

## 2. Categories of Eligible Activities

### 2.1 Introduction

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

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

### 2.2 Purpose

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

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

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

The purpose of this chapter is to help ensure that grant recipients will: (1) use CDBG funds only for activities that fall under categories of basic eligibility authorized by the HCDA; (2) properly classify the activity; and (3) provide adequate documentation for each activity as required by the selected category. The importance of using CDBG funds only for eligible activities is self-evident. The proper classification of each assisted activity by one of these categories of eligibility is also important because the HCDA and regulations place very different requirements on the various eligibility categories. For example, there is a statutory and regulatory limitation on the amount of CDBG funds that may be used for activities assisted under the category of Public Services. Some services that are assisted under the program may also be eligible under a category other than Public Services and, if properly classified by the grant recipient under another category, would not be subject to the 15 percent public service cap.

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

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

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

## 2.3 Acquisition of Real Property

### 2.3.1 The HCDA

#### Section 105(a)(1)

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

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

### 2.3.2 Eligible Activities

The HCDA authorizes the use of CDBG funds by a state grant recipient to acquire real property in whole or in part by purchase, long-term lease, donation, or otherwise. In order to be considered acquisition, a permanent interest in the property must be obtained. Long-term leases can be considered to constitute a permanent interest for this purpose. In the Entitlement program, policy memos have established that a lease period of 15 years or more gives sufficient control to the acquiring party to constitute a permanent interest.

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

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

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

### Example

Real property to be acquired could include:

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

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

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

- The cost of moveable equipment, furnishings, or machinery if this is the principal purpose of the activity, since such items are not real property. They may, however, qualify under another category, such as assistance to a for-profit business, when needed for carrying out an economic development project, or under Public Services. (See discussion of these categories later in this chapter.)
- Acquisition of property that is then expected to be donated or sold at less than the purchase price to the same entity from which the property was purchased. This is not an eligible activity since it is not considered to involve a legitimate change of ownership. (However, if land is acquired and then given or sold at less than the purchase price to a for-profit business as part of an economic development project, this could be eligible under HCDA Section 105(a)(17) as assistance to a for-profit business.”
- Acquisition of newly-constructed housing or an interest in the construction of new housing, unless such housing is already constructed and for sale on the open market at the time that a commitment is made to use CDBG funds for such a purchase. The prohibition of this type of acquisition is based on the fact that such acquisition would be considered to constitute assisting new housing construction, which is generally ineligible for CDBG assistance.

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

- Under certain circumstances, CDBG funds may be provided to private individuals and private for-profit entities to acquire property to be rehabilitated, if the property is then rehabilitated and used or sold for residential purposes.
- Private non-profit entities may use CDBG funds to acquire real property for commercial or industrial uses, and private for-profit entities may also do so when appropriate for an economic development project.



### 2.3.3 Complying With National Objectives – Acquisition of Real Property

Qualifying an acquisition activity under one of the CDBG national objectives depends entirely on the use of the acquired real property following its acquisition. A preliminary determination of compliance may be based on the planned use. The final determination must be based on the actual use of the property, excluding any short-term, temporary use.

Where the acquisition is for the purpose of clearance that will eliminate specific conditions of blight or physical decay, the clearance activity may be considered the actual use of the property. However, any subsequent use or disposition of the cleared property must be treated as a “change of use,” under 24 CFR 570.489(j), as applicable.

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

### 2.3.4 Additional Considerations

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

The purchase of real property by the grant recipient or other entities under this eligibility category is subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Among other things, this could mean that persons displaced as a result of the acquisition must be provided with financial assistance. Temporary easements, acquisition from another public agency, and voluntary offers in response to a public solicitation are exempt from Uniform Act requirements. *Reference: 24 CFR 570.488 and –.606; 49 CFR Part 24.*

Since the ultimate use of the property determines how a national objective will be met, whenever the use differs from that contemplated at the time of acquisition, a review must be made of the new use to ensure it will meet a national objective. When such review results in the determination that the national objective being met differs from that ascribed to the activity initially, an adjustment must be made to the program records to reflect this change. If the objective claimed for the original acquisition costs was that of benefit to L/M income persons, and the objective being met by the new use falls under either of the other two national objectives, the new use of the property would be authorized only if the classification of the acquisition costs to the new objective would not result in a violation of the “overall expenditures certification” that the state made for the year’s allocation of funds which the state used to fund the activity. See Chapter 4, Overall Expenditures—Benefit to L/M Income Persons, of this Guide for further information on the certification issue.

National Objectives – Acquisition of Real Property			
Objective	Qualifies If	Example	Additional Information
<b>L/M Income Area Benefit</b>	The property will be used for an activity the benefits of which are available to all the residents in a particular area that is primarily residential, and at least 51 percent of those residents (or fewer if the exception criteria apply) are L/M income persons.	Purchasing land for use as a park serving a primarily residential neighborhood that is predominantly L/M income.	For more information, see page 3-5.
<b>L/M Income Limited Clientele</b>	The property will be used for an activity the benefits of which will be limited to a specific group of people; at least 51 percent of who are L/M income persons.	Buying a building to be converted into a sheltered workshop for developmentally-disabled adults.	For more information, see page 3-10.
<b>L/M Income Housing</b>	The property will be used for housing to be occupied by L/M income persons.	Buying an apartment house to provide dwelling units to L/M income households at affordable rents, where at least 51 percent of the units will be occupied by L/M income households.	For more information, see page 3-13.
<b>L/M Income Jobs</b>	The property acquired is to be used for an activity that will create or retain permanent jobs at least 51 percent of which will benefit L/M income persons.	Acquiring vacant property that is planned to be used for a commercial purpose and will be made available for that purpose only if the business commits to provide at least 51 percent of the new permanent jobs that will be created to L/M income persons.	For more information, see page 3-16.
<b>Slum or Blighted Area</b>	The acquired property is in an area designated by the grant recipient as a blighted area, and the property will be used in a manner that addresses one or more of the conditions that contributed to the deterioration of the area.	Using CDBG funds to acquire deteriorated buildings located in a blighted area for rehabilitation or demolition.	For more information, see page 3-26.

**National Objectives – Acquisition of Real Property**

Objective	Qualifies If	Example	Additional Information
<b>Spot Blight</b>	The acquisition of property is located outside a designated blighted area and the acquisition is a prerequisite for clearance that will eliminate specific conditions of blight or physical decay on a spot basis.	The acquisition of a dilapidated property containing an abandoned grain elevator, the presence of which is detrimental to public health and safety which will be demolished.	For more information, see page 3-28.
<b>Urgent Needs</b>	The acquisition is part of an activity designated to alleviate existing conditions, and the state grant recipient certifies and the state determines that those conditions are a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the state grant recipient is unable to finance the activity on its own, and other sources of funds are not available.	Acquisition of property located in a flood plain that was severely damaged by a recent flood.	For more information, see page 3-30.



## 2.4 Public Facilities and Improvements and Privately- Owned Utilities

### 2.4.1 The HCDA

#### Section 105(a)(2)

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

### 2.4.2 Eligible Activities

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

- Acquisition (including long term leases for periods of 15 years or more),
- Construction,
- Reconstruction,
- Rehabilitation (including removal of architectural barriers to accessibility), or
- Installation of public improvements or facilities (except for buildings for the general conduct of government).

Neither the HCDA nor the regulations define the terms “public facilities” or “public improvements.” However, in the CDBG program, these terms are broadly interpreted to include all improvements and facilities that are either publicly owned or that are traditionally provided by the government, or owned by a nonprofit, and operated so as to be open to the general public. Such facilities include firehouses, civil defense shelters, public schools, libraries, and housing shelters. Public improvements include streets, sidewalks, curbs and gutters, parks, playgrounds, water and sewer lines, flood and drainage improvements, parking lots, utility lines, and aesthetic amenities on public property such as trees, sculptures, pools of water and fountains, and other works of art.

The Entitlement program regulations specify that facilities designed for use in providing shelter for persons having special needs are considered to be public facilities (and not permanent housing), and thus are covered under this category of basic eligibility. Such shelters include nursing homes, convalescent homes, hospitals, shelters for victims of domestic violence, shelters and transitional facilities/housing for the homeless, itinerant farm workers, group homes for the developmentally disabled, and shelters for disaster victims.

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



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

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

Generally speaking, buildings that house administrative functions of the government are considered to be “buildings for the general conduct of government.” Thus, CDBG assistance to a building in which the chief of police and the fire captain of a city have their offices would generally be ineligible.

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

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

#### 2.4.3 Inclusion of Privately-Owned Utilities

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

#### 2.4.4 Eligible Activities for Privately-Owned Utilities

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

- Acquire,
- Construct,
- Reconstruct,
- Rehabilitate, or
- Install the distribution lines and related facilities for privately-owned utilities. This includes placing existing lines and facilities underground.

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

**For example**, a grant recipient could use CDBG funds to:

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

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

Except for highly specialized facilities, such as senior centers and day-care centers, most public facilities and improvements are intended to benefit all the residents of an area. Thus, to qualify under the national objective of benefit to L/M income persons, in most cases, they must serve a primarily residential area having at least 51 percent L/M income residents.

Different types and sizes of public facilities and improvements have different service areas. The service area might differ from existing census groupings. It may be larger than the boundary limits of the city. The service area may even be multi-county, or even statewide. Note that public facilities that serve the entire jurisdiction of the state grant recipient, such as a main library, may qualify under the L/M Income Benefit national objective only if the percentage of L/M income persons in the entire jurisdiction is sufficiently high to meet the “Area Benefit” test.

Some facilities, by their nature, serve an area that is larger--sometimes much larger--than the grant recipient’s jurisdiction. Regional parks and education facilities, such as community colleges, fall into this category. In such cases, it is important to note that the entire area served by the facility must be considered in determining if it meets the L/M Income Area Benefit subcategory of the L/M Income Benefit national objective.

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

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

States are responsible for establishing policies for their program concerning:

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



The charts following Additional Considerations, below, show several ways that facilities and improvements eligible under this category may meet a national objective of the CDBG program.

**Privately owned utilities** may qualify as meeting a national objective of the CDBG program in the same ways as are applicable to Public Facilities and Improvements.

#### 2.4.6 Additional Considerations

##### Water/sewer hook-ups:

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

##### “911” Emergency telephone response systems:

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

##### “211” Calling systems:

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

##### Title to public facilities:

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

##### Facilities containing both eligible and ineligible uses:

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

##### Fees

- Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges, such as excessive membership fees, which will have the effect of precluding L/M income persons from using the facilities, are not permitted.

### Special assessments:

- There is no special category of basic eligibility authorizing the use of CDBG funds to pay for special assessments. However, because of the broad use of this technique for funding public improvements, the use of CDBG funds to pay special assessments on behalf of property owners for a public improvement has been considered to constitute a form of using CDBG funds to assist the public improvement and is thus authorized under this category. Therefore, all the rules applicable to a CDBG-assisted public improvement apply even if CDBG funds are only used to pay special assessments for that improvement, but do not assist in the construction. These include Davis-Bacon labor standards as well as the rules described in Appendix D, Special Assessments under the CDBG Program, concerning the requirement to pay assessments on behalf of L/M income property owners.
- For purposes of the CDBG program, “special assessment” is defined as the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through:
  - (1) a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of a benefit derived from the installation of a public improvement; or
  - (2) a one-time charge made as a condition of access to the public improvement.
- The term “special assessment” does not relate to taxes, or to the establishment of the value of real estate for the purpose of levying real estate, property or ad valorem taxes. The term does not include periodic charges based on the use of public improvements (such as water and sewer user charges) even if such charges include the recovery of all or some portion of the capital costs of the public improvement.
- Because many communities levy special assessments against property owners to help pay for the costs of certain public facilities, it is important to be aware of limitations, implications, and requirements that are unique to the CDBG program in this regard.
- Although impact fees generally are not eligible to be paid with CDBG funds, there are several instances in which impact fees are eligible for CDBG funding. For example, impact fees associated with housing developed under Section 105(a)(15) (activities carried out through nonprofit development organizations) or developed as housing of last resort may be paid with CDBG funds. In either case, the impact fees must be a necessary expense of developing housing in the community in order to be an eligible expense.
- Where CDBG funds are used to pay all or part of the cost of a public improvement, the rules at 24 CFR 570.482(b) (described in Appendix B, Code of Federal Regulations, Title 24 570.482 – .497) apply if special assessments are used to recover capital costs.

#### 2.4.7 Other Considerations

### Economic development infrastructure projects:

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

- In certain cases, the area served by a public improvement that enables a business to create or retain jobs may also include other properties (for example, bringing new water or sewer service to a fringe area of a community that will not only help a business to locate there but that also will bring that new water/sewer service to houses that are located in that area). When, overall, the properties served by the public improvement are primarily residential, the benefits to the residents must also be considered. Therefore, the assisted public improvement in such a case must not only meet the L/M Income Benefit based on the Jobs criteria but must also meet the Area Benefit.  
(See also the discussion on page 3-27 of this Guide concerning the case where more than one business may create or retain jobs as a result of a public improvement.)

#### Combining CDBG funds with other federal money:

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

#### 2.4.8 Example

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

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

### National Objectives - Public Facilities and Improvements and Privately-Owned Utilities

Objective	Qualifies If	Example	Additional Information
<b>L/M Income Area Benefit</b>	The public facility or improvement will be used for a purpose the benefits of which are available <i>to all the residents in a particular area</i> that is primarily residential, and at least 51 percent of those residents are L/M income persons.	Paving of gravel road and the installation of drainage in a predominantly L/M income community.	For more information, see page 3-5.
<b>L/M Income Limited Clientele</b>	The public facility or improvement will be used for an activity designed to benefit a particular group of persons at least 51 percent of whom are L/M income persons.	Rehabilitation of a building to be used as a center for training severely disabled adults to enable them to live independently.	For more information, see page 3-10.
<b>L/M Income Housing</b>	The public facility or improvement exclusively assists in the provision of housing to be occupied by L/M income persons.	Site improvements on publicly-owned land to serve a new apartment structure to be rented to L/M income households at affordable rents.	For more information, see page 3-13.
<b>L/M Income Jobs</b>	The provision of a particular public improvement needed by one or more businesses to allow creation or retention of jobs, primarily for L/M income persons.	Rebuilding a public road adjacent to a factory to allow larger and heavier trucks access to the facility determined to be necessary for plant expansion and the creation of new jobs, where the business agrees to fill 51 percent of the jobs with L/M income persons.	For more information, see page 3-16
<b>Slum or Blighted Area</b>	The public facilities and improvements are located in a designated blighted area and are designed to address one or more conditions which contributed to the deterioration of the area.	Renovation of an abandoned, deteriorated elementary school building, located in an area designated by the grant recipient as blighted pursuant to CDBG rules, in order to re-open it as a library and community center.	For more information, see page 3-26.



**National Objectives - Public Facilities and Improvements and Privately-Owned Utilities**

Objective	Qualifies If	Example	Additional Information
<b>Spot Blight</b>	The public facilities or improvements are for the historic preservation or rehabilitation of blighted or decayed public facilities/improvements located outside of a designated blighted area. Rehabilitation must be limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.	Rehabilitation/restoration of a severely deteriorated building of historic significance that is being used as a museum that is located outside a designated blighted area (and does not serve an L/M income area).	For more information, see page 3-28.
<b>Urgent Needs</b>	The acquisition, construction, or reconstruction of a public facility or improvement designed to alleviate existing conditions and the grant recipient certifies that those conditions are a serious and immediate threat to the health or welfare of the community, the conditions are of recent origin, there is no other known source of funds it can use to implement the activity and the locality is unable to finance the activity on its own.	Extension of municipal water system distribution lines into a residential area where residents' private wells have recently been found to be contaminated with high levels of fecal coliform bacteria.	For more information, see page 3-30.





## **2.5 Code Enforcement**

### **2.5.1 The HCDA**

Section 105(a)(3)

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

### **2.5.2 Eligible Activities**

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

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

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

### **2.5.3 Compliance with National Objectives - Code Enforcement**

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

### **2.5.4 Additional Considerations**

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

National Objectives - Code Enforcement			
Objective	Qualifies If	Example	Additional Information
<b>L/M Income Area Benefit</b>	The code enforcement is targeted at a deteriorated or deteriorating area delineated by the grant recipient and: At least 51 percent of the residents of the area are L/M income persons and (2) The code enforcement, together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area.	Code enforcement efforts in an L/M income deteriorated neighborhood targeted for rehabilitation assistance, construction of a neighborhood facility, and street reconstruction.	For more information, see page 3-5.
<b>L/M Income Limited Clientele</b>	Not applicable	Not applicable	Not applicable
<b>L/M Income Housing</b>	Not applicable	Not applicable	Not applicable
<b>L/M Income Jobs</b>	Not applicable	Not applicable	Not applicable
<b>Slum or Blighted Area</b>	The code enforcement is targeted at a designated blighted area and: (1) Is designed to address one or more of the conditions which contributed to the deterioration of the area and (2) The code enforcement, together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area.	Building inspections for code violations in a designated blighted area, which are part of a comprehensive effort to arrest decline in that area.	For more information, see page 3-26.
<b>Spot Blight</b>	Not applicable	Not applicable	Not applicable

National Objectives - Code Enforcement			
Objective	Qualifies If	Example	Additional Information
<b>Urgent Needs</b>	<p>While this situation is likely to be infrequent, it is possible for code enforcement to qualify if:</p> <ol style="list-style-type: none"> <li>(1) The code enforcement is targeted at a deteriorated or deteriorating area;</li> <li>(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</li> <li>(3) The grant recipient is able to certify that the existing conditions which the code enforcement is designed to alleviate pose a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grant recipient is unable to finance the activity on its own, and other sources of funds are not available. *</li> </ol>	Code enforcement activities taking place in an area that has been severely affected by a flood and are part of the community's overall response to the emergency.	For more information, see page 3-30.

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



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

### 2.6.1 The HCDA

#### Section 105(a)(4)

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

#### Section 105(a)(25)

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

### 2.6.2 Eligibility of Clearance and Remediation Activities

Under this category, CDBG funds may be used for:

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

### 2.6.3 Additional Clearance Considerations

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

### 2.6.4 Eligibility of Rehabilitation Activities

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

### 2.6.5 Eligible types of property

**Residential:** Residential property, whether privately or publicly owned. This includes manufactured housing when such housing constitutes part of the community's housing stock and is classified as real property.



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

**Other:** Nonprofit-owned, nonresidential buildings and improvements that are not considered to be public facilities or improvements.

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

#### 2.6.6 Eligible types of assistance

**Costs:** Costs of labor, materials, supplies and other expenses required for the rehabilitation of property, including repair or replacement of principal fixtures and components of existing structures (for example, the heating system). The purchase and installation of washers, dryers, and dishwashers are allowed since activities, including rehabilitation, that promote energy efficiency, 42 U.S.C. 5305(a)(4), are permissible. The January 14, 2011 Memorandum on “Guidance Regarding the Use of CDBG Funds for Washers, Dryers, and Dishwashers” provides more information for CDBG grantees.

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

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

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

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

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

**Insurance:** The costs of initial homeowner warranty premiums and, where needed to protect the grant recipient’s interest in properties securing a rehabilitation loan, hazard insurance premiums, as well as flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, as amended, pursuant to 24 CFR 570.605.

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



**Water and Sewer:** Costs of connecting existing residential structures to water distribution lines or local sewer collection lines, or installing wells, septic tanks, septic fields for individual houses, as well as replacing any of the above. (Costs of installing water and sewer collection lines are not eligible as rehabilitation.)

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

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

**Landscaping, Sidewalks, and Driveways:** Costs of installation or replacement of landscape materials, sidewalks, and driveways when incidental to other rehabilitation of the property.

**Renovation of Closed Buildings:** The conversion of a closed building from one use to another (for example, the renovation of a closed school building to residential use). Note that rehabilitation of a closed building for re-use as a public facility would be eligible as a public facility.

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

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

**Rehabilitation Services:** Staff costs and related expenses required for outreach efforts for marketing the program, rehabilitation counseling, screening potential applicant households and structures, energy auditing, preparing work specifications, loan underwriting and processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities that are participating or seeking to participate in rehabilitation activities eligible under this category.

**Business in a Residence:** In some cases where a business is conducted in a residential unit, it may be necessary to make improvements to the residence in order to conduct the business. (This would be the case where, for example, the business is providing child care and local requirements for such business dictate that modifications be made to the housing unit.) In any case where the improvements are of such nature that, in addition to facilitating the business,

they also provide a benefit to the resident(s), such rehabilitation costs may be covered under this category. Other improvements not meeting this test needed for such a business could be eligible under the category of Special Economic Development.

**Rehabilitation does not include:**

- Creation of a secondary housing unit attached to a primary unit;
- Installation of luxury items, such as a swimming pool;
- Costs of equipment, furnishings, or other personal property not an integral structural fixture, such as a window air conditioner; or
- The value of the homeowner's sweat equity to rehabilitate their own property

### 2.6.7 Use of subrecipients

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

### 2.6.8 Drawing down funds for rehabilitation

The general Treasury rules for drawing federal funds require that funds not be drawn until needed. In the CDBG program, this means that a state and its grant recipients are to minimize the elapsed time between the state's receipt of funds from its line of credit (the Treasury) and the state grant recipient's disbursement of funds for CDBG activities. The rules also generally require that any program income on hand must be used before drawing additional funds from the Treasury (but see the special rule applying to revolving funds at 24 CFR 570.489(f)). There are, however, two regulatory provisions that allow drawing funds from the Treasury in advance which apply with respect to rehabilitation. They are: (a) Lump Sum Drawdown; and (b) Escrow Accounts. Each of these is discussed below.

### 2.6.9 Special note on lump sum drawdowns and escrow accounts

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

**Lump Sum Drawdown:** A state grant recipient may draw, as a single amount, the total amount needed for rehabilitation if it enters into an agreement with a financial institution that meets the requirements set forth in 24 CFR 570.513(b)(2) and if it complies with other requirements under 24 CFR 570.513. Some of the key requirements outlined in that provision include: the





agreement may not exceed two years; the financial institution must agree to provide certain benefits in conjunction with the activities paid for from the account; there are time benchmarks for when the rehabilitation carried out with funds in the account must begin and the pace at which the funds must be used; and there are limits to what the funds can be used for.

*Reference: 24 CFR 570.513*

**Escrow Account:** Some state grant recipients have experienced difficulty in making timely payments from their CDBG account to contractors engaged in rehabilitation. Where a CDBG rehabilitation program makes use of small and minority contractors or subcontractors, delays in making payment for invoices presented by such entities can mean that the contractors or subcontractors are unable to participate in CDBG-assisted rehabilitation, since they cannot afford to wait long for payment. In such cases, a state grant recipient may establish an escrow account for purposes of making timely payments from that account rather than from the program account, provided it does so in conformance with the requirements set forth at 24 CFR 570.511. Some of the key requirements contained in that provision include: the use of this feature must be limited to residential rehabilitation; the account may not hold more than the amount expected to be disbursed within ten working days; and interest earned on the funds on deposit is to be returned to HUD at least quarterly. It should be noted that, if a state grant recipient has a lump-sum account, as described in the subsection above, it may serve the same purpose as an escrow account and the two may not need to be used together.

*Reference: 24 CFR 570.511*

#### 2.6.10 Additional Considerations for Rehabilitation

When CDBG funds are used under this category for refinancing, the state or state grant recipient should maintain documentation showing that the rehabilitation was done with CDBG funds and that the borrower needed the refinancing in order to make the rehabilitation affordable.

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

#### 2.6.11 Eligibility of Reconstruction Activities

Reconstruction became explicitly eligible for CDBG assistance as a result of a legislative change under Section 225 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-234, enacted April 26, 1996). This change [in Section 105(a)(4) of the Housing and Community Development Act of 1974 as amended] broadens grant recipients' ability to use CDBG funds for "reconstruction" of properties.

While the HCDA does not define the term "reconstruction," for CDBG purposes, it is generally defined as meaning the rebuilding of a structure on the same site in substantially the same manner. Deviations from the original design are permitted for reasons of safety or if otherwise impractical. The structure to be reconstructed may be residential or nonresidential, and either publicly or privately owned. A reconstructed unit need not contain the same number of rooms as the unit it replaces. States are cautioned that reconstruction that involves increasing the number of housing units on a site may constitute new housing construction. However, there could be situations in which a single-unit structure could be reconstructed as a multi-unit structure, such



as to allow existing residents to comply with local housing standards or occupancy standards. (Note that any decrease in the number of units on a site may require compliance with the one-for-one replacement of L/M income dwelling units at 24 CFR Part 42, Subpart C.) The cost of replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing could also be covered under reconstruction of residential structures.

#### 2.6.12 Eligibility of Construction of Buildings (Including Housing)

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

- A state grant recipient may construct housing of last resort under 24 CFR Part 42, Subpart I. (This is housing that the grant recipient has determined must be constructed in order to provide suitable replacement housing for persons to be displaced by a contemplated CDBG project, subject to the Uniform Act, and where the project is prevented from proceeding because the required replacement housing is not available otherwise.)
- Local development corporations and certain nonprofit organizations eligible under Section 105(a)(15) of the HCDA may construct new housing (including shared housing) as part of a neighborhood revitalization or community economic development project.

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

#### 2.6.13 Additional Considerations for Construction of Buildings (Including Housing)

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

- Acquisition of sites on which buildings will be constructed for use or resale as housing;
- Clearance of toxic contaminants of property to be used for the new construction of housing;
- Site improvements to publicly-owned land to enable the property to be used for the new construction of housing, provided the improvements are undertaken while the property is still in public ownership; and
- The cost of disposing of real property, acquired with CDBG funds, which will be used for new construction of housing.

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

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



24 CFR 570.206(g) of the Entitlement program regulations further describes the types of “soft costs” which may be eligible. The limitations on the use of this provision by direct HUD grant recipients (under the Entitlement program and the HUD-Administered Small Cities program) are not applicable to the State CDBG program. Soft costs incurred in support of **eligible** new housing construction activities may be paid for as part of the cost of the new construction itself.

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

#### **2.6.14 Complying with National Objectives - Clearance**

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

National Objectives - Clearance			
Objective	Qualifies If	Example	Additional Information
<b>L/M Income Area Benefit</b>	The cleared property will be used for a purpose the benefits of which are available to <i>all</i> the residents in a particular area, and at least 51 percent of those residents are L/M income persons.	Demolishing a vacant structure and removing the debris to make a community park and playground serving a predominantly residential L/M income community.	For more information, see page 3-5.
<b>L/M Income Limited Clientele</b>	The cleared property will be used for an activity the benefits of which are limited to a specific group of people, at least 51 percent of who are L/M income persons.	Demolishing a dilapidated structure from the site on which a community center will be built, the use of which will be limited to the elderly.	For more information, see page 3-10.
<b>L/M Income Housing</b>	The cleared property will be used for providing housing to be occupied by L/M income persons. Rental units for L/M income persons must be occupied at affordable rents.	Demolishing seriously dilapidated buildings being used as temporary housing for migrant farm laborers, to make room for new migrant farmer housing.	For more information, see page 3-13.
<b>L/M Income Jobs</b>	The clearance is part of an activity that will create or retain permanent jobs, at least 51 percent of which are for L/M income persons.	Using CDBG funds to clear an environmentally contaminated (brownfield) site on which a new business will locate and agrees that at least 51 percent of the jobs to be created will be for L/M income persons.	For more information, see page 3-16.
<b>Slum or Blighted Area</b>	The clearance activities are within a designated blighted area and are designed to address one or more conditions that contributed to the deterioration of the area.	Using CDBG funds to demolish one or more deteriorated buildings located in a designated blighted area.	For more information, see page 3-26.

National Objectives - Clearance			
Objective	Qualifies If	Example	Additional Information
<b>Spot Blight</b>	The clearance activity is undertaken to eliminate specific conditions of blight or physical decay on a spot basis not located in a designated slum or blighted area.	Demolition of an abandoned and deteriorated grain elevator, the presence of which is detrimental to public health and safety, located in an area that is not designated as a slum or blighted area.	For more information, see page 3-28.
<b>Urgent Needs</b>	The clearance is part of an activity designed to alleviate existing conditions and the grant recipient certifies that those conditions are a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grant recipient is unable to finance the activity on its own, and other sources of funds are not available.	Clearance of a building that was destroyed by a tornado and that constitutes a safety hazard to the community.	For more information, see page 3-30.

### 2.6.15 Complying with National Objectives - Rehabilitation

Section 105(c)(3) of the HCDA requires that, in order for an activity involving the acquisition or improvement of property for housing to qualify as benefiting L/M income persons, the housing must be occupied by such persons. Even though a particular housing activity may provide a clear benefit to an area containing predominantly L/M Income residents, it cannot qualify on that basis. Instead, the housing must be occupied by L/M income households. (See page 3-3 of the Guide for a discussion about the distinction between L/M households and L/M persons in this regard.) That limitation is reflected in the following charts which provide general guidance on how rehabilitation activities may qualify as meeting a national objective under the CDBG program.

This section of the HCDA also limits the extent to which CDBG expenditures for housing activities may count towards the overall expenditures benefit requirement, as discussed in Chapter 4, Overall Expenditures—Benefit to L/M Income Persons, of this Guide. It should also be noted that the section on L/M Income Benefit for housing in Chapter 3, Meeting a National Objective, of this Guide covering National Objectives contains important information on the rules concerning housing activities that are not covered in the following charts in this section. That chapter also discusses the circumstances under which occupancy of a CDBG-assisted housing unit by an L/M income household may qualify for the assistance to that unit without regard to the income of households occupying any other units that may be located in the same structure.

National Objectives - Rehabilitation			
Objective	Qualifies If	Example	Additional Information
<b>L/M Income Area Benefit</b>	Rehabilitation of a building to be used for a purpose that will benefit all the residents of a qualifying L/M income primarily residential area.	Facade improvements to a commercial structure serving a predominantly L/M income primarily residential area.	For more information, see page 3-5.
<b>L/M Income Limited Clientele</b>	Not applicable	Not applicable	Not applicable
<b>L/M Income Housing</b>	Rehabilitation of housing to be occupied by L/M income persons. Rental units must be occupied at affordable rents.	Conversion of an abandoned warehouse into rental housing for L/M income households at affordable rents. Also improvements to a single-family residence used as a place of business provided the improvements generally benefit the unit's residential occupants.	For more information, see page 3-13.
<b>L/M Income Jobs</b>	Rehabilitation of nonresidential property that will create or retain jobs for L/M income persons	Correction of code violations that will enable a business to survive and retain jobs, the majority of which is held by L/M income persons.	For more information, see page 3-16.
<b>Slum or Blighted Area</b>	Rehabilitation of residential structures located in a blighted area, the structure to be rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making the structure substandard are corrected <b>before</b> less critical work is undertaken.	Rehabilitation of substandard housing located in a designated blighted area and where the housing is expected to be brought to standard condition and sold to non-L/M income households.	For more information, see page 3-26.

### National Objectives - Rehabilitation

Objective	Qualifies If	Example	Additional Information
<b>Spot Blight</b>	Rehabilitation of a structure located outside a designated blighted area, where the rehabilitation is limited to the extent necessary to eliminate specific conditions of blight or decay that are detrimental to public health and safety.	Rehabilitation of the deteriorated exterior of an abandoned manufacturing building located in an area that has not been designated as blighted and where the rehabilitation is limited to removal of the exterior blight. Rehabilitation of plumbing in a building located in an area that has not been designated as blighted and where rehabilitation is limited to corrections of code violators that are detrimental to public health and safety.	For more information, see page 3-28.
<b>Urgent Needs</b>	The rehabilitation is part of an activity designed to alleviate existing conditions for which the grant recipient certifies are a serious and immediate threat to the health or welfare of the community, the conditions are of recent origin or recently became urgent, the grant recipient is unable to finance the activity on its own, and other sources of funds are not available.	Rehabilitation of housing that has been badly damaged by a tornado and has been condemned.	For more information, see page 3-30.

National Objectives - Construction of Buildings (Including Housing)			
Objective	Qualifies If	Example	Additional Information
<b>L/M Income Area Benefit</b>	Not applicable	Not applicable	Not applicable
<b>L/M Income Limited Clientele</b>	Not applicable	Not applicable	Not applicable
<b>L/M Income Housing</b>	L/M income households will occupy the new housing. Rental units must be occupied at affordable rents.	New construction of “last resort” housing needed for an L/M income household being displaced by a CDBG-assisted project.	For more information, see page 3-13.
<b>L/M Income Jobs</b>	Not applicable	Not applicable	Not applicable
<b>Slum or Blighted Area</b>	New housing qualifies if: (1) The new housing is located within a designated blighted area and (2) Development of new housing addresses one of the conditions that contributed to the deterioration of the area.	New, modest-income rental housing constructed by a nonprofit Community Development Corporation on a formerly-contaminated site in a designated blighted area, using a combination of CDBG and Low Income Housing Tax Credit funding.	For more information, see page 3-26.
<b>Spot Blight</b>	Not applicable	Not applicable	Not applicable
<b>Urgent Needs</b>	The new housing is needed to respond to a threat to the health or welfare of the community of recent origin and no other funding is available to meet the threat and the new construction is eligible (or the statutory waiver Authority for Presidentially-declared disasters is exercised).	Housing needed to replace units completely destroyed by a flood and needed to be built in a new location.	For more information, see page 3-30.



## 2.7 Architectural Barrier Removal

### 2.7.1 The HCDA

#### Section 105(a)(5)

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

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

### 2.7.2 Eligible Activities

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

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

The passage of the Americans with Disabilities Act (ADA) had much to do with this confusion. Pressure has mounted on grant recipients to provide accessibility in both public and private places. This has led to some attempts to use CDBG funds to provide accessibility in ways that go well beyond the simple removal of existing barriers.

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

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

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

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

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

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

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

The main issue with respect to handicapped accessibility lies in the ability to meet a national objective, as required under the CDBG program. If the new construction of a public facility or improvement cannot meet a national objective based on either area benefit or the clientele to be served, then the features required in such construction in order to provide for accessibility to handicapped persons also cannot meet a national objective.

The situation is somewhat different with rehabilitation or reconstruction. Since the cost of removing existing barriers is specifically eligible under the HCDA, the removal of accessibility barriers may be presumed to meet the L/M Income Limited Clientele criteria if the costs of removal are restricted, to the extent practicable, to the removal of such barriers in:

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

In a related matter, the use in the regulations concerning the presumption of L/M income status of handicapped persons became problematic as the use of the term “handicapped” broadened to include categories of disability that do not necessarily impact a person’s ability to work. Thus, HUD revised the regulations to include the term “severely disabled adult” in lieu of “handicapped.” See the discussion of this matter under the L/M Income Limited Clientele subsection in Chapter 3 of this Guide.

## **2.8 Loss of Rental Income**

### **2.8.1 The HCDA**

Section 105(a)(6)

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

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

### **2.8.2 Eligible Activities**

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



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

### 2.8.3 Complying with National Objectives - Loss of Rental Income

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

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

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

### 2.8.4 Additional Considerations

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

## 2.9 Disposition of Real Property

### 2.9.1 The HCDA

Section 105(a)(7)

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

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

### 2.9.2 Eligible Activities

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

The property may be disposed of through:

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



CDBG funds may also be used under this category to pay reasonable costs of temporarily managing such property until final disposition of the property is made.

### Example

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

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

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

### 2.9.3 Complying with National Objectives - Disposition

For disposition costs to be eligible, the use of the CDBG-acquired property after disposition must meet a national objective of the CDBG program. When property is disposed of for the same purpose as that for which it was acquired, the costs of disposition will be considered to meet the same national objective ascribed to the CDBG funds spent on its acquisition. For an example on how such acquired property may meet a national objective, see the charts on National Objectives—Acquisition of Real Property on pages 2-7 through 2-8

If the property is being disposed of for a purpose other than that for which it was acquired, the new activity must be reviewed to determine whether a national objective will be met by the new use. See the discussion in the preceding section on Acquisition of Real Property on page 2-3 for more details. Property acquired with CDBG funds may be used for purposes that do not meet a national objective, but only after the CDBG program is reimbursed as specified under 24 CFR 570.489(j)(2).

### 2.9.4 Additional Considerations

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

## 2.10 Public Services

### 2.10.1 The HCDA

Section 105(a)(8)

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

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

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

### 2.10.2 Eligible Activities

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

- (1) The public service must be either:
  - A new service; or
  - A quantifiable increase in the level of a service above that which has been provided by or on behalf of the unit of general local government through funds raised by such unit, or received by such unit from the state in which it is located during the 12 months prior to submission of the grant recipient's applicable Action Plan. (This requirement is intended to prevent the substitution of CDBG funds for recent support of public services by the grant recipient using local or state government funds.)

HUD may grant an exception to this limitation if it is determined that the level of service from the previous period has decreased for reasons beyond the unit of local government's control.

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

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

**Public services that are not subject to the cap:** Certain types of services fall under other categories of basic eligibility (such as Sections 105(a)(15) and 105(a)(23)) and are not subject to the limitation that applies to services carried out under Section 105(a)(8). (See especially the category of Special Activities by Nonprofit Development Groups and Appendix E, Community Revitalization Strategy Areas.) In addition, discussion of the factors to consider in deciding how to categorize public services that a grant recipient may be interested in assisting with CDBG funds may be found in the subsection entitled “Making the Best Choice,” at the end of this chapter on page 2-86. *Reference: 24 CFR 570.482(c)(2)*

### Example

Public services include, but are not limited to:

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

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

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

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

### 2.10.3 Complying with National Objectives - Public Services

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

### 2.10.4 Additional Considerations

*Substitution of CDBG funds for private or other federal funds:*

- The prohibition on substituting CDBG funds for recent local or state government funding of a public service does not extend to prohibiting the substitution of CDBG funds for private or other federal funding of a public service.
- It also does not prevent continued funding of a CDBG-funded public service at the same or smaller level in the subsequent program year.

*Purchase or lease of personal property for a public service:*

- The purchase or lease of furnishings, equipment, or other personal property needed for an eligible public service may be paid for with CDBG funds.



NATIONAL OBJECTIVES - PUBLIC SERVICES

Objective	Qualifies If	Example	Additional Information
<b>L/M Income Area Benefit</b>	The public service is available to <i>all</i> the residents in a particular primarily residential area, and at least 51 percent of those residents are L/M income persons.	Operation of after-school programs for children attending an elementary school serving a predominantly L/M income area.	For more information, see page 3-5.
<b>L/M Income Limited Clientele</b>	The public service is limited to a specific group of people, at least 51 percent of who are L/M income persons. Services qualifying under this category serve a specific clientele, rather than providing service to all the persons in a geographic area.	Provision of meals to the homeless. (Most public services qualify under this category.)	For more information, see page 3-10.
<b>L/M Income Housing</b>	Not applicable	Not applicable	Not applicable
<b>L/M Income Jobs</b>	Not applicable	Not applicable	Not applicable
<b>Slum or Blighted Area</b>	The public service is provided within a designated slum or blighted area, and is designed to address one or more conditions which contributed to the deterioration of the area.	Provision of crime prevention counseling to residents of a designated slum or blighted area.	For more information, see page 3-26.
<b>Spot Blight</b>	Not applicable	Not applicable	Not applicable
<b>Urgent Needs</b>	The public service is designed to alleviate existing conditions that pose a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, and the grant recipient is unable to find other available funds to support the activity.	Additional police protection to prevent looting in an area damaged by a tornado.	For more information, see page 3-30.





## 2.11 Payment of Non-Federal Share

### 2.11.1 The HDCA

Section 105(a)(9)

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

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

### 2.11.2 Eligible Activates

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

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

## 2.12 Relocation

### 2.12.1 The HCDA

Section 105(a)(11)

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

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

### 2.12.2 Eligible Activities

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

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

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

A state may permit CDBG funds to be used for **optional** relocation payments and assistance to persons (individuals, families, businesses, non-profit organizations, and farms) displaced by an



activity that is not subject to the requirements described above. This may include payments and other assistance for temporary relocation (when persons are not permanently displaced.).

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

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

This written policy must also provide for equal payments and assistance within each class of displacees. *References: 24 CFR 570.488 and 24 CFR 570.606(d)*

### 2.12.3 Complying with National Objectives – Relocation

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

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

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

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

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

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

### 2.12.4 Additional Considerations

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



## 2.13 Planning and Capacity Building

### 2.13.1 The HCDA

#### Section 105(a)(12)

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

(12) activities necessary

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

#### Section 105(a)(16)

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

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

### 2.13.2 Eligible Activities

CDBG funds may be used for:

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

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

#### Example

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

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

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

*Planning and capacity building activities do not include:*

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

#### Example

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

### 2.13.3 Complying with National Objectives - Planning and Capacity Building

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

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

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

#### **2.13.4 Additional Considerations – Capacity Building**

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

#### **2.13.5 Additional Considerations – Planning**

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

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

### **2.14 Program Administration Costs**

#### **2.14.1 The HCDA**

Section 105(a)(13)

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

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

#### 2.14.2 Eligible Activities

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

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

Other activities eligible under this category include:

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

#### Office space:

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

#### Proration:

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



### 20 percent cap:

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

### State administration cap:

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

### Example

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

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

### Not Eligible

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

- Political activities
- The acquisition, construction, or reconstruction of space in a government office building for staff administering the grant recipient's CDBG or HOME programs, since CDBG funds may not be used to assist "buildings for the general conduct of government." See the section on Public Facilities and Improvements for more information on this limitation.





### 2.14.3 Complying with National Objectives – Program Administration Costs

Costs that are appropriately charged to this category are presumed to meet a CDBG national objective, and the grant recipient does not have to maintain any other documentation for this purpose.

### 2.14.4 Other Considerations

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

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

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

## 2.15 Activities Carried Out through Nonprofit Development Organizations

### 2.15.1 The HDCA

Section 105(a)(14)

- (a) Activities assisted under this title may include only –
  - (14) provision of assistance including loans (both interim and long-term) and grants for activities which are carried out by public or private nonprofit entities, including
    - (A) acquisition of real property;
    - (B) acquisition, construction, reconstruction, rehabilitation, or installation of



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

(C) planning;

#### Section 105(a)(15)

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

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

#### Preface

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Concerning the activities eligible under HCDA Section 105(a)(15), the statutory language is similarly both expansive and limiting. This category authorizes a grant recipient to designate certain types of entities to carry out a range of activities, including activities the grant recipient may not otherwise carry out itself. While the “otherwise ineligible” activities covered by this authority may take many forms, the most frequent use of this provision in the CDBG program has been to carry out new construction of housing.

However, there are also other advantages of using a nonprofit development organization in the CDBG program: specifically, for the purpose of providing public services that in certain

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

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

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

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

- **Neighborhood Revitalization:** Activities undertaken under this provision must be of sufficient size and scope to have an impact on the decline of a designated geographic location within the jurisdiction of the community (but not the entire jurisdiction of an entitlement community unless it has a population of 25,000 or less). The activities to be considered for this purpose are not limited to those funded (or to be funded) with CDBG assistance.
- **Community Economic Development:** This type of project must include activities that increase economic opportunity, principally for low- and moderate-income persons, or that are expected to create or retain businesses or permanent jobs within the community. Housing activities may be included within this project type if they can clearly link the need for affordable housing accessible to existing or planned jobs or otherwise address the Consolidated Plan’s definition of “expanded economic opportunity” at 24 CFR Part 91.1(a)(1)(iii).
- **Energy Conservation:** Activities carried out under this provision are clearly designed to conserve energy for the benefit of residents within the grant recipient’s jurisdiction. An example of this type of project may involve the construction of energy efficient housing where substantial savings in heating and/or cooling costs can expect to be realized.

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

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

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

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

Entities that do not meet the nonprofit development group requirements could establish a subsidiary organization to carry out an activity under this category, but the subsidiary organization in such case would need to be in control of itself and not be merely a “front” for the parent organization. Perhaps the “litmus test” which can be deduced from the above discussion is whether the entity has the authority, independent of the state grant recipient or other involved/related entities, to stop the project if something is going wrong.

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

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

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

#### **2.15.7 Additional Considerations**

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

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



### Public services:

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

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

### Repayments and program income requirements:

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

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

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

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

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



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





## NATIONAL OBJECTIVES - ACTIVITIES BY NONPROFIT DEVELOPMENT ORGANIZATIONS

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





## 2.16 Economic Development Assistance to For-Profit Business

### 2.16.1 The HCDA

#### Section 105(a)(17)

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

#### Preface

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

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

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

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

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

### 2.16.2 Eligible Activities

- Direct financial assistance to private for-profit entities for an activity determined by the grant recipient to be appropriate to carry out an economic development project. This may include, but is not limited to:
  - grants,
  - loans,
  - loan guarantees,
  - interest supplements, and
  - any other form.
- Economic development services in connection with the above subcategories, including outreach efforts to market available forms of assistance; screening of applicants; reviewing and underwriting applications for assistance; preparation of agreements; management of assisted activities; and the screening, referral, and placement of applicants for employment opportunities generated by CDBG-eligible economic development activities. The costs of providing necessary job training for persons filling those positions may also be provided.
- Technical assistance to businesses, including assistance in the development of business plans or plans to reduce energy costs
- For activities funded under HCDA Section 105(a)(17), the statute requires that the state and its grant recipients shall minimize, to the extent practical, displacement of existing businesses and jobs in neighborhoods.

#### Example

Activities eligible under this section include:

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

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

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

### Ineligible Activities

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

- Assistance to a for-profit business in the form of lobbying or other political activities.
- Public facilities and improvements carried out to support or benefit a private for-profit business. These activities may, however, be eligible under the category of Public Facilities and Improvements.
- New Housing Construction. This activity may, however, be eligible under HCDA Section 105(a)(15) when undertaken by nonprofit development groups. When a project to be assisted includes new construction of housing as part of a commercial structure (for example, a “mixed use” project), those costs clearly attributable to the commercial portion of the project may be eligible as economic development assistance to a for-profit business.
- Planning for economic development projects, including conducting market surveys to determine an appropriate type of business to attempt to attract to a particular area, developing individual commercial or industrial project plans, and identifying actions to

implement those plans. Such planning activities may be eligible under the category of Planning and Capacity Building.

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

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

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

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

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

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

Section 105(c)(1) of the HCDA specifies certain limitations on how activities under Section 105(a)(17) may meet the national objective of Benefit to L/M Income Persons. These limitations are reflected in the charts that follow which show how activities in this category may meet the CDBG national objectives.

NATIONAL OBJECTIVES - ECONOMIC DEVELOPMENT ASSISTANCE TO FOR-PROFIT BUSINESS

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

NATIONAL OBJECTIVES - ECONOMIC DEVELOPMENT ASSISTANCE TO FOR-PROFIT BUSINESS

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



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

### 2.17.1 The HDCA

#### Section 105(e)

##### (e) Guidelines for evaluating and selecting economic development projects

###### (1) Establishment

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

###### (2) Project costs and financial requirements

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

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

###### (3) Public benefit

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

### 2.17.2 Public Benefit

The 1992 Amendments to the HCDA added new requirements for economic development activities funded under HCDA Section 105(a)(14), (15), and (17). The previous requirement (that assistance to certain economic development activities be determined to be "appropriate") was replaced with a requirement that the level of public benefit to be derived from the activity must be appropriate given the amount of CDBG assistance being provided. HUD revised the CDBG



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

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

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

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

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

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

### 2.17.3 Prohibition of Job Relocation

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



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

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

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

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

#### 2.17.4 Additional Considerations

States and their grant recipients should take special precautions in the design and implementation of economic development assistance programs, particularly when providing assistance to a for-profit business. First, it should be evident that all business activity involves more than the average amount of risk, and it is possible that the contemplated results will not materialize. It is to be expected that businesses will focus heavily on their own interests; it should not be surprising if they show little interest in the fulfillment of the community's goals and objectives or in the particular requirements of the CDBG program. States and their grant recipients must therefore maintain proper documentation in the activity files and offer technical assistance to avoid non-compliance with program rules. Care should be taken to protect the community's interests in their dealings with those entities that work in the economic development sphere.

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



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

## 2.18 Technical Assistance

### 2.18.1 The HCDA

Section 105(a)(19)

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

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

Section 106(d)(5)

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

### 2.18.2 Eligible Activities

This provision makes eligible the use of CDBG funds to increase the capacity of public or nonprofit entities to carry out eligible neighborhood revitalization or economic development activities. (This could include the state grant recipient itself.) In order to use the funds under this authority, the state must determine, prior to providing the assistance, the eligibility of the activity for which capacity is to be built and that there is a reasonable expectation that a national objective can be met once the entity has received the technical assistance and undertakes the activity. It should be noted that, while building capacity of an entity under this authority provides an alternative to using the authority under the category of Planning and Capacity Building (and thus can help avoid a problem with exceeding the 20 percent cap), the category does not provide a presumption concerning national objective compliance. Thus, it is important that this be considered before charging costs under this category. Factors that should be considered in determining if a national objective can be met include the nature of the organization receiving the assistance, the type and eligibility of the activity to be carried out, the location of the activity, and the entity's expected (or traditional) clientele. Based on a review of these factors, the state should have a reasonable expectation that the activity to be undertaken by the entity would comply with a national objective before funding capacity building.

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

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

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

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

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

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

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

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



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

### 2.18.3 Additional Considerations

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

## 2.19 Housing Services

### 2.19.1 The HCDA

Section 105(a)(20)

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

- (20) housing services, such as housing counseling in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in housing activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act;

### 2.19.2 Eligible Activities

HCDA Section 105(a)(20) provides that CDBG funds may be used to pay costs in support of activities eligible for funding under the HOME program. This includes services such as housing counseling in connection with tenant-based rental assistance and affordable housing projects, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in the HOME program. Since such assistance must also meet HOME income targeting requirements, see the discussion under L/M Income Housing in Chapter 3, Meeting a National Objective, to determine how these services can meet the CDBG national objectives.

(Note that activities funded under this provision are not prohibited from qualifying under other CDBG national objectives, but the requirement to comply with HOME criteria makes the L/M Income Housing Benefit the clear alternative for CDBG compliance.)

## 2.20 Assistance to Institutions of Higher Education

### 2.20.1 The HCDA

Section 105(a)(21)

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



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

### 2.20.2 Eligible Activities

This authority may be used by a grant recipient to provide assistance to an institution of higher education (for example, universities, community colleges, Historically Black Colleges) when the grant recipient determines that such an institution has demonstrated a capacity to carry out activities that fall under one or more of the basic eligibility categories under the CDBG program.

## 2.21 Microenterprise Assistance

### 2.21.1 The HCDA

#### Section 105(a)(22)

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

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

#### Section 102(a)(22)

- (a) Definitions

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

### 2.21.2 Eligible Activities

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

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



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

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

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

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

### 2.21.3 Complying with National Objectives – Microenterprise Assistance

Because microenterprises are for-profit businesses, most of the guidelines for meeting national objectives under other economic development eligibility categories also apply here. There is one notable exception, however. A microenterprise assistance activity may qualify under the L/M Income Limited Clientele national objective criteria if it assists owners of and/or persons developing a microenterprise who are L/M income persons. If such assistance is provided to owners/persons developing a microenterprise who are not L/M income persons, it would not qualify under Limited Clientele, but would need to meet the requirements of other subcategories (for example, Area Benefit or Jobs). See the following chart for further elaboration on meeting the L/M Income Benefit national objective.

### 2.21.4 Additional Considerations

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

Many communities have been assisting some microenterprises as part of their CDBG economic development programs. The creation of a separate eligibility category for this class of businesses does not mean that such grant recipients may no longer do so. First, it should be made clear that just because a business is small enough to meet the CDBG definition of a microenterprise, it is not precluded from being assisted under the category of Special Economic Development. However, when a state grant recipient provides assistance to such businesses under that category, all applicable requirements, including Public Benefit (see Appendix C, Public Benefits Standards), will apply. In order to take advantage of the special advantages



available under the Microenterprise Assistance category, the state grant recipient would need to establish an activity for providing such assistance separate from all other business assistance it might elect to provide. This is necessary to avoid the confusion that would result from mixing assistance under two categories having different requirements. Therefore, states and state grant recipients should design their CDBG economic development programs to clearly separate microenterprise assistance from all other forms.



### National Objectives - Microenterprise Assistance

Objective	Qualifies If	Example	Additional Information
<b>L/M Income Area Benefit</b>	The microenterprise assisted provides services to a residential area that has a sufficiently high percentage of L/M income persons.	A small carry-out store (with no more than 5 employees, including the owner) in a neighborhood having more than 51 percent L/M income residents.	For more information, see page 3-5.
<b>L/M Income Limited Clientele</b>	The microenterprise assistance is provided to a L/M income person who owns or is developing a microenterprise.	Assisting a resident of public housing to establish a business providing childcare or providing assistance to an owner/proprietor to purchase a tow truck to establish a towing business.	For more information, see page 3-10.
<b>L/M Income Housing</b>	Not applicable	Not applicable	Not applicable
<b>L/M Income Jobs</b>	The microenterprise assisted will create or retain jobs, 51 percent or more of which will benefit L/M income persons.	Assisting in the expansion of a house cleaning service with two employees that agrees to hire an additional L/M income person for the business.	For more information, see page 3-16.

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



## 2.22 In Rem Housing

### 2.22.1 The HCDA

Section 105(a)(23)

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

- (23) activities necessary to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low- and moderate-income neighborhoods;

### 2.22.2 Eligible Activities

Section 105(a)(23) of the HCDA, as added by Section 807 (a)(4) of the Housing and Community Development Act of 1992, provided a separate category of eligibility under the CDBG program regarding the provision of assistance to housing units acquired through tax foreclosure proceedings. Specifically, it authorizes activities necessary to make essential repairs and payment of operating expenses needed to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low- and moderate-income neighborhoods.

### 2.22.3 Complying with National Objectives

Since these expenses are statutorily limited to housing located in primarily low- and moderate-income neighborhoods, the L/M Income Benefit national objective is to be met through the Area Benefit subcategory. This means that, even though these are housing activities, the usual requirement that occupancy by L/M income households must be demonstrated does not apply to activities carried out under this authority. Of course, the grant recipient could also claim such activities as qualifying under the Slums/Blight objective in particular circumstances where meeting the criteria for this objective could be demonstrated.

## 2.23 Homeownership Assistance

### 2.23.1 The HCDA

Section 105(a)(24)

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

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

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

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

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

### 2.23.2 Eligible Activities

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

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

Note especially that the use of funds under this category is *specifically limited to assisting low- and moderate-income households*.

### 2.23.3 Complying with National Objectives – Homeownership Assistance

Because the use of CDBG funds authorized under this category is limited to assisting low- and moderate-income households, any such use of funds must qualify under the national objective of benefit to low- and moderate-income persons-housing activities; no further consideration needs to be given here.

### 2.23.4 Additional Considerations

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

recipient should carefully consider its objectives against these factors and select the category that best fits those objectives in the context of its entire CDBG program.

In the case where a community submits (and a state approves) a Community Revitalization Strategy (CRS) which includes homeownership assistance, two further considerations should be given. First, if the state grant recipient elects to use a nonprofit development group to deliver services in the strategy area, any services provided by the nonprofit development group (including homeownership assistance) may be exempt from the expenditures cap on Public Services. Second, if the strategy involves assisting non-L/M income households to purchase houses in the area, CDBG assistance could not be provided under the Homeownership Assistance category (which is limited to assistance provided to L/M income households). The use of a nonprofit development group would be needed for this purpose. It should also be noted that where CDBG funds are provided to non-L/M income households in a CRS area, meeting the L/M Income Benefit national objective is made feasible by a special feature offered by a CRS. All housing units assisted in such an area may be considered to be part of a single structure for the purpose of meeting the 51 percent plus occupancy requirement. See Appendix E, Community Revitalization Strategy Areas that describes the CRS feature of the CDBG program in further detail.

## **2.24 Construction of Tornado-safe Shelters**

### **2.24.1 The HCDA**

#### **Section 105(a)(25)**

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

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

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

### 2.24.2 Eligible Activities

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

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

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

### 2.24.3 Complying with National Objectives: Tornado-Safe Shelters

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



## 2.25 Lead-based Paint Hazard Evaluation and Reduction

### 2.25.1 The HCDA

Section 105(a)(26)

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

### 2.25.2 Eligible Activities

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

Typically these expenses might include:

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

### 2.25.3 Complying with National Objectives

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

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

For rental units the following conditions must be met:

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

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

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

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

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

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

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

## 2.26 Other Provisions Relating to Eligible Activities

### 2.26.1 New Housing Construction

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

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

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

- Acquisition of sites on which buildings will be constructed for use or resale as housing;
- Clearance of environmental contamination from sites to be used for the construction of new housing;
- Site improvements to publicly-owned land to enable the property to be used for the new construction of housing, provided the improvements are undertaken while the property is still in public ownership; and
- The cost of disposing of real property acquired with CDBG funds which will be used for the construction of new housing.

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



### 2.26.2 Last Resort Housing

The regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the “Uniform Act”) are issued by the U.S. Department of Transportation, and are found at 49 CFR Part 24. In certain circumstances, 49 CFR 24.404(c)(1) authorizes the construction of new housing units as a last resort for providing replacement housing for persons displaced as a result of CDBG-assisted activities. (This is housing that the state or state grant recipient has determined must be constructed in order to provide suitable replacement housing for persons to be displaced by a contemplated CDBG project, subject to the Uniform Act, and where the project is prevented from proceeding because the required replacement housing is not available otherwise.)

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

### 2.26.3 Brownfields Redevelopment Activities

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

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

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

### 2.26.4 Interim Assistance

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

There are two subcategories of interim assistance activities:

- (1) The first subcategory covers limited improvements to a deteriorating area as a prelude to permanent improvements. To qualify under this subcategory:
  - The area must be exhibiting objectively determinable signs of physical deterioration.
  - The grant recipient must determine that immediate action is needed to arrest the deterioration and that permanent improvements will be undertaken as soon as practicable. Documentation of this determination must be maintained.

The activities that may be carried out with CDBG funds under this subcategory are limited to:

(A) The repair of:

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

(B) The execution of special (i.e., beyond that normally provided) garbage, trash and debris removal, including neighborhood cleanup campaigns.

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

- (2) The second subcategory covers activities to alleviate an emergency condition. To qualify under the second subcategory:
  - The grant recipient's chief executive officer must determine that emergency conditions threatening the public health and safety exist in the area and require immediate resolution. Documentation of that determination must be maintained.
  - The activities that may be carried out with CDBG funds under this subcategory are limited to:
    - Activities eligible under the first subcategory, except for the repair of parks and playgrounds;
    - Clearance of streets, including snow removal and similar activities; and
    - Improvements to private properties.

These activities may not exceed what is necessary to alleviate the emergency condition.  
*References from Entitlement program regulations (to be used as interpretive guidance only):*  
24 CFR 570.201(f)(2) and 24 CFR 570.200(e)



## 2.27 Activities Specified as Ineligible

### 2.27.1 Ineligible Activities

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

### 2.27.2 Categorically Ineligible

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

- Buildings or portions thereof used for the general conduct of government as defined in HCDA Section 102(a)(21). This does not include, however, the removal of architectural barriers involving any such building, which may be assisted under the category of Public Facilities and Improvements. Also, where acquisition of real property includes a building or other improvement that to be used for the general conduct of government, the portion of the acquisition cost attributable to the land may be assisted under the category of Acquisition of Real Property
- General government expenses. Except as otherwise specifically authorized under OMB Circular A-87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.
- Political activities. CDBG funds may not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

### 2.27.3 Generally Ineligible

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

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

#### Purchase of equipment

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

- **Construction equipment:** The purchase of construction equipment is ineligible. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under the category of Public Facilities and Improvements.
- **Fire protection equipment.** Fire protection equipment is considered for this purpose to be an integral part of a public facility. Thus, purchase of such equipment would be eligible under the category of Public Facilities and Improvements. This includes fire

engines and specialized tools such as “jaws of life” and life-saving equipment as well as protective clothing worn by fire fighters.

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

### Operating and maintenance expenses

The general rule is that any expense associated with repairing, operating, or maintaining public facilities, improvements, and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDBG funds to pay the allowable costs of operating and maintaining a facility used in providing a public service (for example, salaries, rent) would be eligible, even if no other costs of providing the service there are assisted with such funds. Examples of operating and maintenance expenses that are generally ineligible include:

- Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with disabilities, parking, and other public facilities and improvements. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of grass in city or county parks, and the replacement of street light bulbs.
- Payment of salaries for staff, utility costs, and similar expenses necessary for the operation of public works and facilities.

### New housing construction

See the discussion of this activity type under the earlier sections of this chapter entitled Construction of Housing and Special Activities by nonprofit development groups.

### Income payments

The general rule is that CDBG funds may not be used for income payments. For purposes of the CDBG program, “income payments” is defined as a *series of subsistence-type grant* payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities. However, 24 CFR 570.207(b)(4) of the Entitlement program regulations allows, as eligible, emergency grant payments made over a period of up to three consecutive months directly to the provider of such items or services on behalf of an individual or family. One-time grants, emergency type grants, or loans for such purposes may be authorized under the category of Public Services.

### Other Limitations of the Eligibility of Activities

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



### Statutory Provision Regarding “Job Pirating”

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

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

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

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

### Documenting Compliance

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

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

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

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

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

## 2.28 Making the Best Choice

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

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

- Public services (public services cap),
- Commercial/industrial projects (for a discussion of public benefit requirements see Appendix C, Public Benefits Standards), and
- Planning and administration (planning/admin cap).
- The following discussion of these key areas is intended to assist states and state grant recipients in thinking through the alternatives that may be available, the factors that should be considered, and some ground rules that may be helpful in this process.

### 2.28.1 Public Services

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

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

- Financial assistance for homeownership, when funded under the provisions of HCDA Section 105(a)(24);
- Employment services (including job training) related to employment opportunities generated by CDBG-eligible economic development activities (see 24 CFR 570.482(c)(2)(ii));
- Services provided by a nonprofit development organization that are specifically designed to increase economic opportunities through job training and placement and other related support services, such as child care and transportation (see 24 CFR 570.482(c)(2)(ii));
- Services of any kind that are provided by a nonprofit development group and that are carried out pursuant to a Community Revitalization Strategy approved by HUD under 24 CFR 91.315(e)(2) (see also Appendix E, Community Revitalization Strategy Areas, and 24 CFR 570.482(c)(2)(ii)); and

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

### 2.28.2 Commercial/Industrial Projects

Usually, when a commercial or industrial project is provided assistance through a for-profit business under HCDA Section 105(a)(17), or when it is carried out through a nonprofit organization eligible under HCDA Section 105(a)(14) or (15), the assistance will be subject to the public benefit requirements, described in 24 CFR 570.482(f) of the State CDBG regulations (discussed further in Appendix C, Public Benefits Standards). In certain limited cases, provision of infrastructure to assist an economic development project may also trigger the requirements of the public benefit standards. While those requirements may not prevent the project from going forward as planned, it may nevertheless be useful to consider whether any other category could be used that may be more desirable.

The alternatives that should be considered in this regard are:

- Employment services that are also eligible under the Public Services category;
- Depending on the size of the business, assistance that is eligible may also be eligible under the Microenterprise Assistance category of HCDA Section 105(a)(22);
- Property acquisition undertaken by a nonprofit organization may also be eligible under the category of Acquisition of Real Property under HCDA Section 105(a)(1);
  - Rehabilitation or reconstruction of a commercial or industrial property that is eligible under HCDA Section 105(a)(14), (15), or (17) may also be eligible, at least in part, under the category of Rehabilitation under HCDA Section 105(a)(4);
  - Provision of one or more public improvements or utilities needed by the business may qualify under the category of Public Improvements under HCDA Section 105(a)(2).

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

### 2.28.3 Planning/administration

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

### Fair Housing Counseling

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

### Environmental Assessments

- The costs of performing the assessment and related public notices as required under 24 CFR Part 58 may be considered to be “activity delivery costs” as part of the costs of carrying out the activity under the same basic eligibility category applicable to that activity. As such, these costs are not subject to the 20 percent cap. The Entitlement program regulations allow charging these costs under 24 CFR 570.205. As is discussed on page 2-49, states may adopt this approach from the Entitlement program (though most do not).

### Split-function Staff

- State grant recipients and their subrecipients frequently have staff that performs both program administration and activity delivery functions. The Entitlement regulations provide grant recipients (and subrecipients) the option of prorating the costs according to the extent of time involved in each, or, in the case of staff whose primary function is program administration, charging all of the staff person’s time to the category of Program Administration. The implications to be considered in evaluating this option are virtually the same as those for the environmental assessment function discussed above.

### Capacity Building

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