

CATEGORIES OF ELIGIBLE ACTIVITIES

Purpose

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

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

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

Activity Categories

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

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

Acquisition of Real Property

Eligible Activities

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

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

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

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

Example

Real property to be acquired may be:

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

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

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

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

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

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

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

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

Complying With National Objectives— Acquisition of Real Property

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

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

Additional Considerations

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

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

Reference: §570.606.

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

NATIONAL OBJECTIVES — ACQUISITION OF REAL PROPERTY

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

NATIONAL OBJECTIVES — ACQUISITION OF REAL PROPERTY

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

NATIONAL OBJECTIVES— ACQUISITION OF REAL PROPERTY

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

Disposition

Eligible Activities

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

The property may be disposed of through:

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

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

Example

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

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

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

Complying with National Objectives—Disposition

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

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

Additional Considerations

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

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

Public Facilities and Improvements

Eligible Activities

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

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

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

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

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

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

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

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

Reference

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

Complying with National Objectives—Public Facilities and Improvements

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

Additional Considerations

Title to public facilities:

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

Facilities containing both eligible and ineligible uses:

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

Fees:

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

Special assessments:

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

NATIONAL OBJECTIVES— PUBLIC FACILITIES AND IMPROVEMENTS

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

NATIONAL OBJECTIVES— PUBLIC FACILITIES AND IMPROVEMENTS

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

NATIONAL OBJECTIVES— PUBLIC FACILITIES AND IMPROVEMENTS

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

Clearance

Eligible Activities

Under this category, CDBG funds may be used for:

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

Reference: §570.201(d)

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

Complying with National Objectives—Clearance

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

Additional Considerations

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

NATIONAL OBJECTIVES— CLEARANCE

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

NATIONAL OBJECTIVES— CLEARANCE

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

NATIONAL OBJECTIVES— CLEARANCE

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

Public Services

Eligible Activities

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

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

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

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

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

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

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

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

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

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

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

Example

Public services include, but are not limited to:

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

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

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

Reference

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

Complying with National Objectives—Public Services

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

Additional Considerations

Applicability of Public Services Cap to subrecipients:

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

Substitution of CDBG funds for private or other Federal funds:

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

Purchase or lease of personal property for a public service:

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

NATIONAL OBJECTIVES — PUBLIC SERVICES

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

NATIONAL OBJECTIVES— PUBLIC SERVICES

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

Public Services Cap

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

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

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

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

or

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

Determining Compliance with the Cap

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

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

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

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

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

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

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

Interim Assistance

Eligible Activities

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

There are two subcategories of interim assistance activities:

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

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

(A) The repair of:

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

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

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

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

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

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

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

**Complying
with National
Objectives—
Interim
Assistance**

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

**Additional
Considerations**

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

NATIONAL OBJECTIVES— INTERIM ASSISTANCE

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

NATIONAL OBJECTIVES— INTERIM ASSISTANCE

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

Relocation

Eligible Activities

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

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

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

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

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

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

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

Complying With National Objectives—Relocation

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

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

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

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

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

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

Additional Considerations

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

Loss of Rental Income

Eligible Activities

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

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

Reference: §570.201(j)

Complying with National Objectives— Loss of Rental Income

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

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

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

Additional Considerations

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

Privately-Owned Utilities

Eligible Activities

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

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

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

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

Example:

A grantee could use CDBG funds to:

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

Complying with National Objectives—Private-Owned Utilities

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

Additional Considerations

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

Rehabilitation

Eligible Activities

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

Eligible types of property

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

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

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

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

Eligible types of assistance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reference: §570.202

*Rehabilitation does **not** include:*

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

Use of Subrecipients

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

Drawing Down Funds for Rehabilitation

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

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

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

Complying with National Objectives— Rehabilitation

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

Additional Considerations

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

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

NATIONAL OBJECTIVES — REHABILITATION

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

NATIONAL OBJECTIVES — REHABILITATION

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

NATIONAL OBJECTIVES — REHABILITATION

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

Construction of Housing

Eligible Activities

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

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

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

Reference: §570.207(b)(3)

Complying with National Objectives—Construction of Housing

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

Additional Considerations

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

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

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

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

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

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

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

NATIONAL OBJECTIVES — CONSTRUCTION OF HOUSING

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

NATIONAL OBJECTIVES — CONSTRUCTION OF HOUSING

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

Code Enforcement

Eligible Activities

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

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

Example

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

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

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

Compliance with National Objectives—Code Enforcement

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

Additional Considerations

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

NATIONAL OBJECTIVES— CODE ENFORCEMENT

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

NATIONAL OBJECTIVES— CODE ENFORCEMENT

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

NATIONAL OBJECTIVES— CODE ENFORCEMENT

Objective	Qualifies If	Example	Additional Information
<p>Urgent Needs</p>	<p>While this situation is likely to be infrequent, it is possible for code enforcement to qualify if:</p> <ul style="list-style-type: none"> (1) The code enforcement is targeted at a deteriorated or deteriorating area; (2) The code enforcement, together with public or private improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area; and (3) The grantee is able to certify that the existing conditions which the code enforcement is designed to alleviate pose a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.* <p><i>* In cases where disaster causes the blight of an area, it may be easier to qualify the code enforcement under the “Slum or Blighted Area” category than under the “Urgent Need” category.</i></p>	<p>Code enforcement activities taking place in an area that has been severely affected by a flood, and is part of the community’s overall response to the emergency.</p>	<p>For more information, see page 3-41.</p>

Special Economic Development Activities

Preface

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

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

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

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

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

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

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

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

Eligible Activities

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

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

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

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

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

Reference: §570.203(a), (b) and (c)

Example

Special economic development activities may include:

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

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

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

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

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

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

Additional Considerations

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

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

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

NATIONAL OBJECTIVES — SPECIAL ECONOMIC DEVELOPMENT ACTIVITIES

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

NATIONAL OBJECTIVES — SPECIAL ECONOMIC DEVELOPMENT ACTIVITIES

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

Microenterprise Assistance

Eligible Activities

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

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

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

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

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

Definitions:

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

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

Complying with National Objectives— Microenterprise Assistance

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

Additional Considerations

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

NATIONAL OBJECTIVES— MICROENTERPRISE ASSISTANCE

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

Special Activities by CBDOs

Preface

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

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

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

Eligible Activities

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

Eligible Projects

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

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

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

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

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

Eligible Entities

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

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

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

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

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

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

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

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

“Carry out”

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

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

Ineligible Activities

Special activities by CBDOs do not include:

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

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

Complying with National Objectives— Special Activities by CBDOs

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

Additional Considerations

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

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

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

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

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

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

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

Homeownership Assistance

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

Eligible Activities

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

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

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

Complying with National Objectives— Homeownership Assistance

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

Additional Considerations

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

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

Planning and Capacity Building

Eligible Activities

CDBG funds may be used for:

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

Example

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

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

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

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

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

Planning and capacity building activities do not include:

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

Example

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

Complying with National Objectives— Planning and Capacity Building

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

Additional Considerations

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

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

Program

Administration Costs

Eligible Activities

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

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

Other activities eligible under this category include:

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

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

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

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

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

Example

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

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

*Program administration does **not** authorize:*

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

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

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

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

Planning and Administrative Cap

Description

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

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

References: Appropriations Acts and §570.200(g)

Calculating the Cap

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

Entitlement Grant (from line 8.b of the Funding Approval form, HUD-7082) \$ _____

Surplus from Urban Renewal (from line 10.b of the Funding Approval form) \$ _____

Program income received by the grantee and its subrecipients \$ _____

TOTAL \$ _____

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

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

Determining Compliance with the Cap

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

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

\$ _____

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

\$ _____

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

\$(_____)

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

\$ _____

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

Miscellaneous Other Activities

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

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

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

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

Urban Renewal Completion— §570.201(h)

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

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

Technical Assistance— §570.201(p)

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

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

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

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

**Housing
Services—
§570.201(k)**

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

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

Reconstruction

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

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

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

In Rem

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

Handicapped Accessibility

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

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

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

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

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

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

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

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

Activities Specified as Ineligible

Ineligible Activities

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

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

Categorically ineligible

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

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

Generally ineligible

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

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

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

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

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

Documenting Compliance

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

The requirement

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

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

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

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

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

Making the Best Choice

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

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

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

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

Public Services

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

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

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

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

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

Commercial/Industrial Projects

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

The alternatives that should be considered in this regard are:

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

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

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

Planning/administration

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

Such activities include:

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

A brief discussion of each of the preceding activities follows:

Fair Housing Counseling

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

Environmental Assessments

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

Capacity Building

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

Split-function Staff

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