

CHAPTER 1

CDBG INTRODUCTION

The Community Development Block Grant program was authorized by Title 1 of the Housing and Community Development Act of 1974 (HCD Act), as amended (Pub. L. No. 93-383)(42 USC 5301). Congress amended the HCD Act in 1981 to give each state the opportunity to administer CDBG funds for non-entitlement areas. Non-entitlement areas include those units of general local government which do not receive CDBG funds directly from HUD, are cities with populations of less than 50,000 (except cities that are designated principal cities of Metropolitan Statistical Areas) or counties with populations of less than 200,000 (non-entitlement communities).

Each year the State of California (State) receives an allocation of funding from the Department of Housing and Urban Development (HUD) for the CDBG program. Based on the method of distribution described on the State's Consolidated Annual Plan, funds are distributed to eligible city and county applicants through a competitive process. The California Department of Housing and Community Development (Department) is the agency that manages the CDBG program for the non-entitlement communities.

Community Development Block Grant – Disaster Recovery (CDBG-DR) funds are appropriated by Congress in response to specific presidentially declared disasters. CDBG-DR funds are intended to jump-start recovery and rebuilding efforts in areas affected by the identified disasters. HUD provides the CDBG-DR funds as flexible grants to affected communities, especially those that are low- and moderate-income areas. In 2010, California received Disaster Recovery (DR) funds to address the impacts of the 2008 wildfires. These funds were from the allocation created under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), known as the Stafford Act.

HUD created the National Disaster Resilience (NDR) Competition to make funding available to innovative resilience projects to ensure communities are better able to reduce their risks and vulnerabilities in their planning before and after a disaster, and in their day to day decision making. The competition shifts the focus away from damage repairs after an extreme weather event (e.g., hurricane, flood, fire, drought, etc.) to having communities include potential future extreme events and their impacts on the community into their assessment, planning and design of projects. States and communities that had presidentially disaster declarations in 2011, 2012, or 2013 were eligible to apply.

In January, 2016, California was awarded NDR funds to offset the unmet needs of Tuolumne County as result of the devastating 2013 Rim Fire, which had been declared a major disaster by President Obama on December 13, 2013 (disaster declaration number 4158).

Eligible activities and uses of funds are outlined in the applicable Federal Register Notices. References to the governing legislation(s) per program are listed on the California Department of Housing and Community Development (HCD, or Department) website at www.hcd.ca.gov.

The purpose of this manual is to provide program Grantees and their subrecipients and/or contractors the information necessary to successfully complete their grant-funded activities in compliance with all, Federal and State statutes, regulations, rules and requirements, in addition to the terms of their Standard Agreement contract with the Department.

Note: HCD's Community Development Block Grant *Recovery* Program (CDBG-R) provided funding on a one-time basis as part of the American Recovery and Reinvestment Act (ARRA). No additional funding is available, and the CDBG-R program is not covered in this manual.

CDBG PROGRAM BASIC REQUIREMENTS

All entities awarded funds or contracted with the Department to carry out specific CDBG-DR or CDBG-NDR activities shall comply, and require each of their sub-recipients and/or sub-contractors to comply with all applicable laws, rules, regulations, statutes, and policies of the Federal, State and local governments, as well as all terms of the Standard Agreement and/or inter-agency agreement entered into by the Department and the awarded entity. Details included in this manual do not in any way replace, relieve, modify or abolish the terms of the executed Standard Agreement and/or inter-agency agreement with entities for completion of any contracted work.

NATIONAL OBJECTIVES

The State partners with rural cities and counties by providing CDBG funding for activities that will improve the lives of their residents, principally, persons at or below 80 percent (80%) of the area median income (LMI), as adjusted for family or household size, through the creation and expansion of community and economic development opportunities. Eligible activities target the development of:

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

The authorizing statute of the CDBG program requires that the outcome for each funded activity (except for program administration) must meet one of the following three **National Objectives**.

- 1) **Benefit to low and moderate income persons**, known as the **LMI National Objective**. The CDBG definition for low income is any person that is a member of a household whose income is at or below 50 percent of the AMI; while a moderate income person is any member of a household whose income is at or below 80 percent of the AMI. LMI is considered to be the primary objective, as the statute requires that at least 70 percent of CDBG expenditures will be for activities that meet the LMI National Objective.

This may be met by using one of the following LMI *sub-categories*;

- A. **Low/Mod Area Benefit:** the activity benefits all of the residents in a particular area, where at least 51 percent (51%) of the residents are low- or moderate-income;
- B. **Low/Mod Limited Clientele:** The activity provides benefit to a specific group rather than to everyone in an area generally. For Limited Clientele, the activity must meet one of the following:
- i. “Presumed benefit,” where the activity provides benefit **exclusively** to clientele that belong to one of the groups that HUD *presumes to be low and moderate income* (homeless persons, migrant farm workers, persons meeting the Bureau of Census’ definition of severely disabled adults, domestic violence victims, abused children, elderly persons, illiterate adults, persons living with AIDS; or
 - ii. Be a public service or facility that is not open to all, and where the qualified beneficiary of the activity meets specific criteria (youth services requires the beneficiaries be 12 years or younger, for instance); or
 - iii. Be of such a nature and delivered in such a location that it may be reasonably concluded that the clientele will primarily be LMI persons (a day care center designated to serve residents of a public housing complex, for example); or
 - iv. The activity, in being carried out in accordance with the HCD Act, requires that eligible participants meet a particular characteristics (for instance, the microenterprise technical assistance activity requires eligible beneficiaries to be the owners of or persons developing microenterprise businesses), or
 - v. The activity serves to remove material or architectural barriers to the mobility or accessibility of elderly or severely disabled persons);

(Note: Evidence that the beneficiaries meet the Limited Clientele criteria must be documented in the CDBG Grantees’ records.)

C. **Low/Mod Housing:** Activity which provides beneficiaries assistance for acquisition, construction, or improvement of permanent, residential structures may must result in the occupancy of the units by low-moderate income households (those at or below the 80%AMI levels). Occupancy requirements ae as follows:

- i. All single unit structures must be occupied by LMI households, and
- ii. An assisted two-unit structure (duplex) must have at least one unit occupied by a LMI household, and
- iii. An assisted structure containing more than two units must have at least 51 percent of the units occupied by LMI households

- 2) Aid in prevention or elimination of slums or blight (**Slum/Blight National Objective**), which may be either an area or spot basis.
- 3) Meeting other community development needs of a particular urgency, because existing conditions pose a serious and immediate threat to the health or welfare of the community and are of recent origin or are as result of a specific event, and where other financial resources are not reasonably available to meet such needs (referred to as **Urgent Need**).

“Family” is defined as all persons living in a household who are related by birth, marriage or adoption; “household” is defined as all persons occupying the same housing unit, regardless of their relationship to each other, which could consist of a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

Section 105(c)(3) of the HCD Act 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 the National Objective section above for the distinction between L/M households and L/M persons.)

CDBG regulations require the State to ensure that moderate-income persons are not benefitting to the exclusion of low-income persons (24 CFR 570.483(b)). This does not mean that each CDBG-assisted activity must involve both low- and moderate-income beneficiaries. However, it does mean that the State’s CDBG program, as a whole, must primarily benefit low-income persons, and that moderate-income persons do not benefit to the exclusion of low-income persons. The way HCD ensures compliance for the State’s allocation is by ensuring that each Grantee’s program, as a whole, primarily benefits low-income persons, and that moderate –income persons do not benefit to the exclusion of low-income persons.

Any activity that does not meet a national objective is not in compliance with CDBG requirements

and will be subject to remediation actions.

Some CDBG activities require that, in addition to the National Objective requirement, the activity also meets a Public Benefits Standard in order for the activity for costs to be eligible. Economic Development activities, as well as some public facilities and public services require the public benefits standards; see the description of the public benefits standards in “ADDITIONAL APPLICABLE REQUIREMENTS – ACTIVITIES FUNDED UNDER SECTION 105(A)(14, (15), AND (17)” under Eligible Activities below.

CDBG ELIGIBLE ACTIVITIES

The HCD Act defines the eligible activities for which CDBG funds may be used. The activity categories are listed in the HCD Act Section 105(a). Each activity must meet a national objective for the costs paid with CDBG funds to be eligible: any activity that does not meet an appropriate national objective will result in the costs being ineligible, and all ineligible costs (activity and activity delivery) must be repaid.

ACQUISITION OF REAL PROPERTY - HCD Act Section 105(a)(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.

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.

PUBLIC FACILITIES AND IMPROVEMENTS – HCD Act Section 105(a)(2)

The acquisition of the site, and/or construction, reconstruction, or installation of or other

improvements for public works or facilities projects (except for buildings for the general conduct of government). This could include design features and improvements that promote energy efficiency.

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.

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.

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.

CODE ENFORCEMENT – HCD Act Section 105(a)(3)

Activities assisted under this section may only include 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.

Code enforcement costs are limited to the payment of salaries directly related to the enforcement of state and/or local codes. Grantees may not use CDBG funds to pay for code enforcement jurisdiction-wide (in every area or neighborhood of a Grantee’s boundaries). In addition, code enforcement cannot qualify under the Slums & Blight National Objective – it can only qualify under Low/Mod Area Benefit and may only take place in primarily residential areas where at least 51% of the residents are low- and moderate-income.

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.

CDBG-funded code enforcement activities will trigger the Uniform Relocation Act (URA) and HCDA Section 104(d) if the follow-up activity involves the acquisition, rehabilitation or demolition of property with other federal or private funding, requiring that individuals move on a temporary or permanent basis. Grantees engaging in code enforcement activities that may or will cause the

relocation and displacement of persons must obtain HCD approval on the project-specific relocation plan prior to undertaking the code enforcement activity. This plan must outline how the Grantee will manage the relocation and displacement activities for the project, include an estimate for all relocation benefits will be required and identify the funds that will be used to cover relocation costs.

CLEARANCE, REHABILITATION, RECONSTRUCTION, AND CONSTRUCTION OF BUILDINGS (INCLUDING HOUSING) – HCD Act Section 102(a)(4)

Eligible activities include clearance, demolition, removal, reconstruction, and rehabilitation of buildings and improvements, including rehabilitation that promotes energy efficiency. Interim assistance, financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation of privately owned properties, and the renovation of closed school buildings may be eligible.

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.

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

Commercial/industrial: For commercial or industrial property that is owned by a for-profit entity (including persons), rehabilitation under this category is limited to exterior only improvements of the building and the correction of code violations. (Further improvements required for such buildings may qualify under the category of “Special Economic Development” activity category.)

Other: Non-profit-owned, non-residential buildings and improvements that are not considered to be public facilities or improvements.

Important 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.

ARCHITECTURAL BARRIER REMOVAL – HCD Act Section 105(a)(5)

Activities assisted under this title may include only special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons.

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.

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.

CDBG regulations 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.

LOSS OF RENTAL INCOME – HCD Act Section 105(a)(6)

This section of the 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 section of the HCD Act.

The statutory requirements concerning displacement require certain replacement housing to be made available to any households that could be displaced. 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.

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 displaced households also qualifies as benefiting L/M income persons, even if the displaced household itself is not L/M income.

Determining compliance of this activity with the national objectives of the CDBG program must

be based on the underlying relocation activity.

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

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.

DISPOSITION OF REAL PROPERTY – HCD Act Section 105(a)(7)

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.

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. 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 24 CFR 570.505 and the OMB Administrative Requirements for more information and restrictions on the change of use of real property acquired or improved with CDBG funds.

PUBLIC SERVICES – HCD Act Section 105(a)(8)

Activities under this may include only the 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, and only 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 application for CDBG public service funds (CDBG funds for public services cannot supplant other resources). Grantees are required to provide a certification at the time of funding application stating that funding would not result in supplanting of funds.

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

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.)

The nature of the public service dictates which national objectives may be used.

No more than 15 percent of the HUD grant may be used for public services, which HCD manages at the time of awards, and tracks on an annual basis.

PAYMENT OF NON-FEDERAL SHARE – HCD Act Section 105(a)(9)

This provision allows for payment of a non-federal share in connection with a federal grant-in-aid program undertaken as part of activities assisted, but 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.

(Section 105(a)(10) is not an eligible activity at this time.)

RELOCATION – HCD Act Section 105(a)(11)

Relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined to be appropriate. These relocation payment and assistance includes 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.

Grantees may use CDBG funds 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.). Grantees must have 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 displaced individual. References: 24 CFR 570.488 and 24 CFR 570.606(d).

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 displaced households 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.

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.

PLANNING AND CAPACITY BUILDING – HCD Act Section 105(a)(12)

This Section may include only the activities necessary to develop a:

- Comprehensive community development plan, and
- Policy-planning-management capacity so that the recipient of the 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 implantation.

PROGRAM ADMINISTRATION COSTS – HCD Act Section 105(a)(13)

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. 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.

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, and
- Staff and overhead costs for project delivery.

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.

ACTIVITIES CARRIED OUT THROUGH NONPROFIT DEVELOPMENT ORGANIZATIONS – HCD Act Sections 205(a)(14) and (15) – Not applicable with HCD CDBG funds.

ECONOMIC DEVELOPMENT ASSISTANCE TO FOR-PROFIT BUSINESSES – HCD Act Section 105(a)(17)

State of California Health and Safety Code 50827, as well as CDBG Regulations Section 7062.1, requires the Department to set-aside 30% of the annual federal CDBG award for economic development (ED) activities. The ED activities set-aside includes funding for Planning and Technical Assistance (PTA), Business Assistance (BA) and Microenterprise Assistance (ME).

The ED activity funds are then split on a 70%/30% basis between the Enterprise Fund (EF) (70%) and the Over-The-Counter (OTC) allocation (30%). These amounts may be adjusted, based on demand.

Funds under the ED activity may be provided to eligible for-profit businesses as loans, when the assistance is appropriate to carry out an economic development project that shall minimize, to the extent practicable, the displacement of existing businesses and jobs in neighborhoods, and 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) above.

Certain activities funded under Section 105(a)(17) must meet the Public Benefits Standards, in addition to meeting a National Objective. Details about the public benefit standards are in the section titled “ADDITIONAL APPLICABLE REQUIREMENTS – ACTIVITIES FUNDED UNDER SECTION 105(A)(14, (15), AND (17)” below.

ED projects funded in either the Enterprise Fund or the OTC Component must be underwritten to insure that:

- a) all of the activity's costs are reasonable;
- b) all of the project's sources of financing are committed;
- c) to the extent practicable, CDBG funds are not substituting non-Federal financial support;
- d) the project is financially feasible;
- e) to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and
- f) to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the activity.

Grantees must underwrite all ED projects, including OTC projects, to HCD's underwriting standards, which are those set in 24 CFR 570.482(e), described in the federal *Guidelines and Objectives for Evaluating Project Costs and Financial Requirement*, and as set forth in Appendix A to 24 CFR Part 570. Required underwriting criteria is similar to those used by private commercial lenders including credit scores, equity contributions, historic income, projected income, collateral, and debt coverage. OTC projects shall also be underwritten by the Department.

ENTERPRISE FUND (EF) – This activity contains both direct Business Assistance (BA) and Microenterprise (ME) Assistance; ME is described below as Microenterprise Assistance – HCD Act Section 105(a)(22).

Business Financial Assistance Program

Funds under this activity are provided to eligible for-profit businesses as loans. Eligible loans must be documented as having been underwritten using the standards described above. Businesses funded can be either an existing or a startup company, and eligible loan funds are restricted to eligible activity costs as listed below.

- Financing of working capital to pay for marketing costs, operating expenses and inventory.
- Financing of furniture, fixtures and equipment (FF&E). Also, purchase and installation of manufacturing equipment.
- Financing of interior and exterior repairs and property improvements to owner and renter occupied commercial properties (including permits, engineering

and architectural costs). These improvements may include ADA accessibility improvements.

- Financing of demolition and reconstruction or repair of blighted buildings where the business will operate.
- Financing may be used for refinancing existing indebtedness.
- Financing of relocation costs of any displaced persons due to project development are also eligible under this program.
- Financing of offsite public improvements required as part of project's development.

Ineligible uses of funds for Business Financial Assistance include, but are not limited to:

- Projects that do not meet proper Public Benefit or National Objective.
- Projects that assist housing development.
- Projects that are speculative in nature; no firm basis for sales projections and loan repayment documentation is available.
- Payment of project costs incurred prior to loan approval and NEPA review completion.
- Projects which violate HUD job pirating prohibition (using CDBG funds to encourage a business to move from one labor market to another).
- Financial Assistance to Nonprofits – neither loans nor grants are eligible.

Any project that is funded and later determined as ineligible (due to any of the above, or other non-compliance reasons), will be subject to repayment.

ADDITIONAL APPLICABLE REQUIREMENTS FOR ACTIVITIES FUNDED UNDER HCD Act SECTIONS

105(a)(14), (15), and (17) - Additional requirements are:

- 1). Guidelines,
- 2). Public Benefit,
- 3). Prohibition of Job Relocation, and
- 4). Evidence demonstrating program design technical assistance to avoid non-compliance with program rules and to protect the community's interests in dealings with the for-profit entities receiving economic development assistance, including loan portfolio management.

Section 105(e) requires guidelines that include, at minimum, all of the following:

1. Standards for evaluating and selecting economic development projects,
2. Underwriting requirements that, as found in 24 CFR 570.489(e):
 - a) all project costs be reasonable,
 - b) the project is financially feasible,
 - c) To the extent practicable:
 - i. reasonable financial support has been committed from non-federal sources prior to the disbursement of federal funds,

- ii. any grant amounts provided must not substantially reduce the amount of non-federal financial support for the project,
 - iii. that the owner, as result of the CDBG assistance, will not receive a return on investment that is above a reasonable level,
 - iv. grant amounts used for the costs of such assistance are disbursed on a pro rata basis with amounts from other sources, and
3. Public Benefit Standards must be met, as per 24 CFR 570.482(f).

Public benefit standards are mandatory for all economic development projects that do not use a LMI National Objective (ME activities); most often documented by showing the creation or retention of one permanent full-time equivalent job for each \$35,000 of CDBG funds (activity and activity delivery costs). Certain public facilities and improvement projects eligible under section 105(a)(2) of the HCD Act, when they are undertaken for economic development purposes, require compliance with the public benefit standards.

Public benefit standards are intended to identify two different subsidy limits, as well as the maximum assistance amount that should be provided to a business. One limit is based on individual projects, while the other is based on the annual aggregate of all BA and ED OTC projects assisted. Public benefit subsidy amounts are also adjusted based on the public benefit standard being met (jobs creation/retention versus area benefit for goods and services).

For public benefit standard of jobs, the maximum subsidy amount for a project is \$50,000 per job created or retained, based on federal regulations but state regulations presently limit individual projects to \$35,000. The annual aggregate standard is a project average subsidy of \$35,000 per job created or retained.

For the public benefit standard of goods or services (Low/Mod Area Benefit - National Objective), the individual project subsidy is \$1,000 per LMI person within the service area and annual aggregate standard of \$350 per LMI person within the service area. The Department uses the federal standard for compliance since the CA CDBG regulations do not reference a goods and services public benefit.

Grantees must use these public benefit funding limits to ensure that businesses receiving CDBG funds, which is a public subsidy, provides a “return on investment” to the residents of the community lending the funds; i.e. jobs for local residents, or goods and/or services for local residents.

Grantees’ must maintain records showing their programs are designed and implemented, and technical assistance to avoid non-compliance with program rules and to protect the community’s interests in dealings with the for-profit entities receiving economic development assistance, including loan portfolio management.

MICROENTERPRISE (ME) ASSISTANCE – HCD Act Section 105(a)(22)

Qualified ME participants (persons must be the owner of either an existing or a startup ME business) are eligible to receive services for up to three years from the date of Technical Assistance eligibility determination, per 24 CFR 570.483(b)(2)(iv).

Activity costs cover the following three types of assistance and are restricted to certain eligible activity costs:

- (1) Technical Assistance Services;
- (2) Support Services; and,
- (3) Financial Assistance.

Eligible Use of Funds

1. ME Technical Assistance participants' must be income eligible; the Department's Income Self-Certification Form included in the Department's *Income Calculation and Determination Guide for Federal Programs* manual must be used. ME assistance includes technical assistance (TA) to develop capacity for business owners in:

- Business Assessment
- Development of business plans
- Management
- Customer service
- Credit repair
- Financial management and recordkeeping

100% of all costs paid with CDBG funds must benefit TA participants that have been qualified to meet both the income and business size requirements, or TA clients, which falls under the Low/Mod Limited Clientele Microenterprise Development (LMCMC) National Objective.

TA may be provided in one-on-one sessions, group or classroom trainings, peer-to-peer counseling, and/or online computer training. TA must be structured to help business owners develop skills and knowledge in marketing, financial management, inventory control, and should result in participants' increased capacity.

TA participants gain the skills necessary to create and develop the following items:

- Business Needs Assessment
- 3 to 5 Year Business Plan
- Marketing Analysis and Plan
- Business accounting program
- Web design
- "Branding" and niche market identification
- Development of print ready marketing materials
- Legal counsel on organizational structure of the business, and
- Identification of capital sources.

TA does not include one-on-one application preparation for financial assistance as noted below, nor does it include materials or inventory.

Ineligible under Micro TA: Microenterprise Technical Assistance is a service that provides education and guidance for skills that increases the capacity of the TA clients. As such, TA clients may **not** receive any 'direct benefits' or items that have a cash value, such as normal business operations expenses. For instance, rent payments, the purchase of inventory or marketing materials, or an owner's draws all have a cash value and are ineligible as TA. These cash value items are considered financial assistance and may only be provided under the Financial Assistance activity, which requires a full Part 5 income eligibility determination. Any costs that provide a direct benefit are ineligible if provided to a TA client.

Microenterprise TA services only meet the LMCMC requirement if **all** assisted clients are income eligible. This means that if the Grantee provides a service for ten clients in a group or classroom training under the Micro TA Program and it is determined that some of the clients attending are not low- or moderate-income eligible, the entire service (training) becomes ineligible.

For this reason, mixed income TA classes, which requires all participants to be self-certified, are extremely difficult to operate eligibly. Other methods of providing TA services, such as one-on-one, peer-to-peer, and on-line training would likely not have the same mixed income class issue since the service method is for a single participant rather than a group.

CDBG Grantees operating Microenterprise TA programs are required to report beneficiary data and accomplishments annually. Grantees must also maintain full and accurate documentation supporting all costs, program operation (including all applicants not served) and the reported accomplishments and beneficiary data, and the records must be available to the Department and/or HUD for review if requested. Grantee must ensure that each microenterprise TA client's file documents all services that particular client received, including but not limited to class subject, attendance and/or one-on-one sessions attended, and service topic. In addition, a copy of any product that was created under the TA program must be maintained in the file. For example, if the Grantee's Program Guidelines indicate that all clients will receive a needs assessment and will be required to develop a business plan, copies of those deliverables must be in the client's file.

Important Note: Grantees with ME programs that include both TA and Financial Assistance (FA) must be notify all TA clients that they are not automatically eligible for FA since the income qualifying process for TA is a self-certification, while FA requires full Part 5 income qualifying. If the in the Part 5 review of income documentation it is determined that the TA clients are actually over the 80% AMI level, the clients are ineligible for any and all Microenterprise Assistance; not only are the clients not eligible for Financial Assistance, they are also no longer eligible

for any further Technical Assistance as of the date of the income determination.

2. ME Support Services Assistance (may only be provided to eligible ME TA participants currently enrolled in the ME TA program and the support services being provided must be associated to the ME TA participants' ability to obtain Technical Assistance):

- Funds for payment of transportation costs to allow ME participants to travel to and from classes and technical assistance.
- Funds for payment of child care services to support the ME Program participant in attending technical assistance activities.

Ineligible uses of funds for ME support services include, but are not limited to:

- Assistance to non-profit agencies,
- Projects that assist development of housing, or
- Payment of project costs incurred prior to NEPA review completion.

Financial documentation supporting all expenses and/or costs submitted to the Department for reimbursement (such as invoices and time sheets) must be maintained in the client's file.

3. ME Financial Assistance - financial assistance may be in the form of a loan or grant to persons/families above 80% AMI by county, adjusted for household size. Participants must be income qualified in compliance with the Part 5 method, and as outlined in the Department's *Income Calculation and Determination Guide for Federal Programs*):

- Using grant or loan financing to pay for working capital or to pay for marketing costs, operating expenses and inventory.
- Financing for furniture, fixtures and equipment (FF&E), and the purchase and installation of equipment.
- Financing for payment of interior repairs and property improvements to owner- and renter-occupied commercial properties (including permits, engineering and architectural costs). These improvements may include ADA accessibility improvements.
- Funds for relocation of any displaced persons due to project development.

Microenterprise activities are not subject to the Public Benefit Standards; all ME program assistance must meet the HUD definition of microenterprise size (five or fewer employees) and also meet the national objective of benefit LMI beneficiaries for BA and LMCMC for TA by restricting the program to low- and moderate-income micro business owners.

IN REM HOUSING – HCD Act Section 105(a)(23)

Eligible costs are limited to only those necessary to make essential repairs and 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.

Since these expenses are statutorily limited to housing located in primarily low- and moderate-income neighborhoods, the Low/Mod Income Benefit national objective is to be met through the Area Benefit subcategory (LMA). This means that, even though these are housing activities, the usual requirement that occupancy by low/mod income households must be demonstrated does not apply to activities carried out under this authority. The activity might also qualify under the Slums/Blight objective in particular circumstances where documentation for meeting Slums/Blight criteria is submitted and approved by HCD.

HOMEOWNERSHIP ASSISTANCE – HCD Act Section 105(1)(24)

Homeownership assistance is specifically limited to assisting low- and moderate-income households and may include only:

- (A). Providing 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 the purposes of (ii) below by using such assistance to:
 - i. Subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;
 - ii. Finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;
 - iii. Acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except the 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);
 - iv. Provide up to 50 percent of any down payment required form low- or moderate-income homebuyer; or
 - v. Pay reasonable closing costs (normally associated with the purchase of a home incurred by low- or moderate-income homebuyers.

Because the use of CEBG funds authorized under this Section of the Act 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 households.

Homeownership assistance may also be eligible under the category of Public Services or assistance to nonprofit developers (Sections 105(a)(8) and (15)), and these categories do not have the same restrictions on the use of the national objective. However, since use of funds under the Public Service activity must be included in the Public Services spending cap, HCD does not allow homeownership assistance under Public Services. However, homeowner education is an eligible Public Service activity, and any homeowner education expenditures will be included in the Public Service spending cap.

CONSTRUCTION OF TORNADO-SAFE SHELTERS – HCD Act Section 105(a)(25)

California does not qualify for this section of the act since the activity may only be undertaken within a State in which a tornado has occurred during the fiscal year for which the amounts are to be used under this paragraph of the Act and were made available for any of the 3 preceding fiscal years, as determined by the Secretary of consultation with the Administrator of the Federal Emergency Management Agency.

LEAD-BASED PAINT HAZARD EVALUATION AND REDUCITON – HCD Act Section 105(a)(26)

Eligible costs include those associated with the evaluation and reduction of lead-based paint hazards in a CDBG project whether undertaken alone or in conjunction with other rehabilitation activities. Lead-based paint evaluation and abatement can either be completed on its own or as part of a rehabilitation activity, including:

- 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.

Lead-based paint hazard evaluation and reduction activities undertaken on residential units (whether the units are owned or rented) must qualify under the Low/Moderate Housing national objective category. Homeownership, rehabilitation or infrastructure-in-support-of-housing activities, as well as any acquisition of sites for the construction of housing, clearance of environmental contamination from sites to be used for the construction of new housing, the costs of disposing of real property acquired with CDBG funds which will be used for the new construction of new housing, all require the units to be occupied by low/moderate income households. Single unit properties require 100% of the residents be low/moderate, while multiple unit structures require a proportional percentage (with no less than 51%) of the units be occupied by low/moderate households. Rents are set at levels which are affordable to LMI persons. Occupancy and household incomes must be monitored annually to ensure compliance.

Lead-based paint hazard evaluation and remediation activities that do not directly benefit low/mod persons may qualify under the Slum/Blight national objective. However, the use of Slum/Blight must be approved by HCD, and will be related to either an Area Basis or Spot Basis. Area Basis requirements include:

- The activity may only occur within an area that was delineated by the Grantee and approved by HCD and the area meets a definition of a slum, blighted, deteriorated, or deteriorating area under state or local law (must have evidence of this in the files), and
- At least 25% of the properties throughout the area experience one or more conditions identified in §570.208(b)(ii)(A), and the activity must address one or more of the conditions which contributed to the deterioration of the area.
- Lead-based paint activities meet this requirement only if the building to be rehabilitated is considered substandard under local definition (and the file must contain evidence of the local definition, and
- If non-critical items will be addressed through a CDBG rehabilitation activity all deficiencies making the building substandard must be eliminated.
- A program involving only the evaluation and not the reduction of lead hazards does not qualify under Area Slum/Blight national objective.

OTHER PROVISIONS RELATING TO ELIGIBLE ACTIVITIES:

New Housing Construction: The construction of new permanent residential structures is ineligible, *except* under two limited conditions (one that HCD does not allow at this time):

- 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); HCD does not allow this activity.

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.

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 can be 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 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. HCD must authorize any last resort housing prior to the Grantee undertaking the activity.

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.

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).

ACTIVITIES SPECIFIED AS INELIGIBLE:

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. The activities stated below have been determined to be ineligible under the HCDA.

CATEGORICALLY INELIGIBLE: The following activities may not be assisted with CDBF funds under any circumstances:

- 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 requirements at 24 CFR Part 200, 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.

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 earlier sections above 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, HCD allows, (under “maximum feasible deference”) as eligible, emergency grant payments made over a period not to exceed 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.

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.”

HCD CDBG Grantees must provide sufficient documentation to support their position that the economic development applicant’s business operation will not result in a shift of workers 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 minimus 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 and 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

HCD Grantee jurisdictions must document that each assisted activity falls within a specified category and that it meets the requirements that apply to that category. Both the local grant recipient and each of their sub-contractors or -recipients must maintain records related to the HCD CDBG-DR or -NDR grant. HCD will conduct reviews of the Grantees’ records to ensure compliance with all applicable laws, statutes, regulations and terms of the Standard Agreement.

Recordkeeping Requirements: The records that must be collected and maintained by HCD Grantees and their sub-contractors and/or sub-recipients must be sufficient to establish:

- Each activity funded by CDBG-DR or –NDR grant money is eligible under HCDA Section 105(a) and
- Each activity meets one of the national objectives.

General Administration - include, but are not limited to:

- Personnel files,

- Property management files,
- Files relating to the Grantee's application to the HCD,
- All records relating to the Standard Agreement,
- Program policies, guidelines (if applicable), correspondence with HCD, reports, etc.,
- Legal files including any organizational, tax status, board minutes, contracts and any other agreements,
- Evidence of public outreach for participation of the Grantee's citizens, and
- Any other CDBG-DR or –NDR related general administration records.

Financial records including, but not limited to:

- Charts of accounts,
- Grantee's accounting policies and procedures,
- Accounting ledgers and journals,
- Source documentation (purchase orders, invoices, cancelled checks, wire transfer documentation, etc.),
- Procurement records and files,
- Bank account records,
- Financial reports, and
- Audit reports and files, etc.

Program records showing overall program structure, operation and compliance, including but not limited to:

- Program policies and procedures,
- Guidelines,
- Application log,
- Copies of all program documentation (applications, notes, deeds, verification forms, reports, contracts, outcomes, correspondence with the public, interested parties, applicants, denial processes, appeal processes, etc.),
- Applications in process,
- Closed files,
- Denied files,
- Withdrawn files, and
- Any other documentation associated with the operation of the program not included in an individual project file.

Project files must include, but are not limited to:

- All documentation associated to the activities undertaken with respect to the specific, individual projects (location, beneficiary, owners, uses, etc.), whether projects are part of a "program" (such as housing rehabilitation) or is a stand-alone project (such as a street improvement project).

HCD must document the Grantees' compliance with all applicable laws and regulations. See the Monitoring Chapter for a description of the Department's policies, procedures and requirements.