grantee must modify its consolidated plan and/or stop funding the program (if it is ineligible).
- ✓ In addition, there are several reports that are available on the HUD website that grantees can use to evaluate their performance as well as performance of their subrecipients. Grantees can use reports to assess local/state CDBG program performance. These reports ensure that the most up-to-date information is available to grantees, their clients, and public officials (see specific information on the CDBG accomplishments and performance).
  - **Community Performance Profiles:** These profiles share information about the performance of CDBG grantees. This information is important to our grantees, stakeholders, and citizens so they will be able to access information about the performance of each local CDBG program.
  - **Expenditure Reports:** As part of HUD's continuing effort to provide grantees and citizens with program information on the status of our programs, the Office of Community Planning and Development has developed expenditure profiles that show how each entitlement community expended their CDBG funds during its most recently completed program year. The profiles depict expenditures by activity.
  - **Selected CDBG Accomplishment Reports**. As part of HUD's continuing effort to provide grantees and citizens with information on the status of our programs, the Office of Community Planning and Development has developed profiles that display accomplishments for selected housing, economic development, public improvement, and public service activities. The profiles contain accomplishments by program year, by CDBG entitlement communities and states.
- ✓ The second area that grantees must monitor is program implementation by their subrecipients.
  - Review program descriptions of subrecipients to ensure they meet program eligibility goals, grantee objectives, and overall performance.
- ✓ There are two ways to conduct program monitoring reviews. The first is to conduct what is referred to as a "desk review." The second, more intensive way to monitor CDBG-funded programs and organizations is to conduct an "on-site monitoring review". Both options are discussed below.

13.4.6 Project Monitoring

- ✓ For individual projects, monitoring begins when activities are selected for CDBG funding and continues through project completion.
- ✓ For example, once construction has started, grantees should:
  - Require progress reports (weekly, monthly, quarterly or with each draw request) that flag any pending or anticipated problems;
  - Hold regular meetings to discuss issues and provide any technical assistance needed; and
  - Make periodic site visits to evaluate progress.
- ✓ Other general areas for project monitoring include:
  - Project schedule:
    - Is the project on schedule and have all major milestones been met?
  - Project accomplishments:
    - Is the project meeting standards established in the written agreement?
    - Are costs on target?
    - Is the number of units proposed being produced?
    - If applicable, is the quality of the construction/rehabilitation acceptable?
    - If the project is finished, have the CDBG-assisted units been rented/sold to income-eligible households?
- ✓ There are two ways to conduct project monitoring reviews which may be done in conjunction with program monitoring. The first is to conduct what is referred to as a "desk review." The second, more intensive way to monitor CDBG-funded programs and organizations is to conduct an "on-site monitoring review". Both options are discussed below.

13.4.7 Desk Reviews

- ✓ Desk reviews are a key component of basic monitoring activities. They involve examining information and materials provided to grantees by subrecipients as a means to track performance and identify potential problem areas.
  - Staff performing desk reviews should examine progress reports, compliance reports, and financial information to adequately assess performance and look for indicators of performance or compliance problems.
- ✓ A typical grantee is likely to request three kinds of reports from its subrecipients: information on drawdown requests, regular progress reports, and CAPER data.
  - **Drawdown requests** involve the following:
    - Funds budgeted;
    - Funds received in drawdowns to date;
    - Funds obligated in most recent period and to date;
    - Funds expended in most recent period and to date;
    - Cash on hand (including program income identified as such); and

  - Previous drawdowns requested but not yet received.
- **Regular progress reports** (either monthly or quarterly) involve the following:
  - Track actual project accomplishments;
  - Obligations; and
  - Spending patterns against planned operations and accomplishments.
- **CAPER data** collection involves the following:
  - The activity's name, matrix code, description, and location;
  - The national objective being met;
  - The amount expended during the program year;
  - The total cost of each multi-unit housing and 570.203(b) economic development activity;
  - The amount of unliquidated obligations for each public service and planning and administration activity if CDBG funds are not disbursed during the 90 days after the end of the grantee's program year; and
  - Activity status and specific units of accomplishments, including compliance with the applicable national objective, during each program year.

✓ If questions or concerns arise from the desk review, staff should gather additional information through telephone calls, additional documents, or other written materials.

13.4.8 On-Site Reviews

✓ On-site reviews typically involve monitoring of the subrecipient's overall program administration as well as individual beneficiary or project files, depending upon the activity undertaken.

✓ The following steps provide grantees with the basic framework to follow when conducting on-site program monitoring reviews, including reviews of subrecipients.

✓ **Step 1: Prepare for the Monitoring Visit**—Before the monitoring visit, grantees should make sure staff is adequately trained for the task. Staff should be thoroughly familiar with the applicable program rules and the established monitoring protocol. In addition, staff should review the following types of in-house data prior to the visit:

- Application for funding;
- Written agreement;
- Progress reports;
- Draw-down requests;
- Integrated Disbursement and information System (IDIS) reports;
- Correspondence;
- Previous monitoring reviews; and
- Copies of audits.

- ✓ **Step 2: Conduct the Monitoring Visit**—There are four basic elements to conducting an on-site monitoring visit: notification, entrance conference or meeting, data collection and analysis, and exit conference or meeting. These steps are described briefly below.
  - **Notification:** Grantees should begin the monitoring process by calling subrecipients to explain the purpose of the visit and to agree upon dates for the visit. A formal notification letter should follow at least several weeks before the planned visit and should include:
    - Confirmation of the dates for the review,
    - Scope of the monitoring,
    - Information needed for review during the visit, and
    - Staff needed for interviews or other assistance during the review.
  - **Entrance conference**: Entrance conferences are held at the beginning of monitoring visits, usually with the executive director or other top official of the organization, to make sure the subrecipient has a clear understanding of the purpose, scope, and schedule for the monitoring.
  - **Documentation, data gathering, and analysis:** Grantees should keep a clear record of information reviewed and conversations held with subrecipient staff during the monitoring visit. The most efficient and effective way to review all of the necessary documentation and data is with a checklist. Checklists should be based on the CDBG Program requirements for each type of project. The information gathered will serve as the basis for conclusions to be included in the monitoring report and follow-up letter. Subrecipients may request identification of sources if any of the conclusions are disputed.
  - **Exit conference:** At the end of the monitoring visit, the reviewers should meet again with key representatives of the subrecipient organization to:
    - Present preliminary results of the monitoring,
    - Provide an opportunity for the subrecipient to correct any misconceptions or misunderstandings,
    - Secure additional information to clarify or support their position, and
    - If applicable, provide an opportunity for the subrecipient to report on steps the organization may already be taking to address areas of noncompliance or nonperformance.
- ✓ **Step 3: Follow-Up**—At the end of the process, the grantee should provide the subrecipient with formal written notification of the results of the monitoring review. This letter should both point out problem areas ***and*** recognize successes.
  - The follow-up letter creates a permanent written record of what was found during the review.
  - Standardized language set forth in the monitoring procedures often helps grantees to develop standardized monitoring letters in a reasonable time frame and with consistency from subrecipient to subrecipient.
  - The letter should outline concerns and findings (see above), and set deadlines for a written response and corrective actions.
  - Follow-up procedures are discussed below under “Corrective Actions.”

13.4.9 Corrective Action and Training/Technical Assistance

Corrective Actions

- ✓ Grantees are responsible for taking appropriate actions when performance problems arise. Written agreements should be the primary mechanism for enforcement in situations of noncompliance.
- ✓ There are three increasingly serious stages of intervention. Grantees should start at Stage I, then move through Stages 2 and 3 as the situation requires. A grantee's response to monitoring findings will depend upon the seriousness of the grantee's problems.
  - **Stage 1: Low-level Intervention**—At this stage, grantees should do one or more of the following:
    - Clearly identify problem areas and required corrective actions;
    - Plan a strategy with the subrecipient that includes any training or technical assistance that may help to address identified problems;
    - Require more frequent or more thorough reporting by the subrecipient or other organization carrying out the activity; or
    - Conduct more frequent monitoring reviews.
  - **Stage 2: Moderate-level Intervention**—After attempting the low-level intervention steps, grantees may need to take increasingly tougher steps, such as:
    - Restrict payment requests,
    - Disallow certain expenses or require repayment of funding provided for certain expenses, or
    - Impose probationary status.
  - **Stage 3: High-level Intervention**—At this point, grantees must take the most serious actions to put an end to noncompliance problems. Suggested steps include:
    - Temporarily suspend the organization from participation in the CDBG Program,
    - Do not renew the organization or the activity for the next program year,
    - Terminate the organization or activity for the current program year, or
    - Initiate legal action.

Incorporating Training and Technical Assistance

- ✓ Monitoring should not be a "one-time" event. To be an effective tool for avoiding problems and improving performance, monitoring must be an ongoing process of planning, implementation and follow-up.
- ✓ In fact, in order to avoid future problems with subrecipients, training and technical assistance should be an ongoing feature of grantee CDBG programs. There are three basic approaches, that together, focus on enhancing performance and reducing common problems among subrecipients:
  - **Orientation Sessions**
    - Typically held at the beginning of a funding cycle. (Some grantees hold these types of sessions prior to applications).

- Provides a forum for discussing basic requirements and procedures, and to discuss expectations about performance.

– **Training**

- Training is typically aimed at larger audiences.
- This type of workshop focuses on specific issues, and provides sufficient technical detail necessary for subrecipients to understand and implement program requirements.
- Training should be held throughout the year, and should enhance performance and long-term capacity of subrecipients.

– **Technical Assistance**

- Typically provided in a one-on-one or small group setting on site.
- Technical assistance should be designed to correct a specific weakness, or to improve the quality or performance of a specific program or project already underway.

Exhibit 13-1
Performance Measurement Indicators for CDBG Projects

Indicator	Data to be Collected
Public facility or infrastructure	Number of persons that have been assisted by public facility or infrastructure activities that provide individuals with new or improved access to the facility or infrastructure. If the activity was used to meet a quality standard or to measurably improve quality, then this indicator will report the number of household units that no longer have access to a substandard service.
Public service	Number of persons that have been assisted with new or improved access to a service. If the activity was used to meet a quality standard or to measurably improve quality, then this indicator will report the number of persons that no longer have access to a substandard service.
Targeted revitalization	This indicator shows a range of outcomes such as jobs created and retained, businesses assisted, LMI persons and households served, slum/blight demolition, number of acres of brownfields remediated, etc. in a targeted area.
Commercial façade treatments or business building rehabilitation	Number of commercial façade treatments undertaken and the number of business buildings that were rehabilitated.
Brownfields remediated	Number of acres of brownfields that were remediated.
Rental units constructed	Number of affordable rental units created, Number of years of affordability, Number of units occupied by the elderly, and Units designated for chronically homeless persons and persons with HIV/AIDS.
Rental units rehabilitated	Number of affordable rental units rehabilitated, Number of years of affordability, Number of units occupied by the elderly, Units for chronically homeless persons, and persons with HIV/AIDS.
Homeownership units constructed or acquired with rehabilitation	Number of homeownership units constructed, acquired, and/or acquired with rehabilitation per activity. Number of affordable units, number of years of affordability, Energy Star qualified units, section 504 accessible units, and number of households previously living in subsidized housing. Number of units occupied by the elderly, number of units designated for persons with HIV/AIDS, and Number of units for the chronically homeless.
Owner occupied units rehabilitated	N umber of owner occupied units rehabilitated, including the number of these units occupied by the elderly, Number of units designated for persons with HIV/AIDS, and Number of units for the chronically homeless.

Indicator	Data to be Collected
Direct financial assistance to homebuyers	Number of homebuyers receiving direct financial assistance, housing counseling, and downpayment assistance/closing costs.
Tenant Based Assistance	Number of households receiving TBA, Number with short-term rental assistance (less than 12 months), Number of homeless and chronically homeless households assisted.
Homeless shelters	Number of homeless persons given overnight shelter.
Emergency housing	Number of beds created in an overnight shelter or other emergency housing.
Tenant Based Assistance	This indicator shows the total number of households receiving TBA, Number with short-term rental assistance (less than 12 months), Number of homeless and chronically homeless households assisted.
Emergency housing	Number of beds created in an overnight shelter or other emergency housing.
Homeless prevention	Number of households that received emergency financial assistance to prevent homelessness and emergency legal assistance to prevent homelessness.
Jobs created/retained	Of the total number of jobs created, this indicator shows the number of jobs that have employee-sponsored health care, The types of jobs created [using Economic Development Administration (EDA) classifications], and Number or persons unemployed before taking the job (created only)
Business assistance	Number of new businesses, existing businesses, and the DUNS number of each business so that HUD can track the number of new businesses that remain operational for three years after assistance.
Businesses providing goods or services	This indicator shows whether an assisted business provides goods or services to meet the needs of the service area, neighborhood, or community, as determined by the grantee.

Exhibit 13-2
National Objective Recordkeeping

National Objective Criteria	Records to be Maintained
LMI— Area Benefit	Boundaries of the area Income data of residents and percent LMI If less than 51 percent LMI, exception criteria data
LMI— Limited Clientele	Documentation that facility/service designed for or used exclusively by one of the eligible "presumptive" groups Documentation of nature and location of the facility/service such that it can be presumed to service LMI OR Data on household size and income of each person receiving the benefit
LMI— Housing	Copy of written agreement with landlord/developer with total no. of units and no. to be occupied by LMI persons Total cost of project (CDBG and non-CDBG funds) Income and household size data for occupants/purchasers Rent charged (rental housing only)
LMI— Job Creation	If qualifying under "jobs available to LMI": – Copy of written agreement with required provisions – Listing by job title of permanent jobs filled, which were available to LMI and evidence of first consideration to LMI If qualifying under "jobs held by LMI": – Copy of written agreement with required provisions – Listing by job title of permanent jobs filled and which were initially held by LMI – For each LMI person hired, household size and annual income prior to hiring
LMI— Job Retention	Evidence that without CDBG, jobs will be lost Listing by job title of permanent jobs retained (include part-time and those held by LMIs) Information on job turnover, including jobs to be available to and filled by LMI persons For each job retained and held by a LMI person, family size and income
Slum/Blight— Area Basis	Boundaries of the area Description of the conditions which qualified the area For residential rehab— Local definition of substandard Pre-rehab inspection report with noted deficiencies Details of CDBG-funded rehab
Slum/Blight— Spot Basis	Description of the specific condition of blight or decay treated Description of specific conditions detrimental to public health and safety (rehab only) Details of CDBG-funded rehab (rehab only)

National Objective Criteria	Records to be Maintained
Slum/Blight— Urban Renewal	Copy of Urban Renewal Plan Maps and supporting documentation
Meeting C.D. Needs Having a Particular Urgency	Nature and degree of seriousness of condition requiring assistance Certification that CDBG activity designed to address the need Timing of development of the serious condition Evidence that other financial resources were not available

Exhibit 13-3

Risk Assessment Matrix

Risk Area	Assessment Areas
Project Complexity	Size of dollar amount requested Use of funds: *For construction or rehab *For operation of facility *For program only
Type of Organization Requesting Funding	Non-profit For-profit (570.201(o)) Governmental Agency
Complexity of Housing Project	New construction Rehabilitation Single unit/multi-unit Number of units Subrecipient's prior experience with this size and type project
Economic Development	Complexity of project Number of jobs to be created or retained Area benefit Providing direct grants and loans Providing technical assistance Subrecipient's prior experience
Potential Environmental Concerns	Degree of complexity E.I.S. needed
Other Type of Project	Degree of experience carrying out similar type project
Funding	Other sources of funds indicated, but not committed Other funds committed CDBG funds only
Type of Assistance	Grant Loan
Float Loan	Ability to repay within necessary time frame
Program Income	To be retained to continue with the same activity To be retained for a different activity To be returned to grantee

Risk Area	Assessment Areas
Subrecipient Organization	Newly created entity Well established, but no prior CDBG or Federal experience Prior experience with CDBG or other Federal programs No independent source of funding, i.e., general fundraising
Subrecipient History, If Previously Funded	Ability to deliver project within budget and on schedule Ability to anticipate and overcome past problems Any past monitoring issues raised Any special contract conditions needed
Staffing	Staff experienced with this type activity Have sufficient staff to carry out project or must hire Entity has significant staff turnover
Recent Problems	Unresolved monitoring findings Citizen complaints

CHAPTER 14: PROCUREMENT

CHAPTER PURPOSE & CONTENTS

This chapter provides an overview of the federal procurement requirements. It covers the basics of Part 85.

SECTION	TOPIC	PAGE
14.1	Overview of Procurement Requirements	14-1

14.1 Overview of Procurement Requirements

✓ When a grantee elects to hire a contractor, whether to administer a program, complete a task or do construction, those contractors must be procured competitively. This section highlights the procurement rules.

Key Topics in This Section	✓ Procurement requirements and methods
Regulatory/Statutory Citations	§570.502, §570.610, §85.36
Other Reference Materials on This Topic	✓ CPD Notice 96-05 ✓ Executive Order 12549

✓ Both grantees and subrecipients must follow federal procurement rules when purchasing services, supplies, materials, or equipment. The applicable federal regulations are contained in:

- State and local governments and Indian tribes – 24 CFR Part 85. A copy of Part 85 is included in the attachments to this chapter;
- Nonprofits, institutions of higher education and hospitals – 2 CFR Part 215.44 (formerly OMB Circular A-110), as implemented through 24 CFR Part 84.

✓ In addition to federal regulations, most states and many local governments have laws and regulations regarding procurement. Each entity receiving CDBG funds should be aware of state and/or local laws that may affect procurement policies.

✓ Grantees should adopt procurement policies that describe how the grantee or subrecipient will procure supplies, materials, services, and equipment. The policy should assure that all purchases are handled fairly and in a manner that encourages full and open competition. Grantees should follow the procedures established in the policy, and document how all procurements were handled.

✓ The "essence of good procurement" can be summarized as follows:

- Identify and clearly specify standards for the goods or services the grantee or subrecipient wants to obtain;
- Seek competitive offers to obtain the best possible quality at the best possible price;

  - Use a written agreement that clearly states the responsibilities of each party;
  - Keep good records; and
  - Have a quality assurance system that helps the grantee or subrecipient get what it pays for.

✓ There are four methods of procurement that are identified in the federal regulations:

  - Small purchase procedures;
  - Sealed bids;
  - Competitive proposals; and
  - Non-competitive proposals.

✓ Please note that the following training manual text is an abbreviated summary of the procurement rules and grantees are encouraged to read Part 85.36 in its entirety (attached) as well as any applicable state or local procurement laws.

14.1.1 Small Purchase Procedures

✓ The small purchase procedures allow recipients to acquire goods and services totaling no more than **$100,000,** without publishing a formal request for proposals or invitation for bids.

  - This method of procurement is typically used to purchase commodities such as equipment or other materials.
  - In the event that a grantee is purchasing materials that will exceed $100,000, they must use the sealed bid process.

✓ The small purchases method can also be used to acquire eligible types of services, such as professional consulting, environmental review, or planning. This method cannot be used if the services contract will exceed $100,000 in value. If the services contract will exceed $100,000, the grantee must issue an RFP under the competitive proposals approach (see below).

✓ In general, the small purchases procedures also should not be used to acquire construction contractors. It is recommended that these acquisitions occur under the sealed bid approach outlined below.

✓ Under the small purchases method, grantees send a request for quotes to potential vendors with a detailed description of the goods or services needed. In return, they receive competitive written quotations from an adequate number of qualified sources.

  - Each quote should include pricing information that allows the grantee to compare costs across bidders and ensure cost reasonableness.
  - Documentation of the quotes shall be maintained in the grantee's files.

✓ The award should be made to the lowest responsive and responsible source.

14.1.2 Sealed Bids (Formal Advertising)

✓ Sealed bids (Formal Advertising) should be used for all construction contracts or for goods costing more than $100,000.

- ✓ Competitive sealed bidding requires publicly solicited sealed bids and a firm-fixed-price lump sum or unit price contract is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.
- ✓ In order for formal advertising to be feasible, the following minimum conditions must be present:
  - A complete, adequate and realistic specification or purchase description is available.
  - Two or more responsible suppliers are willing and able to compete effectively for a grantee's business.
  - The procurement lends itself to a firm fixed-price contract, and the selection of the successful bidder can appropriately be made principally on the basis of price.
- ✓ When the competitive sealed bid (formal advertising) process is used, the following requirements apply:
  - Publication Period: The invitation for bids must be publicly advertised and bids solicited from an adequate number of suppliers. The publication should be published at least once in a newspaper of general circulation, providing sufficient time prior to bid opening. If the publication period is not of sufficient time to attract adequate competition, the bid may have to be re-advertised.
  - Clear Definition: The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for bidders to properly respond to the invitation.
  - Public Opening: All bids must be opened publicly at the time and place stated in the invitation for bids. The public is allowed at that time to review the bids.
  - Selection and Contracting: A firm-fixed-price contract award must be made by written notice to the responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs must be considered in determining which bid is lowest.
  - Rejection of all Bids: All bids may be rejected when sound documented reasons exist. Such documentation shall be made a part of the files.

14.1.3 Competitive Proposals

- ✓ Competitive proposals are used to purchase professional services where the total cost will exceed $100,000. Under this procurement method, the grantee must publish a written request for submissions and then review these submissions based on established selection criteria.
- ✓ The grantee must solicit proposals from an adequate number of qualified sources.
- ✓ Under this approach, there are two possible methods of soliciting proposals.
  - A request for proposals asks that offerors submit both qualifications and cost information.
  - A request for qualifications can be used for purchasing architecture and engineering services. It only asks for information on the offeror's expertise/experience and not on cost, subject to a negotiation of fair and reasonable compensation. When acquiring any service that is not architecture or engineering, the full RFP process must be used.

  - For example, if a grantee were to hire a for-profit CDBG contract administrator and that contract exceeded $100,000, an RFP would be required.

- ✓ When acquiring architectural or engineering services, either a RFP or a RFQ may be used. Note that if an architectural or an engineering firm is being hired to provide a non architectural/engineering service that service must be procured using either the small purchases process or a RFP. For example, some engineering firms also provide construction and grants management services. In that situation, a RFQ cannot be used and either the small purchases (if it is less than $100,000) or a RFP must be used.
- ✓ When Competitive Proposals are utilized, the following requirements apply.
  - Publication Period: Proposals must be solicited from an adequate number of qualified sources and an advertisement must be published. RFPs/RFQs should be published in a sufficient timeframe before the proposals/qualifications are due.
  - Clear Definition: The RFP/RFQ must identify the general scope of work and all significant factors of evaluation, including price where appropriate, and their relative importance.
  - Technical Evaluation: The grantee must provide a mechanism for technical evaluation of the proposals received, determinations of responsible offeror and the selection for contract award.
  - Award: Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly. The contract can be either a fixed price or a cost reimbursement type.

14.1.4 Non-competitive Proposals

- ✓ Non-competitive procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:
  - Where the item is available only from a single source;
  - Where a public emergency or urgent situation is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods; or
  - Where after solicitation of a number of sources, competition is determined inadequate.

14.1.5 Conflict of Interest

- ✓ Grantees must develop and maintain a written code of standards that helps to prevent conflicts of interest in procurement.
  - This written code of conduct must apply to all employees, officers, agents of the grantee, members of their immediate family, and partners.
- ✓ The code shall prevent financial interest or other benefits earned for any of these persons due to a CDBG-related procurement action. These persons also cannot solicit or accept gratuities, favors or other items of monetary value from contractors. Grantees are allowed to establish minimum thresholds below which the financial interest is not substantial or is of nominal value.

- For example, many grantees have rules that nominal items worth less than $10 or $25 are not considered to be a conflict.

14.1.6 Excluded Parties

✓ Grantees must not make any award (subgrant or contract) to any organization which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

- This applies to any CDBG-assisted contract at any tier in the process.
- To learn more about excluded parties, go to: http://www.epls.gov/

ATTACHMENT 3-1: PART 85.36

[Code of Federal Regulations]
[Title 24, Volume 1]
[Revised as of January 1, 2007]
From the U.S. Government Printing Office via GPO Access
[CITE: 24CFR85.36]

[Page 532-538]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 85_ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE

Subpart C_Post-Award Requirements

Sec. 85.36 Procurement.

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in

regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only--

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the

jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 85.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed. (1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in Sec. 85.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms. (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of

analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Sec. 85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ``brand name'' product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ``bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ``performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ``payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled ``Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ``Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

[53 FR 8068, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]

CHAPTER 15: ENVIRONMENTAL REVIEW

CHAPTER PURPOSE & CONTENTS

This chapter provides grantees with general information on environmental review. The chapter will provide an overview of the applicable regulations, responsibilities, guidance on classifying the activity and the appropriate level of review. Grantees must consult the regulations (cited within this chapter) and their HUD Environmental Representative for more detailed guidance than this chapter can provide.

SECTION	TOPIC	PAGE
15.1	Overview of Environmental Requirements	15-1

15.1 Overview of the Environmental Requirements

15.1.1 Background and Applicable Regulations

- ✓ The purpose of the environmental review process is to analyze the effect a proposed project will have on the people and the natural environment within a designated project area and the effect the material and social environment may have on a project.
- ✓ Grantees who receive CDBG funds are considered responsible entities and must complete an environmental review of all project activities prior to obligating CDBG funds. This requirement also applies to projects funded with CDBG generated program income.
- ✓ The HUD rules and regulations that govern the environmental review process can be found at 24 CFR Part 58.
- ✓ The provisions of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations in 40 CFR Parts 1500 through 1508 also apply. In addition, a myriad of other Federal and state laws and regulations (some of which are enforced by State agencies) also apply depending upon the type of project and the level of review required.

✓ The following is a summary of applicable statutory and regulatory cites and other reference materials available from HUD:

Key Topics in This Section	✓ Applicable environmental rules ✓ Legal responsibilities ✓ Triggering actions ✓ Classifying the activity
Regulatory/Statutory Citations	24 CFR Part 58, §570.604 40 CFR Part 1500-1508
Other Reference Materials on This Topic	✓ HUD's Office of Environment and Energy: http://www.hud.gov/offices/cpd/environment/ ✓ HUD's Environmental Review Requirements: http://www.hud.gov/offices/cpd/environment/review/ ✓ HUD's Frequently Asked Environmental Questions and Answers: http://www.hud.gov/offices/cpd/environment/library/ ✓ CPD Notice 02-07

15.1.2 The Responsible Entity & Official Designations

✓ Under 24 CFR Part 58, the term "responsible entity" (RE) means the grantee receiving CDBG assistance. The responsible entity must complete the environmental review process. The RE is responsible for ensuring compliance with NEPA and the Federal laws and authorities has been achieved, for issuing the public notification, for submitting the request for release of funds and certification, when required, and for ensuring the Environmental Review Record (ERR) is complete.

✓ In order to fulfill its obligations under 24 CFR Part 58, the RE should designate two responsible parties:

- **Certifying Officer**: The responsible entity must designate a Certifying Officer -- the "responsible Federal official" -- to ensure compliance with the National Environmental Policy Act (NEPA) and the Federal laws and authorities cited at section 58.5 has been achieved. This person is the chief elected official, chief executive official, or other official designated by formal resolution of the governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all environmental requirements have been followed. This function may not be assumed by administering agencies or consultants.
- **Environmental Officer**: The funding recipient should also designate an Environmental Officer. The Environmental Officer is responsible for conducting the environmental review including such tasks as: writing the project narrative, obtaining maps of the project area, soliciting comments from appropriate local, state and federal agencies, and facilitating responses to comments received on the environmental findings.

15.1.3 Environmental Review Record

- ✓ Each responsible entity must prepare and maintain a written record of the environmental review undertaken for each project. This written record or file is called the Environmental Review Record (ERR), and it must be available for public review upon request.
- ✓ The ERR shall contain all the environmental review documents, public notices (and proof of their publication), and written determinations or environmental findings required by 24 CFR Part 58 as evidence of review, decision making and actions pertaining to a particular project. The document shall:
  - Describe the project and each of the activities comprising the project, regardless of individual activity funding source; and
  - Evaluate the effects of the project or the activities on the human environment;
  - Document compliance with applicable statutes and authorities; and
  - Record the written determinations and other review findings required by 24 CFR Part 58.
- ✓ The ERR will vary in length and content depending upon the level of review required for the categories of activities.
- ✓ Public comments, concerns and appropriate resolution by the recipient are extremely important and must be fully documented in the ERR.

15.1.4 Actions Triggering Environmental Review and Limitations Pending Clearance

- ✓ According to the NEPA (40 CFR 1500-1508) and Part 58, the responsible entity is required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, Part 58 prohibits the commitment or expenditure of CDBG funds until the environmental review process has been completed and, if required, the grantee receives a release of funds.
  - Grantees may not spend either public or private funds (CDBG, other Federal or non-Federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved.
  - Grantees must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made – that decision being based upon an understanding of the environmental consequences and actions that can protect, restore and enhance the human environment (i.e., the natural, physical, social and economic environment).
  - Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the grantee or other project participant's own funds, prior to obtaining environmental clearance.
- ✓ For the purposes of the environmental review process, "commitment of funds" includes:
  - Execution of a legally binding agreement (such as a property purchase or construction contract);
  - Expenditure of CDBG funds;

- Use of non-CDBG funds on actions that would have an adverse impact--- e.g., demolition, dredging, filling, excavating; and
- Use of non-CDBG funds on actions that would be "choice limiting"--- e.g., acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures.

✓ It is acceptable for grantees to execute non-legally binding agreements prior to completion of the environmental review process. A non-legally binding agreement contains stipulations that ensure the project participant does not have a legal claim to any amount of CDBG funds to be used for the specific project or site until the environmental review process is satisfactorily completed.

15.1.5 Classifying the Activity and Conducting the Appropriate Level of Review

✓ To begin the environmental review process, funding recipients must first determine the environmental classification of the project. The term "project" can be defined as an activity or group of activities geographically, functionally, or integrally related, regardless of funding source, to be undertaken by the CDBG recipient, subrecipient, or a public or private entity in whole or in part to accomplish a specific objective.

✓ If various project activities have different classifications, the recipient must follow the review steps required for the most stringent classification.

✓ The four environmental classifications are:

- Exempt Activities,
- Categorically Excluded Activities,
- Activities Requiring an Environment Assessment, or
- Activities Requiring an Environmental Impact Statement.

✓ Regardless of the number of activities associated with a project, a single environmental review is required. Aggregating related activities ensures the recipient adequately addresses and analyzes the separate and combined impacts of a proposed project.

15.1.6 Exempt Activities

✓ Certain activities are by their nature highly unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review.

✓ Listed below are examples which may be exempt from environmental review. For complete details refer to the environmental regulations.

- Environmental and other studies;
- Information and financial services;
- Administrative and management activities;
- Engineering and design costs;

- Interim assistance (emergency) activities if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair or restoration actions necessary only to control or arrest the effects of disasters or imminent threats to public safety or those resulting from physical deterioration;
- Public service activities that will not have a physical impact or result in any physical changes;
- Inspections and testing of properties for hazards or defects;
- Purchase of tools or insurance;
- Technical assistance or training;
- Payment of principal and interest on loans made or guaranteed by HUD; and
- Any of the categorically excluded activities subject to Part 58.5 (as listed in 58.35(a)) provided there are no circumstances which require compliance with any other Federal laws and authorities listed at Part 58.5 of the regulations. Refer to the section below on categorically excluded activities subject to Part 58.5.

✓ If a project is determined to be exempt the responsible entity is required to document in writing that the project is exempt and meets the conditions for exemption as spelled out in § 58.34.

✓ In addition to making a written determination of exemption, the RE must also determine whether any of the requirements of 24 CFR Part § 58.6 are applicable and address as appropriate.

  - The requirements at 24 CFR § 58.6 include the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones.

15.1.7 Categorically Excluded Activities

Categorically Excluded Activities not Subject to 58.5

✓ The following activities, listed at 24 CFR Part 58.35(b), have been determined to be categorically excluded from NEPA requirements and are not subject to Section 58.5 compliance determinations.

- Tenant based rental assistance;
- Supportive services including but not limited to health care, housing services, permanent housing placement, short term payments for rent/mortgage/utility costs, and assistance in gaining access to local State and Federal government services and services;
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs;
- Economic development activities including but not limited to equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy downs and similar activities that result in the transfer of title to a property; and
- Affordable housing predevelopment costs with NO physical impact such as legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

✓ To complete environmental requirements for Categorically Excluded projects not Subject to 24 CFR Part § 58.5, the responsible entity must take the following steps:

- Make a finding of Categorical Exclusion not Subject to § 58.5 and put in the ERR.
  - The ERR must contain a written determination of the RE's finding that a given activity or program is categorically excluded not subject to § 58.5. When these kinds of activities are undertaken, the RE does not have to issue a public notice or submit a request for release of funds (RROF) to HUD.
  - In order to document the finding of categorical exclusion not subject to §58.5. The RE must cite the applicable subsection of § 58.35(b), identify and describe the specific activity or activities, and provide information about the estimated amount of CDBG or other funds to be used.
- Carry out any applicable requirements of 24 CFR Part § 58.6 and document the ERR as appropriate.
  - The RE must determine whether the activity triggers any of the other requirements at 24 CFR 58.6, which are: the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones.

Categorically Excluded Activities Subject to 58.5

✓ The list of categorically excluded activities is found at 24 CFR Part 58.35. While the activities listed in 58.35(a) are categorically excluded from NEPA requirements, the grantee must nevertheless demonstrate compliance with the laws, authorities and Executive Orders listed in 58.5.

✓ The following are categorically excluded activities subject to 58.5:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size, or capacity of more than 20 percent.
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons.
- Rehabilitation of buildings and improvements when the following conditions are met:
  - For residential properties with one to four units:
    - The density is not increased beyond four units;
    - The land use is not changed; and

- If the building is located in a floodplain or in a wetland, the footprint of the building is not increased.

▫ For multi-family residential buildings (with more than four units):

- Unit density is not changed more than 20 percent;
- The project does not involve changes in land use from residential to non-residential; and
- The estimated cost of rehabilitation is less than 75 percent of the total estimated replacement cost after rehabilitation.

▫ For non-residential structures including commercial, industrial and public buildings:

- The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
- The activity does not involve a change in land use, e.g. from commercial to industrial, from non-residential to residential, or from one industrial use to another.

– An individual action on up to four-family dwelling where there is a maximum of four units on any one site. *"Individual action"* refers to new construction, development, demolition, acquisition, disposition or refinancing (does <u>not</u> include rehabilitation which is covered previously). The units can be four one-unit buildings or one four-unit building or any combination in between;

– An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site;

– Acquisition (including leasing) or disposition of or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

– Combinations of the above activities.

✓ The ERR must contain a written determination of the RE's finding that a given activity or program is categorically excluded subject to § 58.5. This determination should:

– Include a description of the project (including all the related activities, even though HOME funds may not be used for all of them);

– Cite the applicable subsection of § 58.35(a);

– Provide the total estimated project cost; and

– Provide written documentation as to whether or not there were any circumstances which required compliance with any of the Federal laws and authorities cited in §58.5.

The RE must use the HUD recommended Statutory Checklist, or an equivalent format, to document its environmental findings. (Contact the HUD Environmental Representative for a copy of the most current version of the checklist and instructions for its completion. Information regarding the HUD Field Office Environmental Representative for your state or local community can be found at:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/contact/localcontacts

- ✓ The RE's documentation must support its determinations related to compliance with the Federal laws and authorities cited in §58.5, including correspondence with the applicable agencies having jurisdiction over the various areas on the checklist.
- ✓ Upon completion of the checklist, the RE will make one of three environmental findings:
  - The project converts to exempt [§ 58.34(a)(12)];
  - The project invokes compliance with one or more of the laws and/or authorities and, therefore, requires public notification and approval from HUD; or
  - The unusual circumstances of the project may result in a significant environmental impact and, therefore, compliance with NEPA is required.
- ✓ If upon completing the Statutory Checklist, the RE determines compliance is required for one or more of the Federal laws and authorities listed in § 58.5, then the RE must publish or post a public notification known as the Notice of Intent to Request Release of Funds (NOI/RROF).
- ✓ After the seven-day comment period has elapsed, the responsible entity must prepare the Request for Release of Funds (RROF) and Environmental Certification. The Environmental Certification certifies that the RE is in compliance with all the environmental review requirements. The RROF and Certification must be signed by the Certifying Officer and submitted to HUD. The RE must receive the release of funds from HUD before proceeding forward with the project.

15.1.8 Activities Requiring an Environmental Assessment

- ✓ Activities which are neither exempt nor categorically excluded (under either category) will require an environmental assessment (EA) documenting compliance with NEPA, HUD and with the environmental requirements of other applicable Federal laws.
- ✓ The responsible entity must take the following steps to complete environmental requirements for projects requiring an environmental assessment:
  - Complete the Modified Format II: Environmental Assessment form completely. The responsible entity must ensure that reliable documentation sources are cited for every item on this assessment checklist. The grantee's HUD Environmental Representative can provide detailed guidance on the Modified Format II, including appropriate documentation for each area of the checklists.
  - Once the Format II has been completed, including consultation with applicable agencies and persons, the grantee must make a determination as to whether the project will or will not have a significant impact on the environment. This can be done once the review has been completed and any comments have been addressed appropriately. The Responsible Entity must select one of the following two findings/determinations:
    - The project is not an action that significantly affects the quality of the human environment and, therefore, does not require the preparation of an environmental impact statement; or
    - The project is an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an environmental impact statement. Both the finding and the environmental assessment must be signed by your environmental certifying officer and included in the ERR.

- ✓ In most instances, the environmental assessment will result in a finding that the project is not an action that significantly affects the quality of the environment and, therefore, does not require an environmental impact statement. If this is the case, the responsible entity must complete the following:
  - Publish and distribute a public notice called a Combined/Concurrent Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF).
  - The RROF and Environmental Certification must be submitted to HUD no sooner than 16 days after publishing the combined/concurrent notice. The Certification must be signed by the Certifying Officer of the jurisdiction.
  - HUD must hold the Release of Funds for a 15-day period to allow for public comment. If no comments are received during this time, HUD will send back a signed Release of Funds and the project may proceed.
- ✓ If the environmental assessment will result in a finding that the project will significantly affect the environment and, therefore, requires an environmental impact statement, the grantee should contact its HUD Environmental Representative for guidance.

15.1.9 Environmental Impact Statement

- ✓ An Environmental Impact Statement (EIS) details the recipient's final analyses and conclusions, according to NEPA, related to potential significant environmental impact of the project. Recipients must follow prescribed steps in the course of preparation, filing and review of an Environmental Impact Statement (See 24 CFR 58, Subpart G, and 40 CFR 1500-1508).
- ✓ An EIS may be required when:
  - The project is so large that it triggers density thresholds, and common sense suggests it may have a substantial environmental impact.
  - A Finding of Significant Impact (FOSI) is found as a result of completing an environmental assessment for the project.
  - Preparation of an EIS is mandatory if the project meets any of these requirements below:
  - Any project to provide a site or sites for hospitals and nursing homes with a total of at least 2,500 beds.
  - Any project to remove, destroy, convert or substantially rehabilitate at least 2,500 existing housing units.
  - Any project to construct, install or provide sites for at least 2,500 housing units.
  - Any project to provide water and sewer capacity for at least 2,500 housing units.
  - Any project that exceeds the 2,500-unit threshold for nonresidential housing construction.
- ✓ EISs are very rare under the CDBG program. Contact your HUD Environmental Officer if there is any indication an EIS may be necessary. Information regarding the HUD Field Office Environmental Representative for your state or local community can be found at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/contact/localcontacts

CHAPTER 16: LABOR STANDARDS

CHAPTER PURPOSE & CONTENTS

This chapter provides grantees with general information on labor standards as these requirements apply to CDBG-funded construction work. The following topics are covered:

SECTION	TOPIC	PAGE
16.1	Overview of the Labor Standards Requirements	16-1

16.1 Overview of the Labor Standards Requirements

✓ Construction work that is financed in whole or in part with CDBG funds must adhere to certain Federal labor standards requirements. This chapter describes the policies and procedures that must be followed when undertaking construction projects with CDBG funds to ensure compliance with the labor laws and requirements.

Key Topics in This Section	✓ Overview of requirements and responsibilities of the grantee ✓ Applicable laws and regulations ✓ Other resources
Regulatory/Statutory Citations	Section 110; §570.603; 40 USC, Chapter 3, Section 276a-276a-5; 29 CFR Part 1, 3, 5, 6 and 7; 40 USC, Chapter 3 Section 276c; 18 USC, Part 1, Chapter 41, Section 874; 29 CFR Part 3; 40 USC Chapter 5, Sections 326-332; 29 CFR Part 4, 5, 6 and 8; 29 CFR Part 70 to 240
Other Reference Materials on This Topic	✓ "Making Davis-Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies" ✓ "Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects"

✓ Under the labor laws, the prime or general contractor is responsible for full compliance with applicable requirements, including all employers/subcontractors on the project. The CDBG grantee is responsible for the administration and enforcement of the requirements to ensure compliance.

16.1.1 Labor Laws and Requirements

✓ The labor laws that may apply to CDBG-funded construction work include the following:

– The **Davis-Bacon Act** (40 USC, Chapter 3, Section 276a-276a-5; and 29 CFR Parts 1, 3, 5, 6 and 7) is triggered when construction work over $2,000 is financed in whole or in part with CDBG funds. It requires that workers receive no less than the prevailing wages being paid for similar work in the same area. Davis-Bacon does not apply to the rehabilitation of residential structures containing less than eight units or force account

labor (construction carried out by employees of the grantee). HUD should be contacted if there is any situation where the applicability of Davis-Bacon is in question.

- The **Copeland Anti-Kickback Act** (40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 CFR Part 3) requires that workers be paid weekly, that deductions from workers' pay be permissible, and that contractors maintain and submit weekly payrolls.
- The **Contract Work Hours and Safety Standards Act** (40 USC, Chapter 5, Sections 326-332; and 29 CFR Part 4, 5, 6 and 8; 29 CFR Part 70 to 240) applies to contracts over $100,000 and requires that workers receive overtime compensation (time and one-half pay) for hours they have worked in excess of 40 hours in one week. Violations under this Act carry a liquidated damages penalty ($10 per day per violation).
- **Section 3 of the Housing and Urban Development Act of 1968**, as amended requires the provision of opportunities for training and employment that arise through HUD-financed projects to lower-income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area. Please see the Fair Housing chapter of this manual for more information.

✓ NOTE: Some states have labor laws that may also apply to CDBG-funded construction projects. If Federal and State laws differ, grantees must comply with the more stringent of the two.

✓ HUD has published two guides that are available for downloading from its web site on labor standards requirements. These documents are "Making Davis Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies" and "Contractor's Guide to Davis-Bacon: Prevailing Wage Requirements for Federally-Assisted Construction Projects."

✓ Demolition, by itself, is not considered to be construction, alteration or repair and therefore Davis-Bacon wage requirements are not typically triggered by demolition work, alone. If however, demolition work is part of a larger, planned construction project, then the demolition work is considered to be part of the overall project and is subject to Davis-Bacon wage requirements. Additional information regarding applicability of demolition work is addressed in Labor Relations Letter 2009-01, found at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14999.pdf

Additional information is available on HUD's Office of Labor Relations web site at http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_relations and the forms referenced herein are available at HUDClips at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips

16.1.2 Bidding and Contracting Requirements

✓ Once it is determined that a construction project is subject to Federal labor standards requirements, certain steps must be taken to ensure compliance. Specifically, grantees must include all applicable labor standards language and the appropriate wage decision in construction bid and contract documents.

Wage Rate Decisions

- ✓ The Davis-Bacon wage decision that applies to a project contains a schedule of work/job classifications and the minimum wage rates that must be paid to persons performing particular jobs. Some wage decisions cover several counties and/or types of construction work.
- ✓ The grantee may access Federal wage rate decisions through the internet at www.wdol.gov. Federal wage determinations are generally issued for four categories: Building, Residential, Heavy, and Highway. It is important to understand the differences when determining which rate category to request to avoid paying wages from an inappropriate determination.
  - **Building construction** generally includes construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies. This includes all construction within and including the exterior walls, both above and below grade.
  - **Residential projects** involve the construction, alteration or repair of single-family houses or apartment buildings no more than four stories tall.
  - **Heavy construction** is generally considered for all construction not properly classified as highway, residential, or building. Water and sewer line construction will typically be categorized as heavy construction.
  - **Highway projects** include construction, alteration or repair of roads.
- ✓ HUD should be consulted if there are questions about properly identifying the type of wage determination and/or modifications.
- ✓ If a work classification that is needed for the project does not appear on the wage decision that will be used, the grantee must request an additional classification and wage rate from HUD. Requests must be made in writing through the grantee and must meet certain criteria to be approved. Requests which fail to meet HUD approval are forwarded to DOL for final determination.

Labor Clauses and Wage Decisions in Bid and Contract Documents

- ✓ The labor clauses, which are contained in HUD-4010, and the applicable wage rate decision (and any additional classifications) must be a physical part of the bid package. The labor clauses obligate the contractor to comply with the Davis-Bacon wage and reporting requirements and provide remedies and sanctions should violations occur.
  - Ten days prior to bid opening, the grantee must check to see if the wage decision has been modified. If so, grantees should notify all potential bidders appropriately in conformance with local procurement procedures.
  - If a contract has been awarded but construction has not yet begun within 90 days of the award, the grantee must also determine if any modifications have been issued to the wage decision. If so, the contractor must adhere to the modified wage decision.

16.1.3 Enforcement of Requirements during Construction

During construction, the grantee is responsible for enforcing the labor standards requirements described in this chapter. This includes good construction management techniques (e.g., pre-

construction conferences, issuance of notices to proceed and payments tied to compliance with the labor requirements), in addition to payroll reviews and worker interviews.

Pre-construction Conference

- ✓ Pre-construction conferences are no longer required in order to comply with Federal labor standards requirements. However it is recommended that grantees hold them prior to the start of work to review contractual requirements, including labor, and performance schedules.
- ✓ The grantee can use this opportunity to clearly present the Federal statutory compliance requirements as well as performance expectations. Items that should be covered at the pre-construction conference include, but are not limited to:
  - Provide and review with the contractor with a copy of the "Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects." This guide can be downloaded from at: http://www.hud.gov/offices/adm/hudclips/guidebooks/HUD-LR-4812/4812-LR.pdf
  - Explain that the contractor must submit weekly payrolls and Statements of Compliance signed by an officer of the company, and that the prime contractor is responsible for obtaining and reviewing payrolls and Statements of Compliance from all subcontractors.
  - Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contact HUD immediately.
  - Explain that employee interviews will be conducted periodically during the project.
  - Emphasize that a copy of the wage rate decision must be posted at the job site.
  - Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the State Bureau of Apprenticeship and Training. If apprentices or trainees are to be used, the contractor must provide the grantee with a copy of the State certification of his/her program.
  - If the contract is $100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week, and that failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards law. In addition to restitution, noncompliance with this law makes the contractor liable for liquidated damages of $10 per day for every day each worker exceeded 40 hours a week without being paid time and a half.
  - Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions unless the contractor has obtained written permission of the employee. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments.
  - Provide contractor with posters for the job site, such as the "Notice to All Employees Working on Federal or Federally Financed Construction Projects." These posters and others that are required are available in both English and Spanish at: http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf (WH-1321 Davis-Bacon Poster (English) or http://www.dol.gov/whd/regs/compliance/posters/davispan.pdf. (WH-1321 Davis Bacon Poster (En Espanol).

- The grantee should also describe the compliance monitoring that will be conducted during the project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making further payment to the contractor.
- Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved and potentially restitution, liquidated damages and/or recommendation for debarment.

Notice to Proceed

✓ Following execution of the contract documents and completion of the pre-construction conference, it is typical practice to issue a Notice to Proceed to the prime/general contractor to begin performance of the work. The Notice to Proceed establishes the construction start date and the scheduled completion date, and provides the basis for assessing liquidated damages. The construction period and basis for assessing liquidated damages must be consistent with those sections of the contract documents.

Payroll Review

✓ Once construction is underway, the prime/general contractor should complete a weekly payroll report for its employees on the covered job and sign the Statement of Compliance. The prime/general contractor must also obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project.

✓ Certified payroll reports should be submitted by the prime/general contractor to the grantee within a reasonable timeframe so as to ensure compliance, typically no more than 10 working days following the end of the payroll period.

✓ The HUD payroll form (WH-347) does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations. The Statement of Compliance must be completed and signed by an authorized representative of the company and submitted in conjunction with the payroll form (or alternate equivalent payroll documentation).

✓ The payrolls should be reviewed by the general contractor to ensure that there are no discrepancies or underpayments. Remember that the prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be necessary. This includes restitution for underpayments and, potentially, liquidated damages that may be assessed for overtime violations.

✓ Grantees should review every payroll to ensure that workers are being paid no less than the prevailing Davis-Bacon wages and that there are no other falsifications.

✓ In addition to the falsification indicators described in the HUD guidance, items to be spot-checked should include:

- The correct classification of workers;
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
- A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;

- Review of deductions for any non-permissible deductions; and
- The Statement of Compliance has been signed by the owner or an officer of the firm.

✓ Any discrepancies and/or falsification indicators must be reported to HUD, along with the steps being taken by the grantee to resolve the discrepancies. Where underpayments of wages have occurred, the grantee is responsible to make sure the correct wages are paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. Grantees should contact HUD for assistance if a violation occurs.

On-Site Interviews

✓ The labor standards requirements include periodically conducting job site interviews with workers. The purpose of the interviews is to capture observations of the work being performed and to get direct information from the laborers and mechanics on the job as to the hours they work, the type of work they perform and the wage they receive.

✓ Interviews should occur throughout the course of the construction and include a sufficient sample of job classifications represented on the job as well as workers from various companies to allow for a reasonable judgment as to compliance.

✓ Information gathered during an interview is recorded on the Record of Employee Interview form (HUD-11).

- The interview should take place on the job site and conducted privately (this is a one-on-one process).
- The interviewer should observe the duties of workers before initiating interviews. Employees of both the prime contractor and subcontractors should be interviewed.
- To initiate the interview, the authorized person shall:
  - Properly identify himself/herself;
  - Clearly state the purpose of interview; and
  - Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.
- When conducting employee interviews, the interviewer should pay particular attention to:
  - The employee's full name;
  - The employee's permanent mailing address;
  - The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and not other work.
  - The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage decision.
    - The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay.
    - If it appears the individual may be underpaid, the interviewer should closely question the worker:

(a) Ask for any records.

(b) Arrange to re-interview the employee.

- Enter the worker's statement of his/her classification.
- Observe duties and tools used:
  - If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.
  - If there are discrepancies, detailed statements are necessary.
- Enter any comments necessary.
- Enter date interview took place.

✓ The HUD-11s must be compared to the corresponding contractor and subcontractor payroll information.

– If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form and it should be signed by the appropriate person.

– If discrepancies do appear, appropriate action should be initiated. When necessary action has been completed, the results must be noted on the interview form.

✓ If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731). The complaint must be investigated and resolved. Contact HUD if necessary.

Progress Payments

✓ Upon receipt of requests for payment during construction, the grantee should check that labor standards compliance is being met.

– All weekly payrolls and Statements of Compliance have been received, reviewed and any discrepancies resolved; and

– Employee interviews have been conducted as necessary, checked against payrolls and the wage rate decisions, and all discrepancies corrected.

✓ Although retainage is not a requirement, many grantees have found it helpful to maintain 10 percent retainage from partial payments until after final inspection, in case of any unresolved problems.

Final Payment

✓ When construction work has been completed, the contractor will submit a final request for payment. Before making final payment, the grantee must ensure that:

– All weekly payrolls and Statements of Compliance have been received and any discrepancies have been resolved;

– All discrepancies identified through job site interviews have been resolved; and

– All files are complete.

16.1.4 Restitution for Underpayment of Wages

- ✓ Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.
- ✓ Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due.
- ✓ Grantees must notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notification should describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments.
- ✓ The employer is required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (e.g., payrolls #1 through #6; or a beginning date and ending date). The correction payroll must list:
  - Each employee to whom restitution is due and their work classification;
  - The total number of work hours;
  - The adjustment wage rate (the difference between the required wage rate and the wage rate paid);
  - The gross amount of restitution due;
  - Deductions; and
  - The net amount to be paid.
- ✓ A signed Statement of Compliance must be attached to the corrected payroll form and each employee who has received restitution should sign the corrected payroll as evidence of their receipt of the payments.
- ✓ The grantee should review the correction payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within 30 days.
- ✓ Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. In these cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The grantee should continue to attempt to locate the unfound workers for three years after the completion of the project. After three years, any amount remaining in the account for unfound workers should be forwarded to HUD.
- ✓ Additional information is available from HUD on disputes, withholding, deposits and escrow accounts including in the publication “Making Davis-Bacon Work: A Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects.”

16.1.5 Documentation & Reporting Requirements

Documentation

- ✓ Grantees must maintain documentation to demonstrate compliance with the labor standards requirements including, but not limited to:
  - Bid and contract documents with the labor standards clause and wage decision;
  - Payroll forms from the contractor and subcontractors, including signed statements of compliance;
  - Documentation of on-site job interviews and review of the corresponding payroll to detect any discrepancies;
  - Documentation of investigations and resolutions to issues that may have arisen (e.g., payments to workers for underpayments of wages or overtime); and
  - Enforcement reports (see below for more information).
- ✓ The labor standards compliance documents contain highly sensitive and confidential information. With the growing rise in identity theft and fraud, it is critical to carefully guard this sensitive information so that the person(s) for whom the information has been collected are not unduly exposed to financial or personal risk.
- ✓ The standard compliance documents must be preserved and retained for a period of five years following the completion of work. Therefore, it is important to follow guidelines outlined in the Labor Relations Letter 2006-02 to minimize risk of improper and/or unnecessary disclosure, including:
  - Keep sensitive materials secret at all times (in locked file cabinet, not left in areas accessible to the public);
  - Do not include Social Security Numbers on documents and records unless it is absolutely necessary;
  - Do not disclose the identity of any informant unless it is necessary and only if authorized by the informant; and
  - Dispose of documents and records containing sensitive information responsibly.

Reporting

- ✓ Grantees must report to the Department of Labor on all covered contracts awarded and on all enforcement actions taken each six months. HUD collects the reports from its client agencies and compiles a comprehensive report to DOL covering all of the Davis-Bacon construction activity.
- ✓ The Semi-Annual Report form (HUD-4710) and instructions (HUD-4710i) are available on HUD's web site and HUDClips http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips

CHAPTER 17: LEAD-BASED PAINT

CHAPTER PURPOSE & CONTENTS

Whenever Federal funds, such as CDBG, are used to assist housing built before 1978, steps must be taken to address lead hazards. These rules must be met for the grantee to be in compliance.

The purpose of this chapter is to provide grantees with a general understanding of HUD's Lead Safe Housing Rule (24 CFR Part 35) and EPA's Lead Renovation, Repair and Painting Program Rule (40 CFR Part 745). These rules apply to all pre-1978 housing units assisted with CDBG funds, including single and multi-family units, whether publicly or privately owned. Additionally, the EPA RRP rule also applies to pre-1978 child-occupied facilities located in not only residential, but also public and commercial buildings. .

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17.1 Lead Safe Housing Rule Overview

Key Topics in This Section	Rule overview
Regulatory/Statutory Citations	§570.608 24 CFR Part 35
Other Reference Materials on This Topic	Making It Work: Implementing the Lead Safe Housing Rule Interpretive Guidance on HUD's Lead Safe Housing Rule June 21, 2004 CPD Assistant Secretary Memo of 8/19/03 CPD Notice 01-01

All housing units in a project assisted with CDBG funds must comply with the regulations found at 24 CFR Part 35.

The lead-based paint regulations consolidate all lead-based paint requirements for HUD-assisted housing. The purpose of the regulation is to identify and address lead-based paint hazards before children are exposed to lead. The regulation is divided into subparts, of which the following apply to the CDBG program:

- ✓ Subpart A: Disclosure;
- ✓ Subpart B: General Requirements and Definitions;
- ✓ Subpart J: Rehabilitation;
- ✓ Subpart K: Acquisition, Leasing, Support Services, and Operations; and
- ✓ Subpart R: Methods and Standards for Lead-Based Paint Hazard Evaluation and Reduction

17.1.1 Types of Requirements

For CDBG projects, the lead-based paint requirements established by the regulation fall into the three major categories listed below:

- ✓ Notification: Recipients must meet four notification requirements:
  - Lead Hazard Information Pamphlet - Occupants, owners, and purchasers must receive the EPA/HUD/Consumer Product Safety Commission (CPSC) lead hazard information pamphlet, or an EPA-approved equivalent.
    - Pamphlets should be provided to all households at time of application.
    - It is recommended that grantees develop an acknowledgement form and have all households sign to document they received and understood the pamphlet.
    - A copy of this acknowledgment form should then be placed in the file.
  - Disclosure - Check that property owners have provided purchasers and lessees with available information or knowledge regarding the presence of lead-based paint and lead-based paint hazards prior to selling or leasing a residence.
    - A disclosure notice must be provided to purchasers before closing so that they are aware that there may be lead in the home they are purchasing. A copy of the disclosure notice must be placed in the file.
    - Tenants must receive a disclosure notice before moving into the unit. Ideally, they should receive a disclosure notice at time of application so they can make an informed decision when choosing housing for their household. A copy of the disclosure notice should be kept by the landlord in the tenant's file.
  - Notice of Lead Hazard Evaluation or Presumption - Occupants, owners, and purchasers must be notified of the results of any lead hazard evaluation work or the presumption of lead-based paint or lead hazards.
    - A copy of this notice must be provided to owners and tenants within 15 days of the evaluation.
    - A copy of this notice should be kept in the project file.
  - Notice of Lead Hazard Reduction Activity - Occupants, owners, and purchasers must be notified of the results of any lead hazard reduction work.
    - A copy of this notice must be provided to owners and tenants within 15 days of the project achieving clearance.
    - A copy of this notice should be kept in the project file.
- ✓ Lead Hazard Assessment/Evaluation: Assessment/evaluation methods include visual assessments, paint testing, and risk assessments. Each method has specific requirements (defined in Subpart R of the regulation) and must be done by qualified professionals. The specific method required depends on the activity undertaken.
- ✓ Lead Hazard Reduction: Lead hazard reduction may include paint stabilization, interim controls, standard treatments, or abatement. Each method has specific requirements (defined in Subpart R of the regulation) and must be done by qualified professionals. The specific method required depends on the activity undertaken.

17.1.2 Exemptions

Some CDBG projects may be exempt from the Lead Safe Housing Rule if they meet the criteria listed below:

- ✓ Housing units constructed after 1978.
- ✓ Emergency repairs to the property are being performed to safeguard against imminent danger to human life, health or safety, or to protect the property from further structural damage due to natural disaster, fire or structural collapse. The exemption applies only to repairs necessary to respond to the emergency.
- ✓ The property will not be used for human residential habitation. This does not apply to common areas such as hallways and stairways of residential and mixed-use properties.
- ✓ Housing "exclusively" for the elderly or persons with disabilities, with the provision that children less than six years of age will not reside in the dwelling unit.
- ✓ An inspection performed according to HUD standards found the property contained no lead-based paint.
- ✓ According to documented methodologies, lead-based paint has been identified and removed, and the property has achieved clearance.
- ✓ The rehabilitation will not disturb any painted surface.
- ✓ The property has no bedrooms.
- ✓ The property is currently vacant and will remain vacant until demolition.

Grantees administering emergency repair programs should pay particular attention to the exemption "The rehabilitation will not disturb any painted surfaces." Many emergency repair programs replace only water heaters or roofs where no painted surfaces are disturbed and thus may be exempt from the Rule.

All exemptions must be documented in the project file. HUD has developed a Lead Safe Housing Rule Applicability form that can be found in the August 19, 2003, memo from Roy A. Bernardi, Assistant Secretary for Community Planning and Development, with the subject Lead-Safe Housing Rule Checklist and Associated Guidance for Implementing and Documenting Compliance.

17.1.3 Requirements for Rehabilitation Projects

CDBG funds may be used rehabilitation of existing units. When such an activity is undertaken using Federal funds on a unit built before 1978, the Lead Safe Housing Rule applies. This section briefly describes the relevant requirements.

Calculating the Level of Assistance

The lead hazard evaluation and reduction activities required for rehabilitation projects depend on the level of rehabilitation assistance received by the project. This level of assistance is determined by taking the lower of:

- ✓ Per unit rehabilitation hard costs (regardless of source of funds); or
- ✓ Per unit Federal assistance (regardless of the use of the funds).

To make this determination, it helps to understand several terms:

- ✓ Rehabilitation Hard Costs. The rehabilitation costs are calculated using only hard costs. They do not include soft costs or the costs of lead hazard evaluation and reduction, as described below.
- ✓ Lead Hazard Evaluation and Reduction Costs. Lead hazard evaluation and reduction costs include costs associated with site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributable to lead-based paint hazard reduction.
- ✓ Federal Assistance. Federal assistance includes all Federal funds provided to the rehabilitation project, regardless of whether the funds are used for acquisition, construction, soft costs or other purposes. This also includes funds from program income, but excludes low-income housing tax credit funds (LIHTC), Department of Energy Weatherization Program funds, or non-Federal HOME Program match funds.

Requirements for Projects Receiving Rehabilitation Assistance Up to and Including $5,000 per Unit

Projects where the level of rehabilitation assistance is less than or equal to $5,000 per unit must meet the following requirements:

- ✓ The goal is to "do no harm." Therefore all work must be conducted using lead safe work practices. Workers must be trained in lead safe work practices (see the attached exhibits).
- ✓ Lead Hazard Evaluation. Paint testing must be conducted to identify lead-based paint on painted surfaces that will be disturbed or replaced. Alternatively, grantees may presume that these surfaces contain lead-based paint.
- ✓ Lead Hazard Reduction. Grantees must repair all paint that will be disturbed during rehabilitation, unless such paint is found not to be lead-based paint.
  - If lead-based paint is detected or presumed, safe work practices must be used during rehabilitation.
  - Clearance is required by a certified clearance examiner.
- ✓ Notices must be provided to owners and tenants:
  - The Lead Hazard Information pamphlet;
  - The Notice of Evaluation (if paint testing is performed) or Notice of Presumption (if paint testing is not performed); and
  - The Notice of Lead Hazard Reduction.
- ✓ In short, for rehabilitation projects where the level of assistance is less than or equal to $5,000 per unit, workers must be trained in safe work practices, notices must be provided to owners and tenants, and clearance must be achieved.

Requirements for Projects Receiving Rehabilitation Assistance Between $5,000-$25,000 per Unit

Projects where the level of rehabilitation assistance is between $5,000 and $25,000 per unit must meet the following requirements.

- ✓ The goal is to "identify and address lead hazards." A risk assessment is required to identify lead hazards and identified hazards must be addressed by interim controls.
- ✓ Lead Hazard Evaluation. A risk assessment must be conducted by a qualified professional prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any surfaces to be disturbed by the rehabilitation.
- ✓ Lead Hazard Reduction. If the risk assessment identifies lead-based paint hazards interim controls must be implemented to address lead-based paint hazards.
  - Interim controls must be performed by qualified professionals using safe work practices.
  - Clearance, conducted by a qualified clearance examiner, is required when lead hazard reduction activities are complete.
- ✓ Options. There are two options, as follows:
  - The grantee is permitted to presume that lead-based paint is present and that lead-based paint hazards exist. In such cases, evaluation is not required. The grantee must perform standard treatments in lieu of interim controls on all applicable painted surfaces and presumed lead-based paint hazards.
  - The grantee is also permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead hazards, the grantee/subrecipient must then conduct a risk assessment. (Note: Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform interim controls on lead-based paint hazards created as a result of the rehabilitation work.)
- ✓ Notices must be provided to owners and tenants:
  - The Lead Hazard Information pamphlet;
  - The Notice of Evaluation (if a risk assessment is performed) or Notice of Presumption (if a risk assessment is not performed); and
  - The Notice of Lead Hazard Reduction.
- ✓ In short, compliance with the Lead Safe Housing Rule for such rehabilitation projects will affect the project planning, timeline, scope of work, contracting and budget.

Requirements Projects Receiving Rehabilitation Assistance over $25,000 per Unit

Projects where the level of rehabilitation assistance is over $25,000 per unit must meet the following requirements.

- ✓ The goal is to "identify and eliminate lead hazards." A risk assessment is required to identify hazards and any identified hazards must be abated by a certified abatement professional.
- ✓ Lead Hazard Evaluation. A risk assessment must be conducted prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any surfaces to be disturbed by the rehabilitation or grantees may assume that lead-based paint hazards exist.
- ✓ Lead Hazard Reduction. To address hazards identified:
  - Abatement must be conducted to reduce all identified lead-based paint hazards except those described below. Abatement must be conducted by a certified abatement contractor.
  - If lead-based paint hazards are detected during the risk assessment on the exterior surfaces that are not to be disturbed by rehabilitation, interim controls may be completed instead of abatement to reduce these hazards.
  - Clearance is required when lead hazard reduction activities are complete.
- ✓ Options. There are two options, as follows:
  - The grantee is permitted to presume that lead-based paint hazards exist. In such cases, a risk assessment is not required. The grantee must abate all applicable painted surfaces that will be disturbed during rehabilitation and all presumed lead hazards.
  - The grantee is permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead hazards, the grantee/subrecipient must then conduct a risk assessment. (Note: Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform abatement on lead-based paint hazards created as a result of the rehabilitation work.)
- ✓ Notices must be provided to owners and tenants:
  - The Lead Hazard Information pamphlet;
  - The Notice of Evaluation (if a risk assessment is conducted) or Notice of Presumption (if a risk assessment is not conducted); and
  - The Notice of Lead Hazard Reduction.
- ✓ In short, compliance with the Lead Safe Housing Rule for such rehabilitation projects will affect the project planning, timeline, scope of work, contracting, and budget. In particular, it involves the engagement of a certified abatement contractor.

17.1.4 Requirements for Acquisition, Leasing or Supportive Services Projects

CDBG funds may be used for acquisition, leasing and supportive services. When such an activity is undertaken using Federal funds on a unit built before 1978, the Lead Safe Housing Rule applies. This section briefly describes the requirements needed to follow to be in compliance.

- ✓ Lead Hazard Assessment. A visual assessment must be conducted during initial and periodic inspections by a person who is trained to detect deteriorated paint. Lead hazard evaluation activities must be completed prior to occupancy, or if the unit is already occupied, immediately after receipt of Federal assistance.
- ✓ Lead Hazard Reduction. Deteriorated paint must be corrected using paint stabilization methods. Paint stabilization must be completed prior to occupancy, or if the unit is already occupied, immediately after receipt of Federal assistance.
  - Safe Work Practices. Safe work practices are required so workers must be appropriately trained or supervised.
  - Clearance. Clearance, by a qualified clearance examiner, is required when paint stabilization is complete.
- ✓ Notification
  - Lead Hazard Information Pamphlet. The lead hazard information pamphlet must be provided prior to selling or providing leasing, support services, or operations activities to a house or unit that was built prior to 1978. Grantees do not have to provide the pamphlet if they can document that it has already been received.
  - Notice of Lead Hazard Reduction Activity. The notice must be provided within 15 calendar days of the date when the paint stabilization is completed.

17.1.5 Compliance

Failure to comply with the lead-based paint requirements under the regulation will subject a recipient to sanctions authorized under the Federal funding programs providing assistance to the property, and violations may be subject a recipient to other penalties available under state or local law. Notifying owners, purchasers, or occupants of possible lead-based paint hazards does not relieve recipients of their responsibilities under the new regulation.

Not complying may expose households and contractors with potentially dangerous levels of lead dust and debris that can cause life threatening illnesses and developmental delays.

17.2 The Renovation, Repair and Painting Rule

Key Topics in This Section	Rule overview
Regulatory/Statutory Citations	§570.608 40 CFR Part 745
Other Reference Materials on This Topic	HUD Lead Grantee Questions on the Environmental Protection Agency's (EPA's) Renovation, Repair, and Painting (RRP) Rule Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools (PDF) / En Espanol (PDF) EPA's Renovator and Trainer Tool Box Site

- ✓ On April 22, 2008, EPA issued a rule requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning. Beginning in April 22, 2010, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. The EPA requires anyone performing renovation, repair, and painting projects that disturbs lead-based paint in pre-1978 homes, child care facilities and schools must be an EPA-certified renovator and follow lead-safe work practices.
- ✓ There are some differences between the EPA RRP Rule and the HUD Lead Safe Housing Rule (LSHR). A major difference is that the LSHR requires clearance examinations. All housing receiving federal assistance must still comply with the LSHR. OHHLHC provides information on complying with the LSHR and RRP, and frequently-asked questions from grantees. Additional information for renovators is available.
- ✓ All contractors must follow these three simple procedures:
  - Contain the work area;
  - Minimize dust; and
  - Clean up thoroughly.
- ✓ The RRP rule requires that contractors performing renovation, repair and painting projects that disturb lead-based paint provide to owners and occupants of child care facilities and to parents and guardians of children under age six that attend child care facilities built prior to 1978 the lead hazard information pamphlet "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools".
- ✓ Under the rule, child-occupied facilities are defined as residential, public or commercial buildings where children under age six are present on a regular basis. The requirements apply to renovation, repair or painting activities. The rule does not apply to minor maintenance or repair activities where less than six square feet of lead-based paint is disturbed in a room or where less than 20 square feet of lead-based paint is disturbed on the exterior. Window replacement is not minor maintenance or repair.

- ✓ Additional information on becoming an EPA-certified renovator or training provider is available on EPA's Renovator and Trainer Tool Box site that can be found at: http://www.epa.gov/lead/pubs/toolkits.htm

Exhibit 17-1 Effective Dates of the Renovation, Repair and Painting Rule

June 23, 2008	Unaccredited renovator or dust sampling technician training programs may not advertise or provide training leading to EPA certification States, Tribes, and Territories may begin to apply for authorization Persons performing renovations for compensation in pre-1978 child-occupied facilities (e.g., child care facilities, kindergarten and pre-kindergarten classrooms) must provide **either** Protect Your Family **or** Renovate Right to the owners and occupants before beginning renovations Modifications/exemptions to Pre-renovation Education Rule take effect: (1) Minor repair and maintenance exception changes to < 6 ft2 per room for interiors, 20 ft2 for exteriors. To qualify, the project cannot involve the use of high dust generating ("prohibited") practices or window replacement. (2) Emergency renovations specifically include interim controls performed in response to an elevated blood lead level in a child. (3) Persons performing renovations for compensation in pre-1978 housing **may use either** Protect Your Family **or** Renovate Right to comply with the existing requirement to provide a lead hazard information pamphlet to the owners and occupants of target (pre-1978) housing before beginning renovations
December 22, 2008	Persons performing renovations for compensation in target (pre-1978) housing or child-occupied facilities **must provide** Renovate Right to the owners and occupants before beginning renovations
April 22, 2009	Training providers may begin applying to EPA for accreditation to provide renovator or dust sampling technician training Persons seeking certification as renovators or dust sampling technicians may take accredited training as soon as it is available
October 22, 2009	Firms may begin applying to EPA for certification to conduct renovations
April 22, 2010	Renovations in target (pre-1978) housing and child-occupied facilities must be conducted by certified renovation firms, using renovators with accredited training, and following the work practice requirements of the rule

✓ Listed herewith is the web site for HUD/EPA renovator training:
http://www.epa.gov/lead/pubs/epahudrrmodel.htm

ATTACHMENT 17-1

QUALIFICATIONS FOR HAZARD EVALUATION PROFESSIONALS

Paint inspectors and risk assessors must be certified to conduct evaluations. Rehabilitation specialists and other program staff may have the experience and educational qualifications needed to pursue lead-based paint inspector or risk assessor training and certification. The following specific certification requirements apply to these evaluators (from *40 CFR 745.226*):

- ❑ Certified paint inspectors must:
  - Successfully complete an EPA or state-accredited training program;
  - Pass the exam required by the certifying authority; and
  - Apply for and be certified by the state or EPA.
- ❑ Risk assessors must:
  - Successfully complete an EPA or state-accredited training program;
  - Pass the exam required by the certifying authority; and
  - Apply for and be certified by the state or EPA;

    OR
  - Be certified as an industrial hygienist, engineer, architect, or related field;

    OR
  - Have a high school diploma and at least three years' experience with lead, asbestos, environmental remediation work, or construction.
- ❑ Clearance must be performed by the following:
  - Certified risk assessor;
  - Certified lead-based paint inspector; or
  - Certified lead sampling technician (called a clearance technician in the HUD regulation).
    - Sampling technicians are currently not authorized by EPA to perform clearance examinations after abatement, but HUD regulations permit them to perform clearance after interim controls or maintenance or renovation activities

ATTACHMENT 17-2

Who is qualified to perform LEAD hazard reduction work?

❑ **Qualifications for Abatement Contractors**

- Abatement contractors consist of:
  - Trained and state-certified abatement supervisor(s); and
  - Workers who have successfully completed accredited lead abatement worker training.

❑ **Qualification to Perform Interim Controls or Standard Treatments**

- To perform interim controls or standard treatments, a worker must be supervised by a certified abatement supervisor or have successfully completed one of the following courses:
  - An accredited lead-based paint abatement supervisor course;
  - An accredited lead-based paint worker course;
  - The lead-based paint course: "Work Smart, Work Wet, and Work Clean," prepared by the National Environmental Training Association for the EPA and HUD;
  - The Remodeler's and Renovator's Lead-Based Paint Training Program prepared by HUD and the National Association of the Remodeling Industry (NARI); or
  - A similar course recognized by HUD and EPA. (See HUD's website, www.hud.gov/offices/lead, for list of approved courses.)

❑ **Qualifications for Safe Work Practices**

- There are no specific qualifications for safe work practices, however, the following courses are useful general courses for all workers who want to work safely with lead.
  - Remodeler's and Renovator's Lead-Based Paint Training Program developed by HUD and the National Association for the Remodeling Industry (NARI); and
  - Lead-Based Paint Maintenance Training Program developed by HUD/EPA and the National Educational Training Association (NETA).
- The booklet, "Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work," is an excellent illustrated guide. Available on www.hud.gov/offices/lead or from the National Lead Information Center at 1-800-424-LEAD or www.epa.gov/lead/pubs/nlic.htm.

ATTACHMENT 17-3

Four Approaches to Implementing Lead Hazard Evaluation and Reduction

APPROACH 1. DO NO HARM		
Lead Hazard Evaluation	Lead Hazard Reduction	Options
♦ Paint testing performed on surfaces to be disturbed.	♦ Repair surfaces disturbed during work. ♦ Safe work practices used when working on areas identified as lead-based paint. ♦ Clearance performed.	♦ Presume lead-based paint is present and use safe work practices on all surfaces being disturbed.
APPROACH 2. IDENTIFY AND STABILIZE DETERIORATED PAINT		
Lead Hazard Evaluation	Lead Hazard Reduction	Options
♦ Visual assessment performed to identify deteriorated paint.	♦ Paint stabilization of identified deteriorated paint. ♦ Safe work practices used. ♦ Clearance performed.	♦ Perform paint testing on deteriorated paint. Safe work practice requirements only apply to lead-based paint.
APPROACH 3. IDENTIFY AND CONTROL LEAD HAZARDS		
Lead Hazard Evaluation	Lead Hazard Reduction	Options
♦ Paint testing performed on surfaces to be disturbed. ♦ Risk assessment performed on entire dwelling.	♦ Interim controls performed on identified hazards. ♦ Safe work practices used. ♦ Clearance performed.	♦ Presume lead based paint and/or lead based paint hazards are present and perform standard treatments.
APPROACH 4. IDENTIFY AND ABATE LEAD HAZARDS		
Lead Hazard Evaluation	Lead Hazard Reduction	Options
♦ Paint testing performed on surfaces to be disturbed. ♦ Risk assessment performed on entire dwelling.	♦ Abatement performed on identified hazards. ♦ Interim controls performed on identified hazards on the exterior that are not disturbed by rehabilitation. ♦ Safe work practices used. ♦ Clearance performed.	♦ Presume lead-based paint and/or lead-based paint hazards are present and perform abatement on all applicable surfaces – deteriorated, impact, friction, chewable surfaces, and surfaces to be disturbed.

ATTACHMENT 17-4

Summary of Required Activities to Address Lead-Based Paint

Category	Required Activities
Notification	All of the following notices must be provided as appropriate: ✓ Pamphlet; ✓ Disclosure; ✓ Notice of Lead Hazard Evaluation or Presumption; and ✓ Notice of Lead Hazard Reduction Activity.
Lead Hazard Evaluation	One or more of the following may apply: ✓ Visual Assessment; ✓ Paint Testing; and ✓ Risk Assessment (or Lead Hazard Screen).
Lead Hazard Reduction	One or more of the following may apply: ✓ Paint Stabilization; ✓ Interim Controls (or Standard Treatments); and ✓ Abatement. The following always apply: ✓ Safe Work Practices; and ✓ Clearance.
Ongoing Maintenance	This requirement may apply. ✓ Inspect and maintain lead hazard reduction work.

ATTACHMENT 17-5

Comparison Between HUD Lead Safe Housing Rule and Renovation, Repair and Painting Rule

Stage of Job	Requirement	HUD LSHR	EPA RRP	Changes to LSHR Projects to Comply with RRP
Planning and Set-Up	Determination that lead-based paint (LBP) is present	EPA-recognized test kits cannot be used to say paint is not LBP. Only a certified LBP inspector or risk assessor may determine whether LBP is present.	Certified renovators use an EPA-recognized test kit to determine if RRP rule applies or not.	None.
	Training	HUD does not certify renovators or firms. All workers and supervisors must complete a HUD approved curriculum in lead safe work practices, except that non-certified renovation workers need only on-the-job training if they are supervised by a certified LBP abatement supervisor who is also a certified renovator.	EPA or EPA authorized States certify renovation firms and accredit training providers that certify renovators. Only the certified renovator is required to have classroom training. Workers must receive on-the-job training from the certified renovator.	Renovation firms must be certified. At least one certified renovator must be at the job or available when work is being done. (The certified renovator may be a certified LBP abatement supervisor who has completed the 4-hour RRP refresher course.)
	Pre-Renovation	HUD requires conformance with EPA regulations, including EPA's Pre- Renovation Education Rule. EPA had required renovators to	Education Renovators must hand out the EPA / HUD Renovate Right: Important Lead Hazard	None.

		hand out the EPA / HUD / CPSC Protect Your Family from Lead in Your Home (Lead Disclosure Rule) pamphlet.	Information for Families, Child Care Providers and Schools pamphlet. (This requirement went into effect on December 22, 2008.)	
During the job	Treating LBP hazards	Depending on type and amount of HUD assistance, HUD requires that lead hazards be treated using interim controls or ongoing lead-based paint maintenance.	EPA generally requires that renovations in target housing be performed using lead-safe work practices.	None.
	Prohibited Work Practices	HUD prohibits 6 work practices. These include EPAï¿½s 3 prohibited work practices plus: heat guns that char paint, dry scraping or sanding farther than 1 ft. of electrical outlets, and use of a volatile stripper in poorly ventilated space.	EPA prohibits 3 work practices (open flame burning or torching, heat guns above 1100 degrees F, machine removal without HEPA vacuum attachment).	None.
	Threshold minimum amounts of interior paint disturbance which trigger lead activities.	HUD has a lower interior at the de minimis threshold (2 sq. ft. per room, or 10% of a small component type) than EPA for lead-safe work practices. HUD	EPA interior threshold (6 sq. ft. per room) for minor repair and maintenance activities is higher than HUDï¿½s de	None.

		also uses this lower threshold for clearance and occupant notification.	minimis threshold.	
End of job	Confirmatory Testing	HUD requires a clearance examination done by an independent party instead of the certified renovatorï¿½s cleaning verification procedure.	EPA allows cleaning verification by the renovator or clearance examination. The cleaning verification does not involve sampling and laboratory analysis of the dust.	None.
	Notification to Occupants	HUD requires the designated party to distribute notices to occupants within 15 days after lead hazard evaluation and control activities in their unit (and common areas, if applicable).	EPA has no requirement to notify residents who are not the owners after the renovation.	None.

CHAPTER 18: RELOCATION & ACQUISITION

CHAPTER PURPOSE & CONTENTS

Whenever Federal funds are used in a project involving the acquisition, rehabilitation or demolition of real property, a Federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) generally applies. In some cases, the use of CDBG funds in a project involving the demolition or conversion of lower income dwellings may also trigger another Federal law under Section 104(d) of the Housing and Community Development Act of 1974 (Section 104(d)). The purpose of this chapter is to provide grantees with a general understanding of the requirements under both Federal laws in addition to where additional information and assistance may be obtained.

SECTION	TOPIC	PAGE
18.1	Overview of the Relocation and Acquisition Requirements	18-1

18.1 Overview of the Relocation and Acquisition Requirements

There are many CDBG activities that may trigger the URA and 104(d) requirements. This section provides a brief overview of these requirements.

Key Topics in This Section	Activity Definitions Triggering Actions
Regulatory/Statutory Citations	49 CFR Part 24 24 CFR Part 42 HUD's Handbook 1378
Other Reference Materials on This Topic	HUD's Real Estate Acquisition and Relocation website at http://www.hud.gov/relocation

18.1.1 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act or URA)

✓ The Uniform Act, passed by Congress in 1970, is a Federal law that establishes minimum standards for Federally funded programs and projects that require the acquisition of real property (real estate) or that displace persons from their homes, businesses, or farms. The Uniform Act's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for Federal or Federally funded projects.

– **49 CFR Part 24** are the government-wide regulations that implement the URA. A formatted copy of these regulations is attached to this chapter.

- **HUD Handbook 1378** provides HUD policy and guidance on implementing the URA and 49 CFR Part 24 for HUD funded programs and projects. This handbook can be found at http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm
- Grantees with questions about the URA are urged to contact the HUD Regional Relocation Specialist (RRS) for their region, as well as referring to the regulations, HUD handbook, and HUD's website for additional guidance. A list of the RRS can be found at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation/contacts

✓ What are the URA's objectives?

- To provide uniform, fair, and equitable treatment of persons whose real property is acquired or who are displaced in connection with Federally funded projects;
- To ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement;
- To ensure that no individual or family is displaced unless decent, safe, and sanitary (DSS) housing is available within the displaced person's financial means;
- To help improve the housing conditions of displaced persons living in substandard housing; and
- To encourage and expedite acquisition by agreement and without coercion.

✓ How do URA requirements impact a grantee's project?

- Agencies conducting a program or project under the URA must carry out their legal responsibilities to affected property owners and displaced persons. Agencies should plan accordingly to ensure that adequate time, funding, and staffing are available to carry out their responsibilities.

✓ Some of those responsibilities include:

- **For Real Property Acquisition** (Involuntary Acquisition – under threat or use of eminent domain)
  - Appraise property before negotiations;
  - Invite the property owner to accompany the appraiser during the property inspection;
  - Provide the owner with a written offer of just compensation and a summary of what is being acquired;
  - Pay for property before possession; and
  - Reimburse expenses resulting from the transfer of title such as recording fees, prepaid real estate taxes, or other expenses.
- Note that agency responsibilities for voluntary acquisitions differ. Refer to 49 CFR 24.101(b) and **HUD Handbook 1378** Chapter 5 for additional information.
- **For Residential Displacements**
  - Provide relocation advisory services to displaced tenants and owner occupants;
  - Provide a minimum 90 days written notice to vacate prior to requiring possession;
  - Reimburse for moving expenses; and

- Provide payments for the added cost of renting or purchasing comparable replacement housing.

– **For Nonresidential Displacements (Businesses, Farms, and Nonprofit Organizations)**

- Provide relocation advisory services.
- Provide a minimum 90 days written notice to vacate prior to requiring possession.
- Reimburse for moving and reestablishment expenses.

✓ For additional information and resources visit HUD's Real Estate Acquisition and Relocation website at:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation

18.1.2 Section 104(d) of the Housing and Community Development Act (Section 104(d)) "The Barney Frank Amendment"

✓ Section 104(d) of the Housing and Community Development (HCD) Act provides minimum requirements for CDBG funded programs or projects when units that are part of a community's low-income housing supply are demolished or converted to a use other than low- or moderate-income dwellings.

– 24 CFR Part 42 are the regulations that implement Section 104(d).

– HUD Handbook 1378 provides HUD policy and guidance on implementing Section 104(d).

✓ What are the Section 104(d) requirements?

– Replacement, on a one-for-one basis, of all occupied and vacant occupiable low- or moderate-income dwelling units that are demolished or converted to a use other than low- or moderate-income housing in connection with an activity assisted under the HCD Act; and

– Provision of certain relocation assistance to any lower income person displaced as a direct result of the following activities in connection with Federal assistance:

- Demolition of any dwelling unit; or
- Conversion of a low- or moderate-income dwelling unit to a use other than a LMI residence.

✓ What triggers Section 104(d)?

– Section 104(d) requirements are triggered by the use of HOME, CDBG, Section 108 Loan Guarantee, or UDAG funding in a project involving the demolition or conversion of low- or moderate-income housing. It should be noted that CDBG funding used solely for relocation assistance or project administration does not trigger Section 104(d) requirements.

✓ What are the relocation requirements under Section 104(d)?

– The relocation assistance and payments for eligible persons under Section 104(d) are similar to those required for the URA, but there are a number of differences. One significant difference is the period of time used to calculate a rental assistance payment: Section 104(d)

factors in 60 months vs. 42 months for the URA. Section 104(d) eligible displaced persons may choose to receive relocation assistance under either Section 104(d) or the URA.

- Grantees with questions about section 104(d) are urged to contact the HUD Regional Relocation Specialist (RRS) for their region, as well as referring to the regulations, HUD handbook, and HUD's website for additional guidance.

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CHAPTER 19: FAIR HOUSING, ACCESSIBILITY, AND EQUAL EMPLOYMENT

CHAPTER PURPOSE & CONTENTS

This chapter summarizes the key regulations and requirements of fair housing, accessibility, and equal employment and contracting laws applicable to CDBG projects.

SECTION	TOPIC	PAGE
19.1	Introduction/Overview of Requirements	19-1
19.2	Fair Housing	19-6
19.3	Handicapped Accessibility	19-8
19.4	Equal Opportunity	19-13
19.5	Recordkeeping and Monitoring	19-16

19.1 Introduction and Overview

The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Basic Overview ✓ Consolidated Plan/Analysis of Impediments ✓ List of Applicable Laws
Regulatory/Statutory Citations	Section 109 §570.602
Other Reference Materials on This Topic	✓ Fair Housing Planning Guide website: http://www.hud.gov/offices/fheo/images/fhpg.pdf

19.1.1 Basic Overview

This chapter summarizes the key regulations and requirements of fair housing and equal opportunity laws applicable to CDBG projects. To be in compliance, the grantee must adhere to all the basic tenets of fair housing and equal opportunity regulations. To demonstrate support for ensuring these tenets, grantees must endorse in attitude and deed all regulations for fairness in the provision of CDBG funded programs and projects.

Fair housing and equal opportunity laws are like an umbrella, intended to protect individuals from discrimination in housing, employment, through business opportunities such as contracting, or through other benefits created by CDBG projects.

19.1.2 Consolidated Plan Requirements

Grantees are required to complete an analysis of impediments to fair housing choice within one year of the effective date of the Consolidated Plan Rule (February 6, 1995). The analysis is not required to be submitted as part of the consolidated plan, but the jurisdiction must certify that it completed the analysis, is taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintains records reflecting the analysis and related actions.

Analysis of Impediments to Fair Housing Choice

In accordance with the Fair Housing Act, the Secretary requires that CDBG grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. As part of the certification to affirmatively further fair housing that grantees are required to submit with their consolidated plan, grantees must complete an analysis of impediments to fair housing choice and to take actions to overcome the effects of any impediments identified through that analysis.

In summary, requirements for the analysis of impediments include:

- ✓ Grantees are to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within their jurisdictions;
- ✓ Grantees are strongly encouraged to annually update their analysis of impediments; and
- ✓ Grantees are to take appropriate actions to overcome the effects of any impediments identified through their analyses, and maintaining records reflecting the analyses and related actions.

19.1.3 List of Applicable Laws

This chapter is broken down into three broad areas for the applicable requirements: Fair Housing; Handicap Accessibility; and Equal Opportunity. The fourth section of this chapter is dedicated toward appropriate record keeping and monitoring. Exhibit 19.1 provides the grantee with references to the major regulations and requirements covering fair housing and equal opportunity.

Exhibit 19.1

Federal and State Laws and Regulations (included amendments)	Fair Housing and Nondiscrimination	Accessibility	Equal Employment and Contracting
Title VI of the Civil Rights Act of 1964: This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance.	X		
Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act): This Act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promotes fair housing.	X	X	

Restoration Act of 1987. This Act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability, or age in a program or activity which does not directly benefit from such assistance.	X		
Section 109 of Title 1 of the Housing and Community Development Act of 1974: This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I of the Act.	X		X
The Fair Housing Amendment Act of 1988: This Act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand of the Justice Department jurisdiction to bring suit on behalf of victims in Federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.	X		
The Housing for Older Persons Act of 1995 (HOPA): Retained the requirement that the housing must have one person who is 55 years of age or older living in at least 80 percent of its occupied units. The Act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 and older.	X		
The Age Discrimination Act of 1975: This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving Federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws.	X		
Section 504 of the Rehabilitation Act of 1973: It is unlawful to discriminate based on disability in Federally assisted programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.	X	X	X

The Americans with Disabilities Act of 1990 (ADA): This Act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.	X	X	X
Executive Order 11063: This Executive Order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government.	X		
Executive Order 11259: This Executive Order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.	X		
Section 109 of Title I of the Housing and Community Development Act of 1974: Requires that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded with CDBG funds on the basis of race, color, religion, national origin, or sex.	X		X
The Equal Employment Opportunity Act: This Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, State, and local governments under the Civil Rights Act of 1964.			X
The Immigration Reform and Control Act (IRCA) of 1986. Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9).			X

The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.			X
Section 3 of the Housing and Urban Development Act of 1968, as amended: Requires the provision of opportunities for training and employment that arise through HUD-financed projects to lower-income residents of the project area, to the greatest extent feasible and consistent with Federal, State and local laws and regulations. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area. Amendments to Section 3 in 1992 included requirements for providing these opportunities in contracts for housing rehabilitation, including lead-based paint abatement, and other construction contracts.			X
The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002): This Act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.			X
Executive Order 11246: This Executive Order applies to all Federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.			X
24 CFR Part 85 (the Common Rule): This rule provides that the grantee shall take affirmative steps to encourage contracting with small minority and female owned business enterprises when possible as sources of supplies, equipment, construction, and services.			X

19.2 Fair Housing

This section of the chapter reviews the requirements grantees must follow to be in compliance with the Fair Housing Act when using CDBG funds.

The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Prohibited Discrimination ✓ Fair Housing Activities
Regulatory/Statutory Citations	Section 109 §570.602
Other Reference Materials on This Topic	✓ CPD Notice 05-09 and 00-09 ✓ Fair Housing and Equal Opportunity Website: http://www.hud.gov/offices/fheo/index.cfm ✓ Uniform Federal Accessibility Standards website: http://www.access-board.gov/ufas/ufas-html/ufas.htm ✓ The *Fair Housing Act Design Manual: A Manual to Assist Designers and Builders in Meeting the Accessibility Requirements of The Fair Housing Act*

19.2.1 Prohibited Discrimination

Grantees should be aware that fair housing provisions apply to the locality as a whole and not just those activities that are CDBG funded; and that implementing fair housing activities is an essential part of the CDBG responsibilities. No person shall be subjected to discrimination because of: race, color, religion, sex, disability, age, familial status, or national origin.

Fair housing actions should increase housing opportunities and affirmatively promote fair housing throughout the entire housing market at all income levels. These activities may include independent actions by the grantee or cooperative ventures with housing related industries, such as mortgage lenders, home builders, and local non-profits working in housing. The grantee is expected to take progressive actions to further fair housing with each CDBG project.

The grantee must assure that all CDBG-funded activities undertaken as part of the project are conducted in a manner which will not cause discrimination on the basis of race, color, religion, sex, disability, familial status, or national origin. Segregated facilities, services, or benefits and different treatment are prohibited.

The grantee should take care to ensure the following:

✓ Access to any advantage arising out of the project is not:

- Denied solely on the basis of race, color, religion, sex, disability, familial status, or national origin; or
- Offered for the enjoyment of a segment of the population in such a way as to intentionally exclude any member of these protected groups.

✓ Selection of sites and locations for facilities and improvements do not have an exclusionary or discriminatory effect.

- ✓ Evaluation criteria and administrative practices do not have a discriminatory effect.
- ✓ Affirmative action is used to overcome the effects of past discrimination.
- ✓ A Fair Housing Poster is displayed in a prominent place at the office of the grantee where applications for assistance are being taken.

19.2.2 Fair Housing Activities

The Fair Housing Act provides that, in connection with the design and construction of multi-family housing, the public use and common areas must be accessible and usable by persons with handicaps, all doors must be designed to be wide enough for wheelchair accessible, and all premises should be of adaptive design (e.g., reinforcements within a bathroom to allow installation of grab bars).

Grantees undertaking housing projects and activities must ensure fair housing rules are followed in the provision of housing services and assistance. Opportunities for purchase or rental, terms and conditions, advertising and marketing information, and availability of real estate services should not discriminate.

Some examples of possible actions to ensure fair housing are listed below.

- ✓ Developing and implementing a fair housing resolution;
- ✓ Marketing information concerning housing services and activities should be disseminated through agencies and organizations that routinely provide services to protected groups;
- ✓ Criteria for selecting recipients of housing services or assistance should be evaluated for any discriminatory effect;
- ✓ Policies guiding the provisions of relocation housing and services for persons displaced by housing activities should be evaluated for discriminatory effect; and
- ✓ Legal documents used by grantees and lending institutions should be reviewed and revised if necessary to eliminate any discriminatory intent or practice.

It is important for grantees to understand both the Fair Housing Amendment and Section 504. The Fair Housing Amendment requires that a landlord must allow a tenant to make reasonable modifications to a unit paid for by the tenant. Section 504 provides that the landlord is responsible for making reasonable accommodations. Finally, the accessibility logo should be used in housing projects where units are available for the disabled.

19.2.3 Affirmative Marketing

- ✓ Grantees must adopt affirmative marketing procedures and requirements for all CDBG-assisted housing with five or more units.
- ✓ Requirements and procedures must include:
  - Methods for informing the public, owners and potential tenants about fair housing laws and the grantee's policies (for example, use of the Fair Housing logo or equal opportunity language);
  - A description of what owners and/or the grantee will do to affirmatively market housing assisted with CDBG funds;

- A description of what owners and/or the grantee will do to inform persons not likely to apply for housing without special outreach;
- Maintenance of records to document actions taken to affirmatively market CDBG-assisted units and to assess marketing effectiveness; and
- Description of how efforts will be assessed and what corrective actions will be taken where requirements are not met.

19.3 Handicapped Accessibility and Section 504

The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Programs ✓ Housing ✓ Facilities ✓ Other Accessibility Rules ✓ Self Evaluation and Transition Plan
Regulatory/Statutory Citations	Section 109 §570.614
Other Reference Materials on This Topic	✓ CPD Notice 00-10 ✓ Fair Housing and Equal Opportunity Website: http://www.hud.gov/offices/fheo/index.cfm ✓ CPD Notice 05-10

19.3.1 Program Accessibility

Communication is an important component of program accessibility. Disabilities involving impairments to hearing, vision, speech or mobility may affect communication. Members of the community who have disabilities must be able to access and enjoy the benefits of a program or activity receiving CDBG funds; therefore, varied approaches may be required to assure effective communication and information dissemination.

Specifically, the grantee must be receptive to the requests and needs of the disabled person(s) within the community when determining which auxiliary aids or services are necessary. For the purposes of Section 504 compliance, the target population includes: the hearing impaired, visually impaired, mobility impaired, developmentally disabled, and those persons requiring in-home care or institutional care. Grantees must furnish auxiliary aids and services, as necessary, which may include:

✓ For persons with hearing impairments:

- Qualified sign language interpreters;
- Note takers;
- Telecommunication devices for deaf persons (TDDs);
- Telephone handset amplifiers;

- Assertive listening devices (devices that increase the sound in large group settings);
- Flashing lights (where aural communication is used, such as warning bells);
- Video text displays (devices that display text that is simultaneously being spoken can be used where a public address system provides information);
- Transcription services; and
- Closed and open captioning.

✓ For persons with vision impairments:

- Qualified readers;
- Written materials translated into alternative formats (e.g., Braille, audio tape, large print);
- Aural communication (e.g., Bells or other sounds used where visual cues are necessary); and
- Audio description services (i.e., through a headset, a narrator describes what the visually impaired person cannot see).

The grantee must ensure effective communication with persons with all types of disabilities in all activities. Where the grantee communicates with applicants and beneficiaries by phone, a TDD is required or an equivalent system must be available.

Please note that grantees are not required to take any action that would result in a fundamental alteration in the nature of a program or activity or undue financial and administrative burdens.

19.3.2 Housing

Section 504 also includes accessibility requirements for new construction and substantial rehabilitation of multi-family rental housing. Section 504 provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation in (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance. Section 504 also contains design and construction accessibility provisions for certain new multi-family dwellings developed for first occupancy on or after March 13, 1991.

For the purposes of compliance with Section 504, “accessible” means ensuring that program and activities, when viewed in their entirety, are accessible to and usable by individuals with disabilities. For housing purposes, accessible means a dwelling is on an accessible route and adaptable inside.

✓ The following requirements apply to both Federally assisted newly constructed multifamily rental housing containing five or more units and substantial rehabilitation of multi-family rental housing with fifteen (15) or more units. A rehabilitation project is considered substantial when the rehab costs will be 75% or more of the replacement cost of the complete facility;

- A minimum of five percent of total dwelling units (but not less than one unit) accessible for individuals with mobility impairments;
- An additional 2% of dwelling units (but not less than one) accessible for persons with hearing or vision impairments; and

- All units made adaptable that are on the ground level or can be reached by an elevator.

19.3.3 Facilities

"Facility" is defined under Section 504 as any portion of a building, equipment, roads, walkways, parking lot or other real property. "Accessible" for non-housing purposes means that a facility or portion of a facility can be approached, entered and used by individuals with physical handicaps.

Non-housing programs, as well as existing facilities in which they are situated, must be readily accessible to and usable by persons with disabilities. Accessibility programs will be determined once again under self-evaluation. The focus of program access is providing programs in the most integrated setting possible. Providing separate or different programs is illegal unless necessary to achieve equal opportunity.

Methods of improving program access in existing facilities can include the following:

- ✓ Relocating programs to accessible facilities or accessible portions of facilities;
- ✓ Acquiring or building new facilities;
- ✓ Selectively altering facilities;
- ✓ Changing operating policies and procedures;
- ✓ Assigning aides to assist beneficiaries;
- ✓ Adding or redesigning equipment or furnishings; and
- ✓ Conducting home visits.

19.3.4 Special Requirements for Grantees with 15 or More Employees

There are two additional requirements for Section 504 compliance for grantees (called "recipients" under 504 to include public agencies, instrumentalities, and public and private entities including nonprofits) with fifteen (15) or more full or part-time employees:

- ✓ Designation of responsible employee and adoption of grievance procedures:
  - At least one person must be designated to coordinate 504 and related compliance efforts. The agency coordinator should be designated in writing and identified in any written notices.
  - A grievance procedure must also be adopted incorporating due process standards and allowing for prompt local resolution of any complaints of discrimination based on disability. Existing grievance procedures can often be adapted to satisfy this requirement.
  - Any individual or authorized representative who believes that they have been denied opportunities or treated differently due to their race, color, national origin, sex, age disability, religion and familial status may file a complaint. The complaint may be filed with the grantee or HUD.
- ✓ Notification to participants, beneficiaries, applicants and employees of their nondiscriminatory provisions. In summary, the grantee must provide notice regarding the following:

- Grantees must publish in a newspaper of general circulation the notice "Policy of Non-Discrimination on the Basis of Disability Status."
- Grantees must include the same language found in their policy of nondiscrimination (mentioned in the first bullet) in all material used for recruitment or general information.
- Grantees must ensure that all members of the population with visual or hearing impairments are provided with the information necessary to understand and participate in the programs offered.
- Methods for ensuring participation may include qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

19.3.5 Other Accessibility Rules

Americans with Disabilities Act of 1990 (ADA)

The Americans with Disabilities Act of 1990 (ADA) guarantees equal opportunities for persons with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. Unlike Section 504 which applies only to programs and activities receiving Federal financial assistance, the ADA applies even if no Federal financial assistance is given. Title II of ADA prohibits discrimination based on disability by State and local governments.

✓ Facilities

- Title II also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. Facilities constructed or altered in conformance with either the Uniform Federal Accessibility Standards (UFAS) or the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) shall be deemed to comply with the Title II Accessibility requirements, except that the elevator exemption contained in Section 4.1.3(5) and Section 4.1.6(1)(j) of ADAAG shall not apply.

✓ Roads and Pedestrian Walkways

- Title II specifically requires that all newly constructed or altered streets, roads, highways, and pedestrian walkways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level or pedestrian walkway and that all newly constructed or altered street level pedestrian walkways must have curb ramps at intersections . Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

Architectural Barriers Act of 1968

The Architectural Barriers Act of 1968 (ABA) requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds, except privately-owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards

(UFAS). In practice, buildings built to meet the requirements of Section 504 and the ADA, will conform to the requirements of the ABA.

19.3.6 Self Evaluation Plan and Transition Plan

Self Evaluation Plan

Self evaluation is required by both Section 504 and the Americans with Disabilities Act. Self evaluation promotes inclusion of the programmatic and project-specific alternations that are necessary to ensure long term compliance with the requirements.

If a grantee has not already performed a Section 504 self-evaluation of programs, services, and activities to determine if they are programmatically and physically accessible to person with disabilities, they must conduct such evaluation and document all needs. Note: If a grantee has already performed a self-evaluation, a new one is not required.

Grantees should also involve persons with disabilities in these evaluations. While performing the self-evaluation, a careful inspection of the following should be performed to determine if they are free from discriminatory effects and practices:

- ✓ Evaluate current policies and practices and analyze them to determine if they adversely affect the full participation of individuals with disabilities in its programs, activities, and services. Be mindful of the fact that a policy or practice may appear neutral on its face, but may have a discriminatory effect on individuals with disabilities.
- ✓ Modify any policies and practices that are not or may not be in compliance with Section 504 or Title II and Title III of the ADA regulations. (See 24 CFR Part 8 and 28 CFR Parts 35, 36.)
- ✓ Take appropriate corrective steps to remedy those policies and practices that either are discriminatory or have a discriminatory effect. Develop policies and procedures by which persons with disabilities may request a modification of a physical barrier or a rule or practice that has the effect of limiting or excluding a person with a disability from the benefits of the program.
- ✓ Document the self-evaluation process and activities. HUD recommends that all recipients keep the self-evaluation on file for at least three years, including records of the individuals and organizations consulted, areas examined and problems identified, and document modifications and remedial steps.

An approach many grantees have used to examine service and program accessibility is to do a walk-through of the process required for participation. Analyze not only the physical path traveled, but also the administrative requirements, service delivery, eligibility criteria, and application procedures.

Any policies and practices that are found to be discriminatory or contrary to Section 504 requirements must be modified and steps taken to remedy the discrimination.

Transition Plan

If structural barriers have been identified during the self-evaluation process and cannot be removed with nonstructural solution, a Transition Plan must be completed and made available for public review and comment.

The plan must address the following items:

- ✓ Identification of physical obstacles in the facilities that limit program accessibility;
- ✓ Description of the method that will be used to make facilities accessible;
- ✓ Specify a schedule to achieve full program compliance and, if the plan is longer than one year, identify steps to be taken during each year;
- ✓ Indicate the person responsible for implementing the plan; and
- ✓ Identify the person or groups with whose assistance the plan was prepared.

The grantee is not necessarily required to make each existing facility or every part of an existing facility accessible. The Transition Plan must involve persons with disabilities and/or representative organizations.

19.4 Employment and Contracting

Employment and contracting activities also trigger employment and contracting rules related to equal employment practices.

The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Employment ✓ Procurement (MBE/WBE) ✓ Section 3
Regulatory/Statutory Citations	Section 109 §570.607
Other Reference Materials on This Topic	✓ Fair Housing and Equal Opportunity Website: http://www.hud.gov/offices/fheo/index.cfm ✓ The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978

19.4.1 Employment

Nondiscrimination is a requirement of employment and employment practices. Employment opportunities may not be denied on the basis of race, color, national origin, sex, age, religion, familial status, or disability. Affirmative action and equal employment opportunity policies are fundamental aspects of CDBG funded activities.

The Americans with Disabilities Act modifies and expands the Section 504 Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

The Equal Employment Opportunity Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after

the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, State, and local governments under the Civil Rights Act of 1964.

Steps that can be taken to prevent discrimination in employment include the following:

- ✓ Review of jurisdictional employment policies and procedures for discriminatory intent or practice and document review;
- ✓ Advertise employment opportunities and/or to recruit employees for project-related positions;
- ✓ Develop and maintain employment data that indicates staff composition by race, sex, handicap status and national origin; and
- ✓ An Equal Employment Opportunity Poster must be displayed in a prominent place at the office of the grantee.

Specifically, Section 504 has a number of general prohibitions against employment discrimination. Grantees must ensure that the following items are adhered to:

- ✓ No qualified individual with a disability shall, solely on the basis of their disability be subject to discrimination in employment under any program or activity that receives Federal assistance.
- ✓ Any grantee cannot legally limit, segregate or classify applicants or employees in any way that negatively affects their status or opportunities because of disability.
- ✓ In pre-employment and employment activities, discrimination based on a disability must not occur and reasonable accommodations must be made to the physical or mental limitations of otherwise qualified individuals unless it creates undue hardship for the grantee. HUD regulations specify that an employer is prohibited from discrimination in the following instances:
- ✓ Recruiting, advertising, and processing of applications;
  - Hiring, upgrading, promoting, tenure, demotion, transfer, layoffs, termination right or return from layoffs, illness, and rehiring;
  - Rates of pay and any other forms of compensation;
  - Job assignments, classifications and descriptions, organizational structures, lines, progression, and seniority lists;
  - Leaves of absence, sick leave, or any other leave;
  - Fringe benefits available by virtue of employment;
  - Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities and selection for leaves of absence for training;
  - Employer sponsored activities (including social or recreation programs); and
  - Any other term, condition, or privilege of employment.
- ✓ Grantees may not participate in a contractual or other relationship that subjects qualified disabled applicants or employees to discrimination.

Reasonable accommodation, under Section 504, in employment is determined on a case-by-case basis. It means reasonable modifications on the job or in the workplace to enable a disabled person to perform the job for which she/he is qualified. Section 504 does not require the hiring or promotion of someone simply because she/he has a disability.

19.4.2 Procurement

All procurements made in whole or in part with CDBG funds must comply with the applicable Federal requirements found in 24 CFR Part 85.36 (referred to as the "Common Rule"). The goal in using these procurement procedures is to achieve maximum open and free competition.

Each grantee is required to adopt written procurement procedures for CDBG projects, as required in 24 CFR Part 85.36(b). If local procurement procedures are more stringent than those described in this chapter, the more stringent of the two should be followed.

Important elements that are required to comply with Federal requirements, but that are often missing in local procurement codes, include:

- ✓ A code of conduct to govern the performance of the grantee's officers, employees, or agents in contracting with CDBG funds; and
- ✓ A requirement that positive efforts be made to use small, minority, female, low-income and/or locally-owned businesses.

Part 85 provides that the grantee shall take affirmative steps to encourage contracting with small minority and female owned business enterprises when possible as sources of supplies, equipment, construction, and services.

At the very least, the grantee must also include minority business enterprises (MBEs) and women business enterprises (WBEs) on solicitation lists and send them an Invitation to Bid. Other outreach efforts that grantees should consider are:

- ✓ Assuring that small businesses and MBE/WBEs are solicited whenever they are potential sources;
- ✓ When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small businesses and MBE/WBEs;
- ✓ Where the requirements permit, establishing delivery schedules which will encourage participation by small businesses and MBE/WBEs;
- ✓ Using the services and assistance of the Small Business Administration;
- ✓ If any subcontracts are to be executed, requiring the prime contractor to take the above affirmative steps; and
- ✓ When economically feasible, including MBE/WBE criteria with additional points in selection criteria for professional services procurements.

The Vietnam Era Veterans Readjustment Act, as amended, includes the obligation to refrain from discrimination in employment against protected veterans. The regulations also require all covered contractors and subcontractors to include a specific equal opportunity clause in each of their nonexempt contracts and subcontracts.

19.4.3 Section 3

Section 3 of the Housing and Urban Development Act of 1968, as amended, requires the provision of training, employment and other economic opportunities that arise through HUD-financed housing and community development assistance to lower-income residents of the project area, particularly residents of government-subsidized housing, to the greatest extent feasible and consistent with Federal, State, and local laws and regulations. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the project area. Amendments to Section 3 in 1992 included requirements for providing these opportunities in contracts for housing rehabilitation, including lead-based paint abatement, and other construction contracts.

Section 3 applies when a housing construction, housing rehabilitation or other public construction project or activity exceeds certain thresholds. Contractors and subcontractors providing services on projects for which the total amount of the housing and community development assistance exceeds $200,000 and the amount of the contract or subcontract exceeds $100,000 are required to comply with Section 3. If a grantee receives housing or community development assistance for a covered project that is funded in part with CDBG funds, Section 3 requirements apply to the entire project or activity.

It is important to document efforts made to comply with Section 3 through recordkeeping. Files should contain memoranda, correspondence, advertisements, etc., illustrating contractor and subcontractor attempts to hire low income residents and business concerns.

19.5 Recordkeeping and Monitoring

Effective recordkeeping procedures and monitoring are tools that grantees use to ensure short term and long term compliance.

The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	✓ Fair Housing Records ✓ Direct Benefit Records ✓ 504 Records ✓ Employment and Contracting ✓ Monitoring ✓ FHEO Compliance and Monitoring
Regulatory/Statutory Citations	Section 109 §570.506
Other Reference Materials on This Topic	✓ CDBG Guide to Eligible Activities and National Objectives, Chapters 2 & 3 ✓ *Managing CDBG: A Guidebook for CDBG Grantees on Subrecipient Oversight*

19.5.1 Fair Housing Records

The following records must be maintained by the grantee in a separate equal opportunity and fair housing file:

- ✓ Documentation of the action(s) the grantee has taken to affirmatively further fair housing, including records on funds provided, if any, for such actions; and
- ✓ Demographic data (actual survey or latest census data) depending on the project undertaken may include:
  - The population of the jurisdiction of the unit of general local government receiving CDBG funds;
  - The minority population of the locality (number and percentage);
  - The target area population;
  - The minority population of the target area (number and percentage);
  - The number of disabled, elderly households, and female-headed households in the target area; and
  - A map of the locality showing the locations of assisted housing units, concentrations of minority population, concentrations of LMI, and the target area.

19.5.2 Direct Benefit Records

It is important that grantees maintain statistical information on the persons benefiting from the project be maintained and updated throughout the implementation of the project. Even if the project activities meet the "presumptive benefit" test for proving LMI benefits and surveys have not been conducted or statistical data on beneficiaries has not been collected, benefit data for fair housing and equal opportunity purposes must be maintained.

Grantees should note that those benefiting from the project must be determined. A Project Benefit Profile must be maintained for each activity except administration, planning, and contingency.

- ✓ For direct benefit activities, provide data on the extent to which persons have applied for benefits and 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, and gender of heads of households.

19.5.3 Section 504 Records

The following records must be maintained by the grantee in a separate 504 file:

- ✓ A copy of the self-evaluation;
- ✓ A copy of the transition plan;
- ✓ A list of interested persons who were consulted;
- ✓ A description of areas and buildings examined and any problems identified;
- ✓ A description of modifications made and remedial steps taken to comply with the regulations; and

- ✓ Evidence that new or substantial rehab multi-family projects were constructed/rehabilitated to meet 504 standards.

19.5.4 Employment and Contracting

Data on employment of the local government that is carrying out an activity funded in whole or in part with CDBG funds. The data to be maintained in the files includes:

- ✓ A description of the local government work force in percentage by race, gender, job title, salary, and hire date;
- ✓ The percentage of minorities in the jurisdiction of the unit of general local government that is receiving CDBG funds and the percentage of minorities working for that unit of general local government;
- ✓ The number of project area residents employed with CDBG funds;
  - Data should show the percentage by race and gender of the personnel in any department, office, or agency of the unit of local government using CDBG funds to employ staff.
  - For example, if CDBG funds are being used to pay a portion of a bookkeeper's salary in the accounting department of the city, then employment data should be available for the department.
- ✓ Government hiring practices and policies;
- ✓ Affirmative Action Plan (if applicable);
- ✓ Documentation of the affirmative actions the grantee has taken to overcome the effects of prior discrimination as determined through a formal compliance review or court proceeding, where the grantee has previously discriminated against persons on the grounds of race, color, national origin, or sex in administering a program or activity funded in whole or in part with CDBG funds.
- ✓ Procurement procedures and implementation plan;
- ✓ Minority and Women Business Enterprise (MBE/WBE) outreach and networking;
- ✓ MBE and WBE reporting;
- ✓ Section 3 Plan;
- ✓ Section 3 Summary Report (CAPER); and
- ✓ Section 3 reporting by contractors.

19.5.5 Monitoring

The designated fair housing and equal opportunity coordinator and/or officers should review compliance requirements on an annual basis.

Grantees will be monitored by HUD on a periodic basis. Proper notification of a monitoring visit will be provided. However, it is important for grantees to keep all records and files in "monitoring readiness" condition at all times. Some of the areas HUD staff will review to determine if grantees meet compliance with all fair housing and equal opportunity requirements and laws are listed below:

- ✓ A check of the availability and adequacy of employment records;
- ✓ Identification of programs and activities assisted through CDBG funding and assessment of program impact on protected groups;
- ✓ An examination of procurement procedures and awards to assess the utilization of minority and/or female owned enterprises and businesses located in the project area or owned in substantial part by project area residents;
- ✓ A review of voluntary efforts to promote fair housing; and
- ✓ An examination of the extent to which various protected groups have been impacted by relocation activities.

19.5.6 HUD FHEO Compliance and Monitoring

HUD's Office of Fair Housing and Equal Opportunity (FHEO) is responsible for seeking cooperation from and providing assistance to grantees regarding compliance. FHEO may perform periodic reviews of grantees or require reports or other information to measure compliance including records of program participation by individuals with handicaps.

It is important for grantees to keep organized records and document their Section 504 activities.

A complaint can be made by any individual or authorized representative of that individual who believes they have been denied opportunities or treated differently, due to their race, ethnicity, gender, disability, or age.

This complaint would be filed with FHEO under the Housing Discrimination Form 903.1. The complainant's identity will be held in confidence unless written authorization is given. The time period for filing complaints is within one hundred eighty (180) days of the alleged act. Grantees should have copies of this form available to the public.

Person who believes his/her rights have been violated may file in Federal court. The remedy through court action may include the award of damages, back pay, seniority and as with any equal opportunity action, attorney fees, or injunction against the noncomplying project.

It is HUD's policy to encourage informal resolutions to matters, solicit voluntary compliance and corrective action. Noncompliance may result ultimately in the termination of or refusal to grant Federal assistance.

CHAPTER 20: THE NSP PROGRAM

CHAPTER PURPOSE & CONTENTS

This chapter provides a general overview of the Neighborhood Stabilization Program, including a brief synopsis of the history of the program, a summary of the objectives of the program, the rules and requirements of the program and a summary of the process for implementing NSP activities.

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20.1 Program History & Primary Objective

✓ This section explains the history of the NSP program and its goals.

Key Topics in This Section	✓ Reason NSP was established ✓ NSP primary objective
Regulatory/Statutory Citations	Title III of Division B of the Housing and Economic Recovery Act, 2008 (Pub, L. 110-289) Division A, Title XII of the American Recovery and Reinvestment Act of 2009 – Community Development Fund (Pub. L. 111-5) Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization (Pub. L 111-203)
Other Reference Materials on This Topic	Not applicable

- ✓ The Neighborhood Stabilization Program (NSP) is authorized under three appropriations by Congress.
  - The NSP program was enacted in 2008 under the Housing and Economic Recovery Act or HERA and is referred to as NSP1. This appropriation provided $3.92 billion to local and state governments hardest hit by the foreclosure crisis nationwide on a formula basis.
  - The second round of funding or NSP2 for $2 billion was appropriated under the American Recovery and Reinvestment Act (ARRA). NSP2 funding was competitively awarded to qualifying nonprofits and government agencies.
  - The third round of funding or NSP3 was appropriated under the Dodd-Frank Economic Reform and Consumer Protection Act of 2010. Like NSP1, the $1 billion appropriation was allocated on a formula basis to local and state governments hardest hit by the foreclosure crisis.
- ✓ Each funding round provided as supplemental CDBG appropriation
- ✓ Congress created the Neighborhood Stabilization Program to help cities, counties and states deal with community problems that are the result of the mortgage foreclosure crisis in the nation.
- ✓ Neighborhood revitalization in areas hardest hit by the foreclosure crisis is achieved through NSP by providing funding to communities to buy up and rehabilitate or redevelop abandoned, foreclosed, and vacant properties.
- ✓ The NSP regulations set forth eligible activities and the national objectives that each activity must meet. As recipients of NSP funds, grantees are charged with ensuring that these requirements are met.

20.2 NSP Regulations

- ✓ This section provides an overview of the NSP regulations.

Key Topics in This Section	✓ Regulatory basis for NSP ✓ Key regulatory requirements
Regulatory/Statutory Citations	Notice of HUD's Fiscal Year (FY) 2009 Notice of Funding Availability (NOFA); Policy Requirements and General Section to HUD's FY2009 NOFAs for Discretionary Programs – December 29, 2008 (FR–5300–N–01) Notice of Definition Revision to Notice of Fund Availability (NOFA) for Fiscal Year 2009: Neighborhood Stabilization Program 2 (NSP2) under the American Recovery and Reinvestment Act of 2009; Change in Definitions – April 2, 2010 (FR-5321-N-04) Notice of Neighborhood Stabilization Program Reallocation Process Changes – August 23, 2010 (FR-5435-N-01)

	Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants – October 19, 2010 (FR-5447-N-01) Notice of Neighborhood Stabilization Program; Closeout Requirements and Recapture – November 27, 2012 (FR-5660-N-01)
Other Reference Materials on This Topic	Not applicable

- ✓ CDBG forms the regulatory basis for NSP. Except where otherwise stated in NSP statutes and regulations, NSP follows CDBG rules and requirements.
- ✓ The regulations implementing NSP can be found in a number of notices published for each of the three rounds of NSP including:
  - **NSP1:**
    - NSP1 Federal Register Notice – October 6, 2008
    - NSP1 Federal Register Bridge Notice – June 19, 2009
    - Notice of NSP Reallocation Process Changes – August 23, 2010
  - **NSP2:**
    - NSP2 Notice of Funding Availability – May 4, 2009
    - NSP2 Notice of Funding Availability (NOFA) Correction – November 9, 2009
    - NSP2 Notice of Funding Availability (NOFA) Correction – January 21, 2010
    - Notice of Definition Revision to NSP2 NOFA for FY2009 – April 2, 2010
  - **NSP3:** NSP3 Federal Register Notice – October 19, 2010
  - **NSP1, NSP2, and NSP3**:
    - Notice of Change in Definitions and Modification to NSP – April 9, 2010
    - Notice of Neighborhood Stabilization Program; Closeout Requirements and Recapture – November 27, 2012
- ✓ A copy of the NSP regulations and statutes can be found at: https://www.onecpd.info/resource-library/

20.3 Deadlines

✓ This section goes over the key deadlines for obligating and expending NSP funds.

Key Topics in This Section	✓ Applicable deadlines for obligating and expending NSP funding
Regulatory/Statutory Citations	Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009 – May 4, 2009 (FR-5321-N-01) Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants – October 19, 2010 (FR-5447-N-01)
Other Reference Materials on This Topic	NSP Policy Alert: Guidance for Tracking and Reporting the Use of NSP Funds: Obligations for Specific Activities – April, 23, 2010 NSP Policy Alert: Guidance on NSP Loan Loss Reserves – December 7, 2010

✓ Different deadlines apply to NSP1 versus NSP2 and NSP3.

- NSP1 included an 18 month obligation deadline requiring grantees to "use" 100 percent of their funds within 18 months following execution of their grant agreement with HUD. HUD defined "use" to mean that a contract was signed for a project or funds were obligated.
- NSP1 grantees are required to expend 100 percent of their allocation within four years following execution of their grant agreement with HUD.
- Under NSP2 and NSP3, grantees are required to expend 50 percent of their total allocation within two years and 100 percent in three years from the date their grant agreement is signed with HUD.

✓ HUD recovers funds if not committed or expended within these timeframes.

✓ Program income expenditures count towards the overall expenditure goals.

20.4 Areas of Greatest Need

Key Topics in This Section	✓ Areas of Greatest Need (Target Areas)
Regulatory/Statutory Citations	Title III of Division B of the Housing and Economic Recovery Act, 2008 (Pub, L. 110-289) Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009 – May 4, 2009 (FR-5321-N-01) Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants – October 19, 2010 (FR-5447-N-01)
Other Reference Materials on This Topic	Not applicable

- ✓ NSP requires that grantees define areas of greatest need in their NSP Action Plan and invest NSP funding in those areas.
- ✓ Areas of greatest need are also called target areas.
- ✓ The methodology for determining target areas can take into account some local factors and must take into account all of the following:
  - Percentage of home foreclosures
  - Number of homes with sub-prime loans
  - Areas likely to see rise in rate of foreclosures
- ✓ All NSP funded activities must be located in the areas of greatest need defined in each grantee's HUD approved NSP Action Plan.
- ✓ An eligible non-housing assisted NSP activity undertaken in a target area should establish a connection how the activity supports NSP efforts and neighborhood revitalization in the area.
- ✓ Target areas can be changed if needed through a Substantial Amendment to the Action Plan. NSP 2 Substantial Amendments must be approved by HUD.

20.5 Key Definitions

- ✓ This section provides definitions of key NSP topics and terms.
- ✓ The definitions included below are in addition to the Key Definitions found in 1.3.

Key Topics in This Section	✓ Key definitions needed for NSP
Regulatory/Statutory Citations	Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008;Revisions to Neighborhood Stabilization Program (NSP) and Technical Corrections – June 19, 2009 (FR-5255-N-02) Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants – October 19, 2010 (FR-5447-N-01) 24 CFR Part 922 A, C, E, F and 92.254 HOME Investment Partnerships Program Final Rule
Other Reference Materials on This Topic	Not applicable

Affordability: The requirements of the NSP Program that relate to the cost of housing both at initial occupancy and over established timeframes, as prescribed in the NSP statute and HOME Final Rule. Affordability requirements vary depending upon the nature of the NSP assisted activity (i.e. homeownership or rental housing).

Abandoned: A property is considered abandoned if one of the following is true:

- ✓ Mortgage/tax/tribal leasehold has had no payments within 90 days

- ✓ Code inspection determines not habitable and no corrective action within 90 days
- ✓ Subject to court-ordered receivership/nuisance abatement or state definition of abandoned
  - – When property meets both foreclosed & either abandoned or vacant definitions, grantee must treat as foreclosed

Blighted: A structure is blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.

Foreclosed: A property is considered abandoned if one of the following is true:

- ✓ Property is 60 days delinquent under Mortgage Bankers of America delinquency calculations and the owner has been notified
- ✓ Property owner is 90 days or more delinquent on tax payments
- ✓ Foreclosure proceedings have been initiated or completed
- ✓ Foreclosure proceedings are complete and the title has transferred to an intermediary that is NOT an NSP grantee, sub, contractor, developer, or end user

Home: A permanent residential unit.

Land Bank: Public or nonprofit entity created for a single purpose: to acquire, manage, maintain, and repurpose foreclosed properties.

Low, Moderate and Middle Income: Low, moderate and middle income (also referred to in this manual as LMMI) means a family or household with an annual income less than 120 percent of the area median income based on the Section 8 Low Income Limit as established by HUD.

Middle-Income Household/Family: A household/family having an income equal to or less than 120% of area median income.

Residential Property: Homes and any vacant residential land and multifamily properties located on the property.

Substantial Amendment: A Substantial Amendment to a grantee's annual action plan and/or consolidated plan as described at 24 CFR 91.505. Circumstances under which a Substantial Amendment is required include changes: in scope, location, beneficiaries, or activities.

Total Development Cost: The total cost invested by a grantee or partner to acquire and rehabilitate or redevelop a residential property.

Vacant: Unoccupied or demolished structures or vacant land that was previously developed.

20.6 Eligible Activities

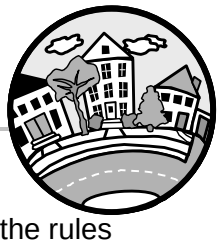
✓ This section describes the range of activities that are eligible under NSP.

Key Topics in This Section	✓ Five eligible uses under NSP ✓ Types of properties eligible ✓ Each activity has a corresponding CDBG ✓ Typical methods for undertaking NSP eligible activities
Regulatory/Statutory Citations	Title III of Division B of the Housing and Economic Recovery Act, 2008 (Pub, L. 110-289) Division A, Title XII of the American Recovery and Reinvestment Act of 2009 – Community Development Fund (Pub. L. 111-5) Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization (Pub. L 111-203) Notice of Neighborhood Stabilization Program; Closeout Requirements and Recapture, November 27, 2012 (FR-5660-N-01) 24 CFR 570.202 (b) 24 CFR 570.205 24 CFR 570.201(a) 24 CFR 570.201 (b) 24 CFR §570.201(d) 24 CFR 570.203
Other Reference Materials on This Topic	Guidance on NSP-Eligible Acquisition & Rehabilitation Activities – December 11, 2009 Guidance on Property Types Under Each Eligible Use – December 3, 2009 Guidance on NSP Disposition and Demolition – March 14, 2013

✓ There are five eligible uses under NSP:

- Eligible Use A: Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties
- Eligible Use B: Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon
- Eligible Use C: Establish and operate land banks for homes and residential properties that have been foreclosed upon
- Eligible Use D: Demolish blighted structures
- Eligible Use E: Redevelop demolished or vacant properties

✓ The regulations and statutes place certain requirements and stipulations on certain eligible uses and not others. For example, the regulations and statutes under NSP2 and NSP3 cap the amount of funds that can be used on demolition. Additionally, the eligible use may dictate



the costs that are eligible, the national objective under which the activity falls, and the rules that are triggered.

- ✓ Only three possible property types can be acquired or rehabbed under NSP:
  - Foreclosed
  - Abandoned
  - Vacant
- ✓ All uses can include direct and related activity delivery costs
- ✓ Under NSP, disposition can be:
  - An allowable expense in an eligible activity, as a Public Facility (NSP1 only) or Special Economic Development Activities
  - Both the eligible activity and end use
  - The eligible activity used to dispose of a property for an ineligible end use that meets a national objective
- ✓ Please refer to the NSP regulations for a more complete description of each of these eligible activities and for an overview of how and when each eligible activity may be undertaken.

20.6.1 Eligible Use A: Financing Mechanisms

- ✓ Eligible Use A: Financing Mechanisms, allows grantees to provide financing mechanisms for the purchase and redevelopment of foreclosed upon homes and residential properties.
- ✓ Grantees can provide financial assistance to a household to purchase a property or a developer to buy or redevelop homeowner or rental property.
- ✓ Some examples of financing mechanisms eligible under Eligible Use A include:
  - Soft second loans
  - Loan loss reserve
  - Equity sharing.
  - Housing counseling for households that are purchasing an NSP, CDBG, or HOME funded home
- ✓ Assistance should be provided as a loan, not in the form of a grant.
- ✓ In many cases, eligible activities under Eligible Use A can be done under Eligible Use B or E but there are some cases when Eligible Use A is necessary, for example if a grantee wants to establish a revolving loan fund.

20.6.2 Eligible Use B: Acquisition and Rehabilitation

- ✓ Eligible Use B is for the purchase and rehabilitation of homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties.
- ✓ The property can be owner or rental housing.
- ✓ Eligible activities under Use B include:

- Acquisition
- Disposition
- Relocation
- Direct homeownership assistance
- Rehabilitation (including related financing e.g. soft second mortgages)
- Housing counseling for participants
- Special economic development activities

✓ Demolition of a structure on a property as part of reconstruction is Eligible Use B and is not considered under Eligible Use D.

20.6.3 Eligible Use C: Land Banking

✓ Eligible Use C is intended for land banking homes and residential properties that have been foreclosed upon.

✓ In order to land bank a property, the property must be a specific, defined area.

✓ By definition, land banks must be operated by a public or nonprofit agency.

✓ The plan for land banked properties should include the reuse of each property for a specific eligible use under NSP and meets a national objective this must at time of closeout.

✓ NSP grant closeout agreement date establishes the start of the 10 year period to obligate all property in the land bank.

✓ If a property in the land bank isn't obligated within the 10 year period, it reverts to the CDBG program for immediate use.

✓ If a property is purchased and placed in the land bank after the closeout agreement date, it must be obligated by the end of the same10 year period.

20.6.4 Eligible Use D: Demolition

✓ Under Eligible Use D: Demolition the demolition of blighted structures is an eligible activity.

✓ Prior to demolition, the property can be any type of property including residential, commercial, or industrial.

✓ Demolition can include:

- Demolition of buildings and improvements
- Removal of demolition products (rubble) and other debris
- Physical removal of environmental contaminants or treatment of such contaminants to render them harmless
- Movement of structures to other sites
- Leveling and seeding the site and/or stake surveys where local codes require it

✓ Under NSP2 and NSP3, only 10 percent of the grantee's total funding allocation can be used on Eligible Use D unless otherwise authorized by HUD.

- ✓ Demolition may be an end use and therefore qualify as an activity under Eligible Use D or when involving acquisition of the property, it may be done in coordination with Eligible Use B or E and qualify under that activity as described in the table below:

Demolition: Meeting eligibility requirements and national objectives			
		Eligibility	**National Objective**
Demolition as End Use	Blighted property	D - Demolish ***blighted*** properties	LMMA
	Concentrated neighborhood demolition strategy or plan	D - Demolish ***blighted*** properties	LMMA
Demolition as Preliminary Use	Land banked Properties	D - Demolish ***blighted*** properties	LMMA
	Reconstruction (Rehabilitate housing)	B - Purchase and rehabilitate homes and residential properties that have been ***abandoned or foreclosed upon*** in order to sell, rent, or redevelop such homes and properties	LMMH
	Redevelopment (New construction of housing)	E - Redevelop ***demolished or vacant*** properties as housing	LMMH
Demolition for Subsequent Uses	Public Facilities (community gardens, parks, etc...)	NSP1 Eligible under E - Redevelop ***demolished or vacant*** properties D – Demolish ***blighted*** properties	LMMA
	Side Lots (Give to LMMI neighbor or an easement if not LMMI)	D – Demolish ***blighted*** properties	LMMA

- ✓ If a blighted structure is demolished, the lot can be made available to any adjacent residential property

20.6.5 Eligible Use E: Redevelopment

- ✓ Under Eligible Use E, grantees can redevelop demolished or vacant properties.
- ✓ Prior to redevelopment, the property can be any type of property including residential, commercial, or industrial.
- ✓ Redevelopment may include:
  - Acquisition

- Disposition
- Public facilities
- Public services for housing counseling for prospective tenants/owners
- Relocation
- Direct homeownership
- New housing construction
- Rehabilitation
- Special economic development activities

✓ Under NSP1, redevelopment activities can include public facilities but under NSP2 and NSP3, all redevelopment activities must relate to housing.

✓ Demolition of a structure on a property as an integral part of a redevelopment activity is Eligible Use E and is not considered under Eligible Use D.

20.6.6 Eligible Uses by Property Type

Eligible Uses		Foreclosed Homes and Residential Properties	Abandoned Homes and Residential Properties	Blighted Structures	Demolished Properties	Other Vacant Properties
A	**Financing Mechanisms**	Yes	No	Only if Foreclosed	N/A	Only if Foreclosed
B	**Acquisition and Rehabilitation**	Yes	Yes	If Foreclosed or Abandoned	N/A	No
C	**Land banks**	Yes (Homes only)	No (Foreclosed only)	Foreclosed home or residential property	No	No
D	**Demolition**	Only if Blighted	Only if Blighted	Yes	N/A	Only if Blighted
E	**Redevelopment**	Only if Vacant	Only if Vacant	Only if Vacant	Yes	Yes

20.6.7 Planning and Administration

✓ NSP funds may be used for planning activities (§ 570.205). Such activities might include

- Community development plans (including the Consolidated Plan);
- Functional plans (for housing; land use and urban environmental design; economic development; open space and recreation; energy use and conservation; floodplain and wetlands management; transportation; utilities; historic preservation; etc.);

  - Other plans and studies (e.g., small area and neighborhood plans; capital improvements program plans; individual project plans; general environmental; urban environmental design; historic preservation studies; etc.); and
  - Policy planning, management, and capacity building activities.

✓ Grantees may also use NSP funds for program administration activities (§ 570.206). Such activities may include:

  - General management, oversight and coordination;
  - Public information;
  - Fair Housing activities;
  - Indirect costs;
  - Submission of applications for Federal programs; and
  - Costs to pursue Section 17 of the United States Housing Act of 1937.

✓ Planning and administration activities are capped at 10 percent of the grantee's total funding allocation plus program income.

20.7 Ineligible Activities

✓ This section describes activities that are not eligible under NSP.

Key Topics in This Section	✓ Ineligible activities under NSP
Regulatory/Statutory Citations	Title III of Division B of the Housing and Economic Recovery Act, 2008 (Pub, L. 110-289) Division A, Title XII of the American Recovery and Reinvestment Act of 2009 – Community Development Fund (Pub. L. 111-5) Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization (Pub. L 111-203) 24 CFR Part 570.207
Other Reference Materials on This Topic	Not applicable

✓ The general rule is that any activity not specifically authorized under the CDBG program or NSP regulations and statutes is ineligible to be assisted with NSP funds.

✓ Unless specifically cited as an eligible activity in the NSP regulations, if an activity is ineligible under the CDBG program, the activity is also ineligible under NSP.

✓ The eligibility differences between NSP and CDBG are covered in detail in this and the three subsequent NSP sections.

✓ Some examples of activities that are ineligible under NSP:

  - Foreclosure prevention

- Demolition of non-blighted structures;
- Acquisition of property or structures that are not abandoned, foreclosed or vacant

✓ The Housing and Community Development Act states that no more than 50 percent of the down payment required by the private lender can be provided as down payment assistance to a homebuyer. Closing cost assistance and other financial assistance such as soft second loans are not capped.

20.8 LMMI National Objective and Beneficiary Requirements

✓ This section describes the national objective requirements all NSP funded activities must meet and the requirement to ensure that a certain percentage of funds serve low income households.

Key Topics in This Section	✓ LMMI National Objective ✓ 25% Low Income Set Aside
Regulatory/Statutory Citations	Title III of Division B of the Housing and Economic Recovery Act, 2008 (Pub, L. 110-289) Division A, Title XII of the American Recovery and Reinvestment Act of 2009 – Community Development Fund (Pub. L. 111-5) Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization (Pub. L 111-203) Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009 – May 4, 2009 (FR-5321-N-01) Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants – October 19, 2010 (FR-5447-N-01) Notice of Neighborhood Stabilization Program; Closeout Requirement and Recapture – November 27, 2012 (FR-5660-N-01)
Other Reference Materials on This Topic	Chapter 3: National Objectives

20.8.1 LMMI National Objective

✓ 100% of NSP funds must meet the low/moderate/middle income (LMMI) National Objective as defined under NSP

- LMMI is a person or household with an annual income less than 120 percent of the area median income based on the Section 8 Low Income Limit as established by HUD.
- The LMMI National Objective requires NSP grantees to expend 100% of NSP funds on activities that benefit LMMI persons.

✓ The LMMI National Objective follows the same rules and requirements as the LMI National Objective under CDBG.

- ✓ "Slum/blight" and "urgent need" National Objectives are not applicable or allowed
- ✓ There are three categories that can be used to meet the LMMI national objective:
  - Housing activities (LMMH)
  - Area benefit activities (LMMA); or
  - Limited clientele activities (LMMC);
  - Job creation or retention activities are eligible under NSP (LMMJ)
- ✓ The housing category of LMMI benefit national objective (LMMH) qualifies activities that are undertaken for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by LMMI households. LMMH is the most common national objective under NSP.
- ✓ The area benefit category (LMMA) is one that benefits all residents in a particular area, where at least 51 percent of the residents are LMMI persons. Under NSP 1 the activity must serve all the residents in a primarily residential area and may include public facilities and improvements. Acquisition and Demolition meet the LMMA National Objective.
- ✓ Under the limited clientele category (LMMC), 51 percent of the beneficiaries of an activity have to be LMMI persons. This category is used for special needs project and shelters and does not count toward the 25% low income targeting requirement described in the next section.
- ✓ The jobs category (LMMJ) as a redevelopment activity is only eligible in NSP under Use B and E and NSP 2 & 3 can only be used for housing so it can only be done as Use B. This category was added to NSP via the Closeout Notice issued on November 27, 2012 (FR-5660-N-01).
- ✓ Further information regarding how to document compliance with the LMMI national objective can be found in Chapter 3: National Objectives.

20.8.2 25 Percent Low Income Set Aside

- ✓ NSP statute requires that no less than 25 percent of each grantees total NSP allocation be used for the purchase and redevelopment of abandoned, foreclosed upon, vacant or demolished properties to house individuals or families whose incomes do not exceed 50 percent of area median income.
- ✓ In order to qualify for the 25 percent low income set aside, the activity:
  - Must be a housing activity, as defined by CDBG; and
  - Occupants must be at or below 50 percent area median income.
- ✓ The following Eligible Uses may count toward the 25 percent set aside requirement provided that the end use is housing and the occupant beneficiary is low income:
  - *Eligible Use A: Financing Mechanisms*
  - *Eligible Use B: Purchase and Rehabilitation*
  - *Eligible Use E: Redevelopment*

- ✓ Non-residential property may be used towards the 25 percent set aside if the project is completed under Eligible Use E: Redevelopment and is turned into affordable housing.
- ✓ The 25 percent set aside applies to the overall grant amount plus program income, not to the number of units created.
- ✓ Program income resulting from NSP1 and NSP3 activities is subject to the 25 percent set aside.

20.9 Long Term Affordability

- ✓ This section describes the rules and requirements to ensure long term affordability for NSP funded homeowner and rental projects if NSP grantees adopt the HOME long term affordability rules.

Key Topics in This Section	✓ Long term affordability requirements for NSP rental and homebuyer projects ✓ HOME program rules for ensuring long term affordability
Regulatory/Statutory Citations	Title III of Division B of the Housing and Economic Recovery Act, 2008 (Pub, L. 110-289) Division A, Title XII of the American Recovery and Reinvestment Act of 2009 – Community Development Fund (Pub. L. 111-5) Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization (Pub. L 111-203) Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009 – May 4, 2009 (FR-5321-N-01) Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants – October 19, 2010 (FR-5447-N-01) Notice of Neighborhood Stabilization; Closeout Requirements and Recapture – November 27, 2013 (FR-5660-N-01)
Other Reference Materials on This Topic	Basically HOME: Chapter 2: General Program Rules NSP Homebuyer Programs: Financing and Long Term Affordability

- ✓ Under NSP, grantees are required to define how they will ensure long term affordability for all NSP funded housing projects.
- ✓ NSP grantees may adopt the HOME program long term affordability rules as a safe harbor or, the NSP grantee may impose more stringent standards. Most NSP grantees have elected to adopt the HOME rules for determining and tracking long-term affordability.
- ✓ If an NSP grantee adopts the HOME rules for long term affordability, the length of the affordability period is dictated by the amount of NSP investment per unit as described in the table below:

NSP Investment per Unit	Length of the Affordability Period
Less than $15,000	5 years
$15,000 to $40,000	10 years
More than $40,000 or rehabilitation involving refinancing	15 years
New construction of rental housing	20 years

- ✓ The amount of investment per unit and therefore the length of the affordability period under the HOME rules depend on whether the project is a rental or a homebuyer project.
- ✓ NSP grantees annually update HUD-provided online registry of covered NSP properties throughout the affordability period.

20.9.1 Rental Projects

- ✓ Under NSP, grantees are required to define 'affordable rents' in their NSP Action Plan. Rents must continue to remain "affordable" as defined by the NSP grantee in their NSP Action Plan for the entire affordability period.
- ✓ NSP assisted rental units must be occupied by LMMI households. Income eligibility is determined when the rental household occupies the property and must be verified again if and when an LMMI household leaves the unit and it is during the affordability period.
- ✓ If a unit is counted toward the 25% low income set aside, the unit must remain available to households $\leq$ 50% AMI

20.9.2 Homebuyer Projects

- ✓ For NSP grantees that adopt the HOME long term affordability requirements, the grantee must select whether the homebuyer program is subject to resale or recapture requirements.
- ✓ Under the resale approach, the affordability period is based on the total HOME investment in the property and must include the total amount of NSP assistance to the homebuyer as well as the total amount of NSP funds provided to the developer.
- ✓ Under the recapture approach, the affordability period is based on the total amount of NSP assistance to the homebuyer. This is also known as the 'direct subsidy' and may include down payment assistance, mortgage assistance, homeowner or title insurance, closing cost assistance, or assistance that reduces the purchase price for the homebuyer below market value.
- ✓ If there is no "direct subsidy" to the homebuyer than the grantee must select the resale requirement.

20.10 Other Requirements under NSP

✓ This section describes some other requirements under NSP including property standards; property purchase discounts, caps on the sales price for homebuyer units and tenant protection requirements.

Key Topics in This Section	✓ Property standards under NSP ✓ Property purchase discount under NSP ✓ Caps on the sales price of homebuyer units ✓ Tenant protection requirements
Regulatory/Statutory Citations	Title III of Division B of the Housing and Economic Recovery Act, 2008 (Pub, L. 110-289) Division A, Title XII of the American Recovery and Reinvestment Act of 2009 – Community Development Fund (Pub. L. 111-5) Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization (Pub. L 111-203) Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants – October 19, 2010 (FR-5447-N-01)
Other Reference Materials on This Topic	Guidance on NSP Tenant Protection Requirements Under the Recovery Act – Updated August 12, 2010 Guidance on Allocating Real Estate Development Costs in NSP, January 13, 2011

✓ *Tenant Protection Requirements:* Tenant protection requirements instated under ARRA require that all NSP grantees ensure that "bona fide" tenants in occupancy when property is acquired by initial successor in interest through foreclosure (usually lender) receive proper notification. The lender must provide 90 day notice to vacate to "bona fide" tenant occupants.

✓ *Appraisals:* Appraisals are required for purchases of foreclosed homes and properties and must be conducted within 60 days of final offer. HUD allows an updated appraisal for another 60 days thereafter a new appraisal is required.

✓ *Purchase Discount:* Foreclosed properties acquired with NSP funding must be purchased at a 1% discount below the current appraised value of the property. The appraisal must be conducted within 60 days of the purchase of the property.

✓ *Property Standards:* NSP grantees must define the property standards that it will apply in its NSP Action Plan. NSP2 and NSP3 grantees are required to incorporate green building and energy efficiency improvements in their rehabilitation standards.

✓ *Homebuyer Counseling:* NSP-assisted homebuyers must complete at least 8 hours from HUD-approved counseling agency

✓ *Sales Price Cap:* The sales price of NSP assisted properties sold to eligible LMMI households cannot exceed the lesser of the total development cost or the appraised value.

20.11 NSP Closeout

✓ This section describes the NSP Closeout requirements and includes the criteria for closeout, the submission requirements, the close out agreements and the requirement for all activities to meet a National Objective.

	✓ Closeout Process ✓ Closeout Agreement
Regulatory/Statutory Citations	Notice of Neighborhood Stabilization Program; Closeout Requirements and Recapture – November 27, 2013 (FR-5660-N-01)
Other Reference Materials on This Topic	Chapter 3: National Objectives

- ✓ An NSP Grant will be closed out when HUD determines, in consultation with the Grantee, that the following criteria have been met:
  - All costs to be paid have been incurred.
  - All activities have been completed
  - 25% set aside has been expended, including 25% of all Program Income
  - All other grant responsibilities and regulations have been carried out.
- ✓ Once the determination that the closeout criteria have been met, the grantee will submit the final QPR in DRGR and the local HUD office will draw up the closeout agreement.
- ✓ Once the closeout agreement has been signed, HUD will cancel any unused portion of the NSP award. HUD will work with the grantee to minimize the amount remaining.
- ✓ The closeout agreement will address:
  - Any lingering costs to be paid after closeout agreement signed
  - Any unused grant funds to be cancelled
  - All program assets, including:
    - program income held,
    - list of real property subject to continuing affordability requirements
    - real property in NSP-assisted land banks;
  - Any land banked property (disposition plan)
  - NSP continuing affordability plan and responsible organizations
- ✓ All NSP activities MUST meet a national objective.

20.12 NSP Resources

The OneCPD website is located at https://www.onecpd.info/ and provides the following types of resources to help grantees and their partners implement NSP:

✓ Laws and Notices

✓ Policy Alerts and Guidance from HUD

✓ Frequently Asked Questions

- ✓ Toolkits including templates, sample forms and procedures, and guidebooks on designing NSP programs
- ✓ Ability to ask questions and submit requests for technical assistance
- ✓ Webinars including presentation, transcript, and recording
- ✓ Problem Solving Clinic presentations and handouts

Acronyms

NSP	Neighborhood Stabilization Program
NSP1	Round 1 of Neighborhood Stabilization Program Funding Authorized under Housing and Economic Recovery Act (HERA)
NSP2	Round 2 of Neighborhood Stabilization Program Funding Authorized under American Recovery and Reinvestment Act (ARRA)
NSP3	Round 3 of Neighborhood Stabilization Program Funding Authorized under Dodd-Frank Wall Street Reform and Consumer Protection Act
LMMI	Low Moderate Middle Income
LMMH	Low Moderate Middle Income – Housing National Objective
LMMA	Low Moderate Middle Income - Area Benefit National Objective
LMMC	Low Moderate Middle Income – Limited Clientele National Objective
LMMJ	Low Moderate Middle Income – Jobs National Objective

CHAPTER 21: DISASTER RECOVERY (CDBG-DR)

CHAPTER PURPOSE & CONTENTS

This chapter provides a general overview of the Community Development Block Grant Disaster Recovery (CDBG-DR) program, including a brief synopsis of the history of the program, a summary of the objectives of the program, the rules and requirements of the program and a summary of the process for implementing Disaster Recovery activities.

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21.1 Program History & Primary Objective

✓ This section explains the history of the Disaster Recovery program and its goals.

Key Topics in This Section	✓ Reason CDBG Disaster Recovery program was established ✓ Program history and objectives
Regulatory/Statutory Citations	Public Law 93-288, as amended, 42 U.S.C. 5121-5207
Other Reference Materials on This Topic	Not applicable

- ✓ The CDBG Disaster Recovery program or CDBG-DR helps cities, counties, and States recover from some Presidentially-declared disasters, especially in low-income areas. CDBG-DR funds may be awarded months or even a year after the disaster.
- ✓ CDBG-DR funding is appropriated by Congress as a special CDBG appropriation in response to a disaster. The statutory authority for CDBG-DR funding is via individual supplemental appropriations to address specific disasters.
- ✓ Primary statutory authority permitting HUD & other federal agencies to assist State & local governments with their response and recovery responsibilities following major disasters and emergencies is provided as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
- ✓ CDBG can fund a broad range of recovery activities and help communities and neighborhoods that otherwise might not recover due to limited resources.
- ✓ Currently, there are 51 active CDBG-DR grantees including29 states and 22local governments receiving a combined total of $46billion.
- ✓ Under CDBG-DR, HUD Headquarters has oversight responsibilities for awards over $500 million, while all other grants are managed by the respective HUD CPD Field Office.
- ✓ CDBG-DR awards are noncompetitive and nonrecurring.
- ✓ To determine awards, HUD uses a formula that considers damage estimates and disaster recovery needs unmet by other Federal disaster assistance programs. This information is generally compiled by the Small Business Administration (SBA) and the Federal Emergency Management Agency (FEMA).

21.2 CDBG-DR Regulations and Implementation

- ✓ This section provides an overview of the CDBG-DR regulations and how they are implemented.

Key Topics in This Section	✓ Regulatory basis for CDBG-DR ✓ Key regulatory requirements
Regulatory/Statutory Citations	See 21.13
Other Reference Materials on This Topic	Not applicable

- ✓ After Congress appropriates Disaster Recovery funding, HUD determines the awards and contacts the grantees to discuss their recovery plans and determine what, if any, waivers are required.
- ✓ HUD publishes the allocations, waivers, and any alternative requirements in a Federal Register Notice. Typically, most State CDBG regulations apply to state grantees; most Entitlement regulations apply to units of general local government receiving a direct award.
- ✓ Grantees conduct a needs assessment to determine the critical unmet needs for long-term disaster recovery. The goal of the assessment is to enable grantees to better design recovery programs that are responsive to the types and locations of actual needs on the ground and to identify gaps in funding where CDBG-DR may be utilized.

- ✓ Based on the findings of the needs assessment and public comments, grantees draft and submit a disaster recovery action plan to HUD. Grantees generally use one of two methods (or a combination thereof) to administer CDBG-DR funding:
  - The grantee distributes funding to communities based on damage estimates and/or unmet needs; each community determines what types of activities to pursue in compliance with the Notice; or
  - The grantee designs and administers the program directly.
- ✓ Most CDBG rules and principles apply—e.g., activities must be CDBG eligible (or allowed via the Notice) and meet a national objective. In addition, all activities must be located in a Presidentially-declared county and respond to a disaster-related impact.

21.3 National Objective

- ✓ This section describes the national objective requirements all CDBG-DR funded activities must meet.

Key Topics in This Section	✓ Three national program national objectives
Regulatory/Statutory Citations	Section 101(c), Section 104(b)(3), 105(c) §570.208
Other Reference Materials on This Topic	Chapter 3: National Objectives

- ✓ The authorizing statute of the CDBG program requires that each activity funded, except for program administration and planning activities, must meet one of three national objectives. This requirement also applies to CDBG-DR funding. The three national objectives are:
  - Benefit to low- and moderate- income (LMI) persons;
  - Aid in the prevention or elimination of slums or blight; and
  - Meet a need having a particular urgency (referred to as urgent need).
- ✓ For more detailed information regarding the national objectives of the program and selecting and documenting the appropriate national objective for activities funded by grantees, refer to Chapter 3 of this manual.

21.4 Eligibility

- ✓ This section describes the range of eligible grantees, beneficiaries and activities under CDBG-DR.

Key Topics in This Section	✓ Eligible grantees under CDBG-DR ✓ Eligible beneficiaries under CDBG-DR ✓ Eligible activities under CDBG-DR ✓ Typical methods for undertaking CDBG-DR eligible activities
Regulatory/Statutory Citations	Public Law 93-288, as amended, 42 U.S.C. 5121-5207 24 CFR 570.482

Other Reference Materials on This Topic	Not applicable

21.4.1 Eligible Grantees

- ✓ Under most CDBG-DR appropriations, funds may be made available to States, units of general local government, Indian tribes, or insular areas.
- ✓ Grantees must have significant unmet recovery needs and the capacity to carry out a disaster recovery program.
- ✓ Supplemental appropriations may restrict funding to certain timeframes, or within certain localities.

21.4.2 Eligible Beneficiaries

- ✓ CDBG-DR funds can be used to assist many types of beneficiaries in a variety of ways. Funds can be provided to:
  - Families with housing needs,
  - Non-profits providing public services,
  - Businesses with economic development or revitalization needs, and
  - Local governments with planning or infrastructure needs.
- ✓ Generally, grantees must use 50 percent of their CDBG-DR award for activities that benefit low- and moderate-income persons.

21.4.3 Eligible Activities

- ✓ Most CDBG-DR appropriations require funds to be used for: *"…necessary expenses for activities…related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas…"*.)
- ✓ Thus, each activity must:
  - be CDBG eligible (or allowed via a waiver),
  - address a disaster-related impact in a Presidentially-declared county, and
  - meet a national objective.
- ✓ Disaster-related activities are those that demonstrate (1) a logical connection to the disaster, and (2) how the activity will contribute to long-term recovery.
  - Grantees must determine what documentation is sufficient and reasonable to show how activities respond to a disaster-related impact.
- ✓ Activities generally fall into one of the following categories:
  - Housing. E.g., activities that restore and/or improve the housing stock such as new construction (typically allowed via a waiver) or rehabilitation/reconstruction. This includes activities for single family or multifamily housing, either owner-occupied or rental.

- Restoration of infrastructure. E.g., activities that rebuild or replace affected public facilities or improvements. Typical activities include the rehabilitation of schools, health care centers, water or wastewater facilities, drainage improvements, etc.
- Economic Revitalization. E.g., activities that address job losses, and negative effects to tax revenues or businesses. This may include job training and workforce development, loans and grants to businesses, or improvements to commercial/retail districts.

✓ Eligible activities include, but are not limited to:

- Constructing new housing for residents located in a floodplain;
- Buying severely damaged structures and relocating the affected household or business out of harm's way;
- Debris removal (not covered by another source, such as FEMA);
- Rehabilitation of homes or buildings damaged by the disaster;
- Constructing or rehabilitating public facilities or improvements (e.g., streets, neighborhood centers, and water/sewer/drainage systems);
- Code enforcement;
- Homeownership assistance (e.g., down payment assistance, interest rate subsidies, and loan guarantees);
- Public services (generally limited to no more than 15 percent of the grant);
- Helping businesses retain or create jobs; and
- Planning and administration activities (limited to no more than 20 percent of the grant).

21.5 Ineligible Activities

✓ This section describes activities that are not eligible under CDBG-DR.

Key Topics in This Section	✓ Ineligible activities under CDBG-DR
Regulatory/Statutory Citations	Public Law 93-288, as amended, 42 U.S.C. 5121-5207
Other Reference Materials on This Topic	Not applicable

✓ An activity is ineligible if it meets any one of the following criteria:

- Is not located in a Presidentially-declared county;
- Does not respond to a disaster-related impact;
- Is explicitly prohibited by the appropriation law;
- Is ineligible under the applicable CDBG regulations (and a waiver has not been granted); or
- Fails to meet a national objective.

- ✓ Activities that are *solely* for mitigation or preparedness are typically ineligible (e.g., construction of new shelters where none previously existed). While these activities may help communities during future disasters, they often fail to demonstrate a connection to the disaster for which funding was appropriated (as required by the CDBG-DR appropriation laws). In addition, other Federal agencies provide funds specifically for mitigation and preparedness (e.g., FEMA's Hazard Mitigation Grant Program).
  - CDBG-DR grantees *are* encouraged to incorporate preparedness and mitigation into their rebuilding practices to ensure structures are safer and stronger.
- ✓ Purchasing equipment is typically ineligible.
  - The following equipment is typically ineligible under CDBG-DR: mobile command centers, radios, or portable lights.
  - Some equipment may be eligible. This includes:
    - Fire protection equipment considered to be an integral part of a public facility,
    - Equipment that constitutes all or part of a public service, or
    - Equipment that is attached to a structure and becomes an integral fixture.

21.6 Duplication of Benefits

- ✓ This section describes the Duplication of Benefits (DOB) rules that apply to CDBG-DR under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Key Topics in This Section	✓ Duplication of benefits under CDBG-DR
Regulatory/Statutory Citations	§ 312 [42 U.S.C.§ 5155]
Other Reference Materials on This Topic	Duplication of Benefits Notice 76 FR 71060

- ✓ CDBG-DR funding is subject to the rules of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act"), PL 100-707, signed into law November 23, 1988, including rules related to the duplication of benefits; amended the Disaster Relief Act of 1974, PL 93-288. This Act constitutes the statutory authority for most Federal disaster response activities.
- ✓ The Stafford Act seeks to guard against fraud and ineligible use of taxpayer funding; it also is designed to ensure that federal assistance (and specifically, CDBG-DR funds) is the last source of recovery funding—made available after all other forms of disaster assistance have been exhausted.
- ✓ The Stafford Act prohibits any person, business, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source.
  - Grantees must ensure that activities provide assistance only to the extent that a disaster recovery need has not been fully met.

- Disaster assistance may come in the form of donations, insurance proceeds, volunteer work, and state or local funds. It also includes assistance received from FEMA, the SBA, or the U.S. Army Corps of Engineers.

✓ Examples

- Assume the cost to rehabilitate a home following a disaster is $50,000 and the homeowner receives $50,000 from private insurance. Any CDBG-DR funding provided to the homeowner for rehabilitation would be considered a DOB because the homeowner had already received sufficient assistance to meet the need.

- Assume FEMA provides $500 for debris removal but the actual cost is $850, CDBG-DR funds may be used to cover the difference.

✓ Assistance *is* duplicative when two sources exceed need for the same recovery item. Assistance is *not* duplicative when two sources contribute to the same need, but the total assistance did not exceed the total need. Even if a grantee attempts to design disaster relief programs to avoid all potential DOB issues, the grantee cannot deem any recipients categorically exempt from DOB calculations. The grantee must perform case-by-case examinations of available benefits.

✓ Grantees may determine the best method for avoiding or identifying potential DOB issues. Grantees should have a process in place to check for all assistance applied for and/or previously received as well as a process for re-examining benefits that may be received over time (e.g. insurance proceeds). Typically, a grantee will require the following information from an applicant:

- All assistance sought or received, including insurance, loans and grants,
- A signed affidavit that indicates (1) the applicant acknowledges the DOB requirements and his obligation to report all funding he has received, and (2) the grantee may inquire about other assistance received (e.g. from the insurance company or FEMA), and
- A signed subrogation agreement.

✓ Wherever possible, grantees should seek third party documentation of disaster needs and assistance received.

✓ Generally, the agency responsible for duplicating assistance is required to collect the duplication.

21.7 Waivers

✓ This section describes how statutory waivers may be provided by HUD.

Key Topics in This Section	✓ Statutory waivers under CDBG-DR
Regulatory/Statutory Citations	See Section 21.13
Other Reference Materials on This Topic	Not applicable

✓ Via the CDBG-DR appropriation laws, the Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers (so

long as the Secretary finds that the waiver would not be inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974).

- The Secretary may not waive requirements related to fair housing, nondiscrimination, labor standards, or the environment.

- Waiver requests should explain why the waiver is necessary for the grantee's recovery. Waiver requests will be reviewed on a case-by-case basis.

✓ As it is required by each appropriation law, HUD may not waive the requirement that funds be used for necessary expenses related to the disaster.

21.8 Other Federal Requirements

✓ This section describes how other federal requirements apply under CDBG-DR.

Key Topics in This Section	✓ Other Federal Requirement Waivers under CDBG-DR
Regulatory/Statutory Citations	Public Law 93-288, as amended, 42 U.S.C. 5121-5207
Other Reference Materials on This Topic	Chapter : Other Federal Requirements

21.8.1 Valuation

✓ Payment of pre-flood values for buyouts may be based on either pre-flood or post-flood values for the acquisition of properties located in a flood way or floodplain.

✓ In using CDBG disaster recovery funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

21.8.2 One for one replacement waiver

✓ One-for-one replacement requirements are waived for low- and moderate-income dwelling units: (1) damaged by the disaster, (2) for which CDBG funds are used for demolition, and (3) which are not suitable for rehabilitation.

✓ This encourages recovery by easing requirements for acquiring, converting, or demolishing disaster- damaged housing.

21.8.3 Relocation Assistance Waiver

✓ Section 104(d) relocation assistance requirements are waived to the extent they differ from the URA and its regulations at 49 CFR 24 following waivers to buyouts and other activities covered by the URA and related to disaster recovery housing activities assisted by the funds covered by FR-5250-N-01 and included in an approved Action Plan.

✓ This simplifies project administration where residential relocation of low-income persons is necessary since only one replacement housing calculation is required (URA) and eliminates potential disparity between persons displaced by projects funded by other federal agencies not subject to 104(d).

21.9 Program Reporting and DRGR

Key Topics in This Section	✓ Other Federal Requirement Waivers under CDBG-DR
Regulatory/Statutory Citations	24 CFR 570.490
Other Reference Materials on This Topic	Chapter X: Other Federal Requirements

- ✓ CDBG-DR program reporting is done through the Disaster Recovery Grant Reporting (DRGR) system rather than IDIS.
- ✓ Standard CDBG reporting rules typically apply to CDBG-DR awards (e.g., grantees must retain records for 3 years following grant closeout).
- ✓ DRGR training documents, guides, and materials can be found here: https://www.onecpd.info/drgr

21.10 Disaster Recovery Enhancement Fund (DREF)

- ✓ This section provides an overview of the Disaster Recovery Enhancement Fund (DREF).

Key Topics in This Section	✓ Overview of the Disaster Recovery Enhancement Fund
Regulatory/Statutory Citations	Federal Register Notice 74 FR 41146
Other Reference Materials on This Topic	Allocation Method for CDBG Disaster Recovery Enhancement Fund (P.L. 110-329)

- ✓ Public Law (P.L.) 110-329 appropriated $6.1 billion for CDBG-DR. After making initial awards, HUD set-aside $311,602,923 for DREF.
- ✓ P.L. 110-329 grantees could receive additional funding via the DREF if they: (1) demonstrated they still had eligible, unmet disaster recovery needs, and (2) planned to undertake certain types of activities.
- ✓ For more information on DREF:
  - https://www.onecpd.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/

21.11 Disaster Recovery Resources

The following Disaster Recovery resources are available for CDBG-DR grantees:

- ✓ CDBG Disaster Recovery website:
  - https://www.onecpd.info/cdbg-dr/
- ✓ Your peer CDBG-DR grantees

✓ Your HUD CPD representative

21.12 Previous Appropriations

✓ Congress has appropriated the following CDBG Disaster Recovery Funding:

- **FY 1993** - $85 million to assist with recovery from Hurricanes Andrew, Iniki, and Typhoon Omar
- **FY 1994** - $425 million to assist with recovery from the earthquake in Southern California and Midwest floods
- **FY 1994** - $180 million to assist with recovery from Tropical Storm Alberto
- **FY 1994** - $225 million for the Northridge Earthquake
- **FY 1995** - $39 million to assist with recover from the Oklahoma City bombing
- **FY 1996** - $50 million to assist recovery from multiple disasters
- **FY 1997** - $500 million to assist recovery from upper Midwest floods
- **FY 1998** - $130 million to assist recovery from multiple disasters
- **FY 1999** - $20 million to assist recovery from multiple disasters
- **FY 2001** - $700 million to assist post-September 11th New York City's recovery efforts
- **FY 2002** - $2.783 billion to assist post-September 11th New York City's recovery efforts
- **FY 2005** - $150 million to assist recovery from multiple disasters
- **FY 2006** - $16.7 billion to assist the victims of Hurricanes Katrina, Rita, and Wilma
- **FY 2008** - $3.0 billion to supplement the Louisiana homeowner assistance program
- **FY 2008** - $300 million to assist recovery from the Midwest floods
- **FY 2008** - $6.1 billion to assist recovery from all 2008 disasters, including Hurricanes Ike, Gustav and Dolly
- **FY 2010** - $100 million to assist recovery from 2010 severe storms and flooding
- **FY 2012** - $400 million to assist recovery from multiple disasters occurring in 2011**FY 2013 -** $16 billion to assist recovery from Hurricane Sandy. ($15.18 billion after sequester)

21.13 CDBG-DR Public Laws (Supplemental Appropriations) and Related Waivers

✓ Public Laws (Appropriations), Federal Register Notices, and Related Resources can be found here: https://www.onecpd.info/cdbg-dr/