

**CHAPTER 5  
ELIGIBLE ACTIVITIES & REQUIREMENTS**

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## **CHAPTER 5 ELIGIBLE ACTIVITIES & REQUIREMENTS**

### **I. CDBG NATIONAL OBJECTIVES & ELIGIBLE ACTIVITIES**

The CDBG Program permits a wide range of eligible activities. In order to receive CDBG funds, eligible activities must meet one of three National Objectives:

1. Provide benefit to low- and moderate-income (LMI) persons;
2. Aid in the prevention or elimination of slums or blight; or
3. Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

In addition, at least 70% of CDBG funds to be expended must be for activities meeting the LMI Benefit national objective. This requirement – sometimes referred to either as the Primary Objective or the Overall Benefit of the Program -- applies to the expenditures of CDBG funds during the specified period without regard to the source year of the funds. For this purpose, CDBG funds include all those funds received in the form of CDBG grants received from HUD, CDBG program income received by the City and its subrecipients, if any, and proceeds of loans guaranteed by HUD under Section 108.

The activity must also qualify as an “eligible activity”. Eligible CDBG activities include the following:

- Acquisition of Real Property
- Disposition
- Public Facilities and Improvements
- Clearance
- Public Services
- Interim Assistance
- Relocation
- Loss of Rental Income
- Privately-Owned Utilities
- Rehabilitation
- Construction of Housing (under limited circumstances)
- Code Enforcement
- Special Economic Development Activities
- Microenterprise Assistance
- Special Activities by CBDOs
- Homeownership Assistance
- Planning and Capacity Building
- Miscellaneous Other Activities

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The CDBG regulations in 570.200 - 209 provide additional descriptions of each of the eligible activities covered in this section, and The Guide to Eligible Activities and National Objectives (the “Desk Guide”) is another good resource for understanding the eligibility of activities. See: <https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/>.

A CDBG local program or project may consist of one or more of these activities. Every expenditure of CDBG funds must correlate to one of the eligible activities listed in the regulation.

As the funding is limited, the State makes a determination annually of the types of projects it will fund. This Chapter provides guidance on the eligible activities currently permitted in the NYS CDBG Program and summarizes key requirements. It addresses the following activity types:

- Housing
- Public Infrastructure
- Public Facilities
- Economic Development
- Community Planning
- Imminent Threat

The remainder of this chapter addresses these categories of eligible CDBG activities that the State currently funds, and provides guidance on eligible costs, national objectives and OCR policies. However, this chapter does not cover all requirements. Recipients are still responsible for reviewing the relevant regulations and HUD guidance in meeting the obligations of the contract.

## **II. HOUSING**

### **A. Eligible Activities**

The following activity types are eligible:

- Rehabilitation – both rental and owner-occupied units in single-family structures, 2-4 unit structures, and 5-or more unit structures
- Homeownership
- Manufactured Housing Replacement
- Wells and Septic

Activities that are commonly found in homeownership programs include direct financial assistance including down payment assistance and closing costs, counseling of prospective homeowners to ensure applicants understand program obligations, budgeting, and overhead costs, and minor rehabilitation of certain houses that are otherwise structurally sound.

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Providing safe drinking water and wastewater systems to individual property owners falls under the category of housing, as these types of assistance provide a direct benefit to those receiving funding. Direct assistance activities can include drilling of private wells, construction or rehabilitation of septic systems, and installation of lateral connections to low- and moderate-income households from the public water/sewer mains.

There are a range of other CDBG eligible activities that are not specific to housing but may be undertaken with respect to an eligible housing project, such as energy conservation, historic preservation and removal of barriers.

### **B. Eligible Costs**

All costs must adhere to the uniform administrative requirements and cost principles discussed in Chapter 3 Financial Management, as well as any specific instructions in the RFP or NOFA.

Eligible direct costs include Includes acquisition, clearance, site improvements, construction and rehabilitation of the units, including lead-based paint hazard reduction or remediation activities.

Administrative costs must adhere to the guidelines in Chapter 3 Financial Management. Program delivery costs can include:

- Marketing grant activities;
- Services verifying client eligibility, applicant in-take and processing;
- Providing education or counseling to beneficiaries;
- Preparation of site-specific environmental review and environmental assessment such as SHPO determinations, well testing or phase 1 archaeology;
- Development of construction specifications bid preparation and contracting;
- Compiling cost data on individual housing units receiving CDBG assistance;
- Construction monitoring and on-site monitoring;
- Payment processing;
- Filing fees and related legal expenses;
- Engineering and/or architectural fees monitoring;
- Client/contractor troubleshooting; and
- Any other professional services required to deliver the program

For more information concerning eligible Program Delivery for Housing Activities, Recipients should contact their Community Developer.

Generally, any activity not specifically authorized under the CDBG regulations is ineligible to be assisted with CDBG funds, but the following are specifically ineligible:

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- New housing construction, except under certain conditions (contact OCR);
- Purchase of personal property, including equipment, fixtures, motor vehicles, furnishings;
- Operating and maintenance expenses, with some exceptions (contact OCR);
- Income payments, which are grants to an individual or family and are not used to provide basic levels of food, shelter (including payment for rent, mortgage and/or utilities) or clothing.

### **C. National Objectives**

While LMI Housing (LMH) is the national objective commonly met when completing housing activities, a national objective can be met in other ways, including LMI Area (LMA) and LMI Clientele (LMC) for housing related services, depending on the activity being undertaken.

To meet the LMH national objective, the activity must meet one of the following qualifying criteria:

- One-unit structures must be occupied by LMI households.
- Two-unit structures must have at least one unit occupied by LMI households.
- Structures containing more than two units must have at least 51% of the units occupied by LMI households (with some exceptions; contact OCR).

Rental buildings under common ownership and management which are located on the same or contiguous properties may be considered as single structures. For rental housing, occupancy by LMI households must be at affordable rents, consistent with the standards adopted and publicized by the Department of Housing and Community Development for determining "affordable rent" levels.

The following records should be maintained for documenting national objectives for housing activities:

- A copy of the written agreement with each landlord or developer receiving CDBG assistance indicating the total number of dwelling units in each multi-family structure assisted and the number of those units which will be occupied by LMI households after assistance;
- For each unit occupied by an LMI households, the size and income of the household;
- For rental housing only, the rent charged for each dwelling unit in each structure assisted.

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### D. General Guidelines

- **Manufactured Housing/Mobile Home Rehabilitation.**
  - While rehabilitation of existing mobile homes is permitted, every effort should be made to assist the owner with the purchase and installation of a new manufactured home (complying with 24 CFR Part 3280). Purchase of an existing manufactured home may be permitted in writing by OCR if the home is documented to be less than 5 years old.
  - The recipient must document that the unit is less than 10 years prior to undertaking the activity. Repairs to existing mobile homes that are more than 10 years old must have prior written approval from OCR.
  - Major systems must have a minimum life expectancy of 5 years.
  - Repairs should not be made to a mobile home that is within a floodplain.
  - Repairs are capped at \$20,000 and must comply with HTFC Housing Rehabilitation Standards addressing (in order): health and safety issues, NYS and/or local code violations, and energy efficiency.
- **Environmental review.** A tiered environmental review for non-site-specific activities aggregated under a single evaluation is typical for many housing programs where specific project sites are not determinable at the time of the initial environmental review.
- **Relocation.** Recipients that assist rental housing units that will involve any temporary relocation or permanent displacement of tenants must adhere to federal relocation requirements, Recipients that choose to provide optional temporary relocation assistance for owner occupants that need to be temporarily relocated during rehabilitation must develop and adopt a Voluntary Relocation Plan. In addition, the recipient must make provisions for the replacement of low and moderate-income dwellings that are demolished as a result of CDBG-assisted activities.
- **Tree removal.** Any rehabilitation activity that includes tree removal must be documented (photos and justification) and submitted for pre-approval by OCR.
- **Procurement.** Recipients should demonstrate open and fair competition by soliciting at least 3 bids for all contracts. Bids cannot not be received by the homeowner(s).
- **Change orders.** Any single change order or cumulative change orders over 3% of original contract amount requires prior approval by OCR staff.

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### **III. PUBLIC INFRASTRUCTURE**

#### **A. Eligible Activities**

Eligible activity types include:

- Water/sewer;
- Storm water;
- Water storage and distribution; and
- Municipal power generation.

Public Infrastructure includes activities consisting of, but not limited to, water source development, storage, and distribution; sanitary sewage collection and treatment; flood control and storm water drainage. Eligible projects may include the repair or replacement of existing systems, construction of new systems, or expansion of existing systems into areas previously unserved that are in compliance with the NYS Smart Growth Public Infrastructure Act (Chapter 433 of the Laws of 2010). Funding solely for residential water and sewer lateral connections are considered for funding under the Housing Funding Category, although funding for lateral connections under the public infrastructure category as long as the activity is incidental to a larger public infrastructure project.

#### **B. Eligible Costs**

All costs must adhere to the uniform administrative requirements and cost principles discussed in Chapter 3 Financial Management, as well as any specific instructions in the RFP or NOFA.

Eligible direct costs include those third-party costs related to the construction/rehabilitation of the infrastructure.

Recipients can use up to 18% of the CDBG award in program delivery, administration, and engineering costs combined. Of the 18%, administration must not exceed more than 5% of the total CDBG award. Administrative costs must adhere to the guidelines in Chapter 3 Financial Management. Program delivery costs can include:

- Marketing grant activities;
- Services verifying client eligibility;
- Providing education or counseling to beneficiaries;
- Preparation of site-specific environmental review and environmental assessment such as well testing or phase 1 archaeology;
- Legal expenses related to construction such as temporary or permanent easements and filing fees;

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- Any required building or regulatory permit or fees associated with regulatory compliance;
- Labor standards compliance work including completion of required on-site employee interviews, verifying and reviewing certified payrolls;
- Development of construction specifications bid preparation and contracting;
- Professional service fees including engineering and architectural fees required to deliver the program;
- Client/contractor troubleshooting; and
- Any other professional services required to deliver the program.

OCR may consider certain eligible pre-award costs for water, sewer, or storm water projects only, which may include pre-development costs necessary to complete the environmental review process. These expenses may include, but are not limited to:

- Engineering or design work needed to obtain approval from state or Federal agencies;
- Administrative costs incurred consulting with state and Federal agencies;
- Permitting activities needed to complete the Environmental Review Record (ERR) and/or Request for Release of Funds (RROF), including State Environmental Quality Review Act (SEQRA) process requirements as applicable.

Pre-development costs incurred up to 12 months prior to grant award may be included as part of the project budget. Eligible costs must still meet all CDBG rules and regulations including Federal procurement and civil rights requirements and must be in compliance with 2 CFR Part 200.

### **C. National Objectives**

Public infrastructure improvements may be undertaken to benefit residents of an area or may be carried out for the purpose of economic development. The most common national objective is LMA, although other national objectives may be met. Recipients need to document how the National Objective requirement is satisfied during the planning, implementing and documenting of CDBG projects.

If water, sewer, or drainage lines are being installed, typically all residents along the line must be counted as beneficiaries. For a system-wide improvement, such as water tank or a waste water treatment plant, all residents in the service area must be counted as beneficiaries. The service area must be justified and clearly defined.

Census data and local surveys are the two sources of data for documenting benefit to LMI persons.



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### **Census Data**

The most recent Census data can be used to determine and provide evidence of compliance with the LMI Area Benefit National Objective. It should be noted that Census data cannot be rounded up – if the Census data shows that the percent of LMI persons is less than 51% (e.g. 50.6%), this figure cannot be rounded to 51%. In addition, the census data must be perfectly co-terminus with the selected service area to demonstrate compliance with the National Objective.

### **Local Income Surveys**

Income surveys may be conducted if the proposed activity is located in a Census Tract or Block Group that has less than 51% LMI persons based on the most recent available Census data and the Applicant has reason to believe that the Census information is not accurate, and the area is primarily LMI. An income survey also can be used if the activity is located in a Census Tract or Block Group that has at least 51% LMI persons, based on the most recent available Census data, but does not serve the entire Census Tract, or Block Group, or it serves portions of several Census Tracts or Block Groups, or the service area (area benefiting from the activity) of the proposed activity is not contiguous with any Census designated area for which data is provided.

Recipients using a third party to conduct an income survey must obtain all the survey documents (instrument, summary, surveys) and retain this information in the project files.

### *Defining the Service Area*

Applicants must first determine the service area for their project to determine the total number of residential units (occupied, vacant and seasonal) in the project area. Activities that benefit an entire community are considered to have an area wide benefit and the service area is the entire community excluding social service residences such as those operated by the New York State Office of Mental Retardation and Developmental Disabilities, group quarters, prisons, dormitories, etc. Activities that benefit a smaller or targeted group only benefit a designated area of a community. If you are trying to determine the LMI status of households in a neighborhood that is benefiting from a NYS CDBG funded activity, that neighborhood is the service area. Instead of a neighborhood, the service area may be a town, it may be as large as a county, or it may be defined some other way.

### *Non-Random Income Survey*

A non-random income survey is conducted when an Applicant wants to survey the entire service area of an activity. This type of income survey is typically used in areas with a relatively small population and the intent is to gather information from 100% of the households in the service area.

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### *Response Rates*

After defining the size of the service area, the Applicant must determine the number of responses needed to estimate the overall characteristics of the service area accurately. Using the tables below, applicants can determine the number of households that must respond to the income survey.

#### **NON-RANDOM INCOME SURVEY: REQUIRED RESPONSE RATE**

# OF HOUSEHOLDS IN THE SERVICE AREA	REQUIRED RESPONSE RATE
1 - 50	95%
51-100	90%
101-200	80%
201-300	70%
301-400	60%
401-600	55%
601-800	50%
800-1000	45%
1,000 or more	40%

The following formula should be used to determine the survey response rate:

$$\frac{\text{Total Number of Surveys Returned}}{\text{Total Number Surveyed}} = \text{Response Rate}$$

If the initial response rate is lower than the required response rate, applicants must either repeat follow-up actions or survey additional persons. **Applicants that do not meet the minimum response rate will be at risk of a determination of non-compliance of the LMI National Objective. Applicants must include as an attachment to their application, the survey methodology and a tabulation of the survey results.** OCR reserves the right to review, re-tabulate and ultimately reject any questionable survey methodology, instruments and data. Applicants should be prepared to defend the validity of their survey methodology, instruments and data when the LMI Area Benefit is demonstrated to be no more than 55%.

Applicants can achieve more accurate estimates if they do not write off a household as unreachable too quickly. When conducting a door-to-door income survey, applicants should make two or more passes through the area (at different times) in order to catch a family at home. Only after at least two tries or an outright refusal should a sampled household be replaced. No matter what you do, however, some households just will not be home during the time of interviewing, some probably will refuse to be interviewed, some will terminate the interview before you finish, and some will complete the interview, but fail to provide an answer to the key question on household income. In order to be considered an

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adequate response, the interview must be completed, and you must obtain complete and accurate information on the respondent's household income.

**Applicants must ensure that the entire service area is surveyed. When tabulating the results of the survey, applicants may identify surveys that were not completed accurately, or vital information is missing. In such cases, the survey must be rejected and included as non-LMI in the tabulation.**

### *Vacant and Seasonal Housing*

All vacant and seasonal housing units must be included in the total number of households and persons benefiting. However, for the purpose of conducting an income survey and meeting the required response rate, these units are deducted from the group to be surveyed. The Applicant must clearly demonstrate on a map, the exact location of all vacant and seasonal housing.

### *Designing the Income Survey Questionnaire*

It is important that all of the individuals surveyed are asked the same exact questions in the same format and the responses are recorded correctly. To ensure this, a written questionnaire is needed. Each question should be clear, written in simple language, and convey only one meaning. Applicants should include questions designed to elicit information that will substantiate compliance with the National Objectives as well as questions that are considered important to the activity. Applicants should be aware that experience has shown that overly detailed surveys may adversely affect the response rate. Income survey questions should be designed to provide, at a minimum, data regarding family size, household income, housing tenure, head of household status and racial and ethnic composition. The survey should request the respondent to provide their annual household income or the most recent HUD Income Limits should be listed in ranges that will allow the Applicant to determine whether the respondent is at or below 30%, 50%, or 80% of area median income or above.

### *Types of Survey Questions*

When designing the income survey questionnaire, applicants should select the best format that will solicit the information needed. There are two question formats that applicants can use in an income survey: open-ended and closed-ended. An example of an open-ended question is: "What do you think is this community's most important need?" The respondent is allowed to answer in any way he/she chooses. Usually, several blank lines are provided for an answer.

A closed-ended question is one that forces the respondent to make a choice: "Do you like the new community center?" Answer yes or no. "Is your income below

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\$5,000; between \$5,000 and \$10,000; or above \$10,000?” Typically, closed ended questions have a box to check for the appropriate answer.

**Income survey questions should be brief and simple and should not be loaded or biased. The interviewer should not imply that the neighborhood would benefit or receive Federal funding if respondents say that they are of LMI. The questions must be designed to determine truthfully and accurately whether respondents have LMIs. It is permissible to note that the reason for the income survey is to gather essential information to support an application for funding under the State or to undertake a CDBG funded activity in the area.**

Applicants should also bear in mind that questions about income are personal. Many people are suspicious or reluctant to answer questions about incomes -- especially if they do not understand the reason for the question. One way to handle this problem is to ask questions about income at the end of a somewhat lengthy questionnaire on other community development matters. In this instance, a local agency can use this questionnaire to gather some information on what the neighborhood sees as important needs or to gather feedback on some policy or project. At the end of such a questionnaire, it usually is possible to ask questions on income more discreetly. If this option is chosen, however, the interviewer should be cautioned that an excessively lengthy questionnaire might cause respondents to lose interest before the survey is completed. The ideal length would probably be less than ten minutes, although certainly you could develop a longer questionnaire if it were necessary.

Of course, it is also possible to ask only the critical questions on income. You should know best how people in your community will respond to such questions. With a proper introduction that identifies the need for the information, you can generate an adequate level of response through a questionnaire with just two questions on income level.

### *Racial/Ethnic Composition Data*

HUD requires racial and ethnic composition data on all beneficiaries of the State CDBG Program for input into their Integrated Disbursement Information System. OCR also provides this data to HUD in its Annual Performance Report to HUD. **Even though racial and ethnic data is not required as part of this application, OCR will request this information from Recipients in the Semi-Annual Performance Report.**

Applicants may choose to collect the racial/ethnic composition data from potential program participants during the income survey or application intake (direct benefit activities) stages. The following chart represents the racial and ethnic categories designated by HUD and how they should be reported.

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<b>Racial/Ethnic Composition</b>		
<b>Racial Categories (HUD Designated)</b>	<b>Racial Group</b>	<b>*Hispanic</b>
	<b>Total # Of</b>	<b>Total # Of</b>
White		
Black/African American		
Asian		
American Indian/Alaskan Native		
Native Hawaiian/Other Pacific Islander		
American Indian/Alaskan Native and White		
Asian And White		
Black/African American And White		
American Indian/Alaskan Native & Black/African American		
Other Multi-Racial		
Totals		

\*HUD has designated Hispanic as an ethnic group that is applicable to all races. A household or person may be identified as both a member of a racial group and an ethnic group.

Income survey materials should include detailed concise information that will aid in the successful collection of the information solicited. At a minimum, the following information should be provided to the residents:

- A brief description of why the income survey is being conducted (without stating the preferred response) and an explanation of why demographic data is being requested. This may be presented in a written or verbal format depending on the survey method
- A statement assuring that the information is confidential. OCR strongly advises applicants to inform candidates of the survey that the information collected is confidential and is not subject to the Freedom of Information Act (FOIA)
- The name and telephone number of a person to be contacted if the respondent has any questions
- Instructions for completing the questionnaire, such as what types of income are counted toward household income and the difference between household size and number of dependents

At a minimum, the household size, income and demographics, the respondent's signature, date, and address should be collected.

*Confidentiality*

Applicants must ensure that the income survey process used to substantiate compliance with the LMI National Objectives includes a way to identify specific households who responded to the questionnaire yet ensures the respondent's

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confidentiality. **Each income survey should include a statement ensuring respondent confidentiality and the process the Applicant will undertake to ensure confidentiality.**

To preserve confidentiality, the income survey materials should be in two parts or consist of two separate pages. **The section with the respondent's name and address must be separated from the income and demographic data after receipt.** All documents related to the income survey should be stored in a locked cabinet or other secure area, which has limited access. The Applicant must impress upon those working with the income survey data the importance of confidentiality.

Questions concerning household income and other personal questions are sensitive topics and applicants need to take this under consideration when developing their questionnaire and determining their income survey method. **If a respondent's address is requested on the questionnaire, many persons may not answer the questions relating to income truthfully, answer the questions at all, or not complete the questionnaire in its entirety.** To promote a high response rate and solicit accurate information, the questionnaire should not include identifying information, such as the person's name or address. The following are examples of acceptable methods for preserving anonymity of income survey respondents:

- Applicants may hand deliver the questionnaire to the respondent or conduct the income survey orally. At the time of delivery or upon completion of the interview, the surveyor would mark off the respondent's address from an address list. If the hand delivered questionnaire is to be returned by mail or collected by the Applicant at a later date, the collector can check off the respondent's address on the address list at the time of collection.
- If the questionnaire is to be mailed and returned by mail, the identifying information (respondent's address) can be on the return envelope. Upon receipt of the completed questionnaire, the Applicant can check off the respondent's address on the address list. The envelope and questionnaire can then be separated, and the envelope destroyed.
- Questionnaires may be coded which entails a simple method of placing a number on the questionnaires or return envelopes. Each number is assigned an address from an address list. When the questionnaire is received, a list of the codes is maintained.
- Questionnaires may consist of two parts or two separate pages. The section with the respondent's name and address can be separated from the income and demographic data after receipt. Where a door-to-door income survey is being conducted, the interviewer can instruct the respondent to separate the two parts of the questionnaire after completion and place the part with the income information in one envelope and the other part in another envelope.

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Excluding the two-part questionnaire method, applicants can review the address list to determine which addresses did not respond to the questionnaire and require follow-up contact.

### **SURVEYS OF HOUSING CONDITIONS SHOULD BE CONDUCTED SEPARATELY TO ENSURE RESPONDENT CONFIDENTIALITY**

#### **D. General Guidelines & OCR Policies**

- Change orders – Changes are allowed only in unforeseen circumstances. Changes orders are not appropriate for a change in scope or geography. The project will have to be re-bid in those circumstances and may have to re-examine the Environmental Review documents pursuant to satisfying NEPA requirements.
- Environmental Re-evaluation – A re-evaluation of the environmental review and conclusions is required under 24 CFR 58.47 in cases where there is a minor change in the scope or location. When a re-evaluation is required, the Recipient should conduct the re-evaluation and forward a memo to OCR describing:
  - The dates of the original environmental review;
  - The proposed changes to the scope of work or location;
  - Summary of the re-evaluation that ensured that all criteria from the original review are still met; and
  - A conclusion of “no alteration of the original findings”, if that is the determination, according to 24 CFR 58.47.
- Force Account – Force account labor is permitted as described in Chapter 4 Procurement.
- Procurement – If only one RFP/Bid is received for professional or construction services, the recipient must contact OCR staff to review procurement procedures before awarding the contract.

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### IV. PUBLIC FACILITIES

#### A. Eligible Activity Types

Public facility activities include, but are not limited to, funding for: structures to house or serve special-needs populations; senior services; child care centers; removal of architectural barriers for the disabled (installing lifts, automatic doors, ramps, etc.); and multi-purpose buildings housing several qualifying activities for low- and moderate-income persons.

Grant funds may also be used for standalone public works activities such as sidewalks, streets, parking, open space, and publicly owned utilities. Eligible projects may include the repair or replacement of existing systems, construction of new systems, or expansion of existing systems into areas previously unserved that are in compliance with the NYS Smart Growth Public Infrastructure Act (Chapter 433 of the Laws of 2010).

The following activities are eligible for public facilities:

- Community facilities
- Day Cares
- Senior Centers
- Removal of Architectural Barriers
- Senior Vans
- Mobile Medical/Dental Vans
- Other (sidewalks, demolition)

The costs to operate and maintain public facilities are not eligible under CDBG, but the recipient must demonstrate that these funds are available. Any public facility funded with NYS CDBG funds must be maintained in the same capacity as funded for a period of five (5) years after the project is formally closed out by OCR. OCR reserves the right to inspect such facilities during the five (5) year period to substantiate compliance.

Private facilities that require a membership fee are not eligible for assistance.

#### B. Eligible Costs

All costs must adhere to the uniform administrative requirements and cost principles discussed in Chapter 3 Financial Management, as well as any specific instructions in the RFP or NOFA.

Eligible direct costs include those third-party costs related to the construction/rehabilitation of the infrastructure.



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NYS CDBG funds can be used for construction or renovation of facilities but cannot be used to cover the day-to-day operational costs, nor can funds be used for buildings that are primarily for the general conduct of government business (i.e. town halls).

Recipients can use up to 18% of the CDBG award in program delivery, administration, and engineering costs combined. Of the 18%, administration must not exceed more than 5% of the total CDBG award.

Administrative costs must adhere to the guidelines in Chapter 3 Financial Management. Program delivery costs can include:

- Marketing grant activities;
- Services verifying client eligibility;
- Providing education or counseling to beneficiaries;
- Preparation of site-specific environmental review and environmental assessment such as well testing or phase 1 archaeology;
- Legal expenses related to construction such as temporary or permanent easements and filing fees;
- Any required building or regulatory permit or fees associated with regulatory compliance;
- Labor standards compliance work including completion of required on-site employee interviews, verifying and reviewing certified payrolls;
- Development of construction specifications bid preparation and contracting;
- Professional service fees including engineering and architectural fees required to deliver the program;
- Client/contractor troubleshooting; and
- Any other professional services required to deliver the program.

Under the CDBG regulations, the purchase of equipment or furnishings (e.g., tables, chairs and filing cabinets) for a public facility is not considered eligible.

### **C. National Objectives**

In order to meet a CDBG national objective, the facility must serve a residential area which consists of 51% LMI persons, or the facility must be designed to serve one of the limited clientele categories (i.e., severely disabled adults) allowed under the CDBG regulations. For LMA, Census data or an income survey (as discussed above under Public Infrastructure) must document the eligible area. For LMC, the family income of the users of the facility must be documented.

### **D. General Guidelines & OCR Policies**

- The facility must be open to the public during normal business hours.

## **CHAPTER 5 ELIGIBLE ACTIVITIES & REQUIREMENTS**

- **Use of Facility.** The Recipient or subrecipient must own and operate a facility to provide the services. The building must be used only for the activity being funded and for the primary benefit of LMI persons and cannot be used for general office or administration space. If owned and operated by a subrecipient, a subrecipient agreement, lease or other contractual document must be executed between the Recipient and any non-profit organization that will own, operate or maintain the facility. A lien or restrictive covenant on the building may be required to ensure the continued use as a public facility that specifies the building will be used for its intended purpose. If the use of the building changes, it is subject to change of use provisions in 24 CFR 570.489(j).

## CHAPTER 5 ELIGIBLE ACTIVITIES & REQUIREMENTS

### V. ECONOMIC DEVELOPMENT

#### A. Eligible Activity Types

CDBG funds may be used in a variety of ways to encourage economic development and support new and existing businesses. NYS CDBG funds may be used for.

- Economic Development – Funding for traditional economic development activities, such as business attraction, expansion, and retention projects to provide financial assistance to businesses for an identified CDBG eligible activity which will result in the creation or retention of permanent, private sector job opportunities principally for persons from LMI families. Eligible businesses may be in sectors of manufacturing, warehousing and distribution, agri-business, high technology, research and development and traditional and innovative small businesses. Market driven businesses (i.e. restaurant, retail) will be considered when that business is an integral part of a community's revitalization efforts.
- Small Business – Funding to foster small business (25 or fewer full-time equivalent employees) development as a vehicle for sustainable economic development and growth while providing job opportunities for persons from LMI families Eligible businesses may be within the same sectors listed above under Economic Development.
- Microenterprise – Funding to support and promote entrepreneurship as a vehicle for economic development to commercial enterprises that have five or fewer employees (head count, not full-time equivalents), one or more of which is the principal and owner.

#### B. Eligible Costs

All costs must adhere to the uniform administrative requirements and cost principles discussed in Chapter 3 Financial Management, as well as any specific instructions in the RFP or NOFA.

Eligible uses include: acquisition of real property (Economic Development/Small Business); financing of machinery, furniture, fixtures and equipment; building construction and renovation (Economic Development and Small Business); working capital; inventory; and employee training expenses. Funds awarded under the NYS CDBG Small Business program may not be used for new construction activity.

Note that for Microenterprise activities recipients can use up to 15% of the CDBG award in program delivery, administration, and training costs combined. Of the 15%, administration must not exceed more than 5% of the total CDBG award.

For Economic Development and Small Business projects, program delivery and grant administration costs combined cannot exceed \$16,000.

## **CHAPTER 5 ELIGIBLE ACTIVITIES & REQUIREMENTS**

Administrative costs must adhere to the guidelines in Chapter 3, Financial Management. Program delivery costs can include:

- Marketing grant activities;
- Services verifying client eligibility;
- Providing education or counseling to beneficiaries;
- Preparation of site-specific environmental review and environmental assessment such as well testing or phase 1 archaeology;
- Preparation of loan closing documents, all costs associated with perfecting security, repayment processing, loan disbursement;
- Professional service fees including engineering and architectural fees required to deliver the program and review of project documentation, etc.
- Legal expenses related to construction such as temporary or permanent easements and filing fees;
- Any required building or regulatory permit or fees associated with regulatory compliance;
- Development of construction specifications bid preparation and contracting;
- Labor standards compliance work including completion of required on-site employee interviews, verifying and reviewing certified payrolls;
- Client/contractor troubleshooting; and
- Any other professional services required to deliver the program.

### **C. National Objectives**

A minimum of fifty-one percent (51%) of the jobs that are created or retained as a result of an economic development award must be either held by and/or made available to persons from low- and moderate-income (LMI) households.

- “taken (or held) by” - a job is considered to be taken by an LMI person if, at the time their employment starts, that person is a member of a family whose income falls at or below the applicable Section 8 Income Limits; in the instance of retention, a job must be either held by LMI persons at the time CDBG assistance is provided and/or expected to turn over to LMI persons within two years.
- “available to” - A job is considered to be made available to an LMI person if the position does not require special skills acquired from substantial training or work experience, and education beyond high school is not a prerequisite to employment. Also, the assisted business must take actions to ensure that LMI persons receive first consideration for filling such jobs.

In order to consider jobs retained as a result of CDBG assistance, there must be clear and objective evidence that permanent jobs will be lost without CDBG assistance. For these purposes, “clear and objective” evidence that jobs will be lost would include:

## **CHAPTER 5 ELIGIBLE ACTIVITIES & REQUIREMENTS**

- Evidence that the business has issued a notice to affected employees or made a public announcement to that effect; or
- Analysis of relevant financial records which clearly and convincingly shows that the business is likely to have to cut back employment in the near future without the planned intervention.

To meet the LMI jobs standard, 51% or more of the retained jobs must be either:

- Known to be held by LMI persons at the time CDBG assistance is provided; and/or
- Jobs not known to be held by LMI persons, but which can be reasonably expected to “turn over” to LMI persons within two years (i.e., the Recipient and the business being assisted taking actions to ensure that such a job, upon turnover, will be either taken by or made available to an LMI person in a manner similar to that pertaining to a newly created job, as discussed above.)

### **D. General Guidelines & OCR Policies**

- Public hearings must be held in the same calendar year in which the application is submitted. Exceptions may be made for projects under board consideration in January. In those cases, OCR will accept hearings held in December of the previous year.
- The notice for the required public hearing must name the business(es) to be assisted
- Davis Bacon Wage Rate requirements apply to the use of CDBG funds for construction and renovation costs, but also the cost of equipment that requires installation and the purchase of materials used for construction activities.
- CDBG funds cannot be used to pre-pay mortgage or rent expenses.
- Machinery and equipment are eligible only if “movable” – i.e., it can be sold or moved if business were to be liquidated.
- Purchase agreements (for acquisition) entered into prior to the environmental release of funds (ROF) will put the CDBG funds at risk.
- The owner’s position does not count as a job created or retained.
- The family income forms must be submitted to OCR at the time of job reporting, prior to monitoring.
- Seasonal positions may only be considered full-time if it is the employee’s principal occupation
- For microenterprise activities, OCR allows only two draws for each assisted business

## **CHAPTER 5 ELIGIBLE ACTIVITIES & REQUIREMENTS**

### **VI. COMMUNITY PLANNING**

#### **A. Eligible Activity Types**

Community planning provides an opportunity for local governments to develop a wide range of community development plans (Plan). The Plan produced with these resources must identify community development challenges and needs and establish a strategy to address them within the framework of specific goals and objectives.

Plans may address, but are not limited to:

- Affordable Housing
- Economic Development
- Downtown and Main Street Revitalization
- Engineering Reports

The primary objective of Community Planning is to identify an eligible CDBG project and to apply for CDBG funding. A successful Plan should serve as a basis and foundation for identifying eligible projects for subsequent applications to the funding sources identified in the Plan, including CDBG. However, Award of a Planning Technical Assistance grant does not guarantee that an eligible CDBG project identified in the Plan will be awarded CDBG funding in the future.

#### **B. Eligible Costs**

All costs must adhere to the uniform administrative requirements and cost principles discussed in Chapter 3 Financial Management, as well as any specific instructions in the RFP or NOFA.

Administrative costs and project delivery costs must adhere to the guidelines in Chapter 3 Financial Management.

CDBG funds may be used for the costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans are eligible.

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. However, 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.

## **CHAPTER 5 ELIGIBLE ACTIVITIES & REQUIREMENTS**

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

### **C. National Objectives**

While planning-only activities are not required to meet a National Objective, the OCR does require that at least 51 percent of the persons who would benefit from implementation of the plan are L/M income persons or that the plan addresses a slum or blighted area of the community.

Community goals outlined in the Plan must address the kinds of activities likely to benefit low- and moderate- income populations in the jurisdiction, consistent with the national objective.

### **D. General Guidelines & OCR Policies**

- 14-month contracts. Community planning contracts are subject to 14 months limits, which is different than other CDBG activities.
- The Plan should consider existing and projected housing and economic conditions and detail how such conditions will be impacted by the Plan.
- The Plan should also identify and describe potential funding sources that may be used to tackle these challenges, including federal, state, local and private resources.
- A copy of the Plan must be submitted to the Office of Community Renewal upon completion in order to close out the grant.
- Closeout. To close out, the Recipient must provide:
  - Letter from CEO that the plan is complete and satisfactory;
  - Completed planning document; and
  - Certification that all CDBG funds have been expended.

## **CHAPTER 5 ELIGIBLE ACTIVITIES & REQUIREMENTS**

### **VII. IMMINENT THREAT**

#### **A. Eligible Activity Types**

CDBG funding may be used for most other CDBG-eligible activities including:

- Housing Rehabilitation – Owner-occupied and rental, single and multi-unit housing
- Homeownership – Purchase assistance for income-eligible households
- Residential Water/Wastewater Assistance – Well, septic
- Economic Development – Assistance to business
- Public Infrastructure/Facility – Water, sewer infrastructure & community facilities

#### **B. Eligible Costs**

Imminent Threat (IT) projects follow the same eligible cost structure as the other activities listed above, depending on the selected activity.

Assistance limits will be based on available funds and may be determined based on need established through Office of Emergency Management (OEM) assessments or by third party engineering reports

#### **C. National Objective**

IT projects may qualify under either the Urgent Need or Low/Mod national objectives. To qualify under the Urgent Need National Objective, the qualified activities must meet the following criteria:

- The existing conditions must pose a serious and immediate threat to the health or welfare of the community;
- The existing conditions are of recent origin or recently became urgent. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months preceding the state grant recipient's certification – 24 CFR 570.483(d).
- The unit of general local government certifies, and the state determines that:
  - The unit of general local government is unable to finance the activity on its own; and
  - Other sources of funding are not available.

#### **D. General Guidelines & OCR Policies**

Applicants may submit a grant request under Imminent Threat at any point during the program year in responses to immediate needs in the community, including but not limited to state and federal disaster declarations or other imminent public health hazards.