

1. Selecting Activities that Comply

1.1 Scope of Selection Decisions

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

The **first step** is to determine if the activity falls within a category of explicitly authorized activities in the CDBG statute. Generally, if an activity does not fall within a category of explicitly authorized activities in the statute, the activity is considered ineligible. This Guide describes all categories of basic eligibility that were authorized at the time of publication.

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

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

The **fourth step** is to ensure that carrying out the activity with CDBG funds will not result in the state violating its certification that at least 70 percent of CDBG expenditures will be for activities considered to benefit low and moderate-income persons over the one, two, or three consecutive program years specified by the grant recipient. The procedure for calculating overall program expenditures for this purpose is described in this Guide.

The **fifth step** is to review proposed costs of the activity to determine if they appear to be necessary and reasonable and will otherwise conform with the requirements of OMB Circulars A-87, "Cost Principles for State, Local, and Indian Tribal Governments," A-122, "Cost Principles for Non-Profit Organizations," A-21, "Cost Principles for Educational Institutions," 24 CFR Part 84, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations;" or 24 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as applicable. **These OMB Circulars have been superseded by the OMB Financial Supercircular. The related guidance entitled, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards can be found at: www.cfo.gov/cofar . The Supercircular requirements will apply to audits of funds allocated in fiscal years that begin on or after December 26, 2014.**

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



1.2 Waivers

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

Under the General HUD Program Requirements regulation at 24 CFR 5.110, HUD may waive a requirement for good cause if the grant recipient can show that applying the provision in the particular situation would result in “undue hardship” and “adversely affect” the purposes of the HCD Act. The applicability of the Part 5 waiver thresholds to the State program is cross-referenced at 24 CFR 570.480(b). Again, the local HUD field office can help the grant recipient with determining whether the test can be met. Waivers may only be granted by the Assistant Secretary for Community Planning and Development and must be published in the *Federal Register* describing the basis upon which the waiver was granted. Since rulemaking involves public participation, waiving any provision can have serious implications for the proper administration of the program. HUD therefore uses its waiver authority judiciously.