

New York State
COMMUNITY DEVELOPMENT
BLOCK GRANT (CDBG) PROGRAM

2023 PUBLIC INFRASTRUCTURE, PUBLIC FACILITIES
& COMMUNITY PLANNING

REQUEST FOR APPLICATIONS



OFFICE OF COMMUNITY RENEWAL

**Homes and
Community Renewal**

**Housing
Trust Fund
Corporation**

KATHY HOCHUL, GOVERNOR
RUTHANNE VISNAUSKAS, COMMISSIONER/CEO

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I. FUNDS AVAILABLE

The Housing Trust Fund Corporation (HTFC) will make available approximately \$20 million in Federal Fiscal Year (FFY) 2023 NYS Community Development Block Grant (CDBG) Program funds through this Request for Applications (RFA).

II. FUNDING LIMITS

Public Infrastructure	Maximum
Counties, Towns, Cities or Villages	\$1,000,000
*With NYS Co-Funding Initiative	\$1,250,000
Joint Applicants	\$1,500,000
*Joint w/Co-Funding Initiative	\$1,750,000
Public Facilities	
Counties, Towns, Cities or Villages	\$1,000,000
Planning	
Counties, Towns, Cities or Villages	\$50,000

III. ELIGIBLE APPLICANTS

Eligible applicants are non-entitlement units of general local government (County, Town, City, or Village), excluding metropolitan cities, urban counties, and Indian Tribes that are designated Entitlement Communities. Non-entitlement areas are defined as cities, towns, and villages with populations of less than 50,000 except those designated principal cities of Metropolitan Statistical Areas, and counties with populations of less than 200,000. A list of eligible communities is available on the OCR website under [Program Guidelines](#).

When a joint effort is required to solve a common water or sewer problem faced by two or more eligible local governments, a joint application may be submitted. Local governments, however, must not only share a common problem that crosses their municipal boundaries but must also be able to demonstrate that a joint effort is required to solve the problem. A cooperation agreement between the local governments must be included as an attachment to the application. Joint applications submitted only for administrative convenience are not eligible and will not be considered for funding. Note that each Applicant individually must adhere to citizen participation requirements. Each participating municipality must hold a public hearing prior to application. Consultation with OCR is strongly encouraged.

IV. PROGRAM OBJECTIVES

OBJECTIVES OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

As set forth in the Federal Housing and Community Development Act, the Primary Objective of the CDBG program "is the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income (LMI)."

OBJECTIVES OF THE NEW YORK STATE CDBG PROGRAM

Financial assistance will be provided for the development of projects that meet the NYS CDBG Program Objectives and that provide decent, safe affordable housing, access to clean drinking water, proper disposal of household wastewater, access to local public facilities, and economic opportunities for persons from LMI households by supporting development projects that are designed to create or retain employment opportunities or foster

Microenterprise activities and provide opportunities through planning efforts to address community development needs.

In support of New York's community development goals, the NYS CDBG Program will:

1. Encourage investment in communities by assisting local governments in devising and implementing economic development strategies to revitalize viable communities and provide economic opportunities that principally benefit LMI persons.
2. Revitalize the vibrancy of New York's communities and enhance the quality of life through improvements to public infrastructure and public facilities.
3. Develop and implement strategies that facilitate the coordination of NYS CDBG funding with other Federal, State, and local community development resources.
4. Support a mix of rehabilitation and conversion activities to preserve and increase affordable housing for both renters and homeowners.

V. ELIGIBLE ACTIVITIES

CDBG funding may be used for eligible activities as outlined below. This is not intended to be an exhaustive list of eligible activities and applicants are encouraged to develop projects in response to local need that may not fit neatly in any one category. In these cases, applicants are encouraged to contact the Office of Community Renewal (OCR) for additional guidance prior to submitting an application.

In selecting eligible activities, communities should be aware that although an activity may be legally eligible under the Federal statute and HUD regulations, it may not be competitive under OCR's evaluation criteria. An activity being considered for a State CDBG application should be compared against the evaluation criteria for that category before a decision is made to prepare an application. Below is an edited list of eligible activities identified at Section 105(a) of the Housing and Community Development Act of 1974, as amended and 24 CFR 570.482, as amended. Additional information on eligible activities can be found on the [HUD Exchange](#).

A. Public Infrastructure

Funds may be requested for public or private water source development, storage, and distribution; sanitary sewage collection and treatment; flood control and storm water drainage; and municipal utilities. The aforementioned types of projects may also include ancillary public works components such as sidewalks, streets, parking, open space, and publicly owned utilities. Projects that are intended as new/replacement sidewalks, lighting, other street improvements, parking are considered public facility activities. Further, ancillary activities, such as homeowner service lateral replacement, may not exceed 10% of the grant amount without formal prior approval from OCR.

B. Public Facility

Funds may be requested for structures to house or serve special-needs populations; senior services; health-care centers; childcare centers; community centers, removal of architectural barriers for the disabled (installing lifts, automatic doors, ramps, etc.); sidewalks; street improvements, lighting and multi-purpose buildings housing several qualifying activities where benefits are provided principally to low-and moderate-income persons. Funds may also be requested for development of broadband in underserved areas. Projects that are applying for ADA for new construction are not eligible, ADA compliance is strictly limited to the removal of architectural barriers.

C. Community Planning

Funds may be requested for Community Needs Assessments and Preliminary Engineering Reports. Any planning proposal at the time of application must provide documentation that the activity will meet a national objective under the CDBG program. Applicants should focus on one or more of the following: public infrastructure, public facilities, housing and/or economic development.

New For This Year – Note the following changes for Community Planning projects:

- Applicants will not be required to provide a 5% cash match
- Project budgets may allocate up to 5% of the award amount toward grant administrative costs
- Period of completion is twelve (12) months from award
- Draft Environmental Review Record (ERR) must be included as an attachment to the application

D. Ineligible Activities

Buildings, or portions thereof, used for the general conduct of government cannot be assisted with CDBG funds. This definition does not include such facilities as neighborhood service centers or special purpose buildings that may house services provided by government at decentralized locations. However, the removal of architectural barriers within public buildings to make them more accessible to elderly and handicapped persons is an eligible activity.

Expenses for the general conduct of government are not eligible. Costs directly attributable to administration of a local CDBG program may be considered for reimbursement.

The general rule is that the purchase of equipment with CDBG funds is ineligible. An exception is that compensation for the use of construction equipment through leasing, depreciation, or use allowances pursuant to 2 CFR Part 200, as applicable, for an otherwise eligible activity is an eligible use of CDBG funds.

1. The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions 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.
2. The general rule is that CDBG funds cannot be used for income payments for housing or any other purpose. Examples of ineligible income payments include payments for income maintenance, housing allowances, down payments and mortgage subsidies. One-time payments made on behalf of persons or families to meet emergency needs such as housing or essential utilities is not an income payment and is eligible.

VI. APPLICATION PROCESS & SUBMISSION

A. How to apply

Funding round materials will be available on the [Funding Opportunities](#) of the Office of Community Renewal website beginning Monday, May 1, 2023.

Applications will be accepted through the [Consolidated Funding Application \(CFA\) system](#).

B. Public Hearing Pre-application Requirement

Applicant communities must conduct a public hearing before a quorum of the full legislative body in compliance with NYS Citizen Participation requirements, prior to submitting an application for funding. A [public hearing template](#), [requirements](#) and [instructions](#) are available online with the funding round materials.

C. Technical Assistance

OCR will provide technical assistance regarding the application, proposed projects, and program regulations to applicants upon request and will continue to be available to answer questions regarding the application and/or the NYS CDBG Program until the application is submitted or the submission date and time has expired, whichever occurs first. Applicants can contact OCR staff at HCR_CFA@hcr.ny.gov or 518-474-2057 for assistance.

D. Application Submission

Application Open Date: Monday, May 1, 2023
Application Submission Ends: Friday, July 28, 2023, 4:00 PM

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all applicants, applications received after the specified date and time will be deemed ineligible and will **not** be considered for funding. Applicants should submit applications as soon as the proposal and required materials are ready to avoid risks of ineligibility resulting from unanticipated delays or problems.

Applicants may make a request, based on demonstrated need, to submit a paper application in lieu of using the CFA system. Requests for approval to submit a paper application must be sent to: Crystal Loffler, Deputy Commissioner, NYS Homes and Community Renewal, Office of Community Renewal, Hampton Plaza, 38-40 State Street, 4th Floor South, Albany, NY 12207.

E. Administrative Funds and Project Delivery

For Public Facilities and Public Infrastructure, applicants may request 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, program delivery and engineering must not exceed 13% of the total CDBG award. For Community Planning, applicants may request up to 5% of the CDBG award in administrative costs.

F. Applicant Capacity and Prior Experience

Applicants for NYS CDBG Program funds, as with all competitive OCR Program funds, are subject to an evaluation of prior program funding history, prior program administration performance and organizational capacity. Factors such as the rate of expenditure during the term of the contract, the number of contract extensions requested, if funds were de-obligated and compliance with all terms will be used to determine satisfactory performance for all applicants. Applicants may be negatively impacted by unsatisfactory performance or may be determined to be ineligible for a grant when prior performance evidence significant lack of capacity to carry out the proposed project or program as required and according to the applicable laws, regulations, policies and procedures governing the program.

Applicants must resolve any and all outstanding monitoring and/or non-compliance issues that involve a violation of Federal, State or local regulations, and/or program and OCR requirements prior to the submission of an application for funding. Applicants that do not resolve monitoring and/or non-compliance issues will be deemed ineligible, and the application will not be accepted or reviewed. The OCR will provide, upon request, status information related to the above items for any potential applicants.

Prior to submitting an application, applicants should evaluate the progress of their open grant portfolio to determine if additional funds are warranted at this time. Interested parties are discouraged from applying for NYS CDBG Program funds if the program activities cannot be completed within the 2-year term or the amount of funding requested cannot be expended within the 2-year term. Please note, the term is fourteen (14) months for community planning activities.

G. Funding Priority

- HTFC reserves the right to prioritize projects that are determined to benefit a NY State Disadvantaged Community.
- HTFC reserves the right to prioritize projects that are proposing broadband infrastructure projects in underserved areas.
- HTFC reserves the right to prioritize infrastructure projects that are addressing PFOA contamination and/or addressing the removal of lead pipes in the distribution system, including, but not limited to lateral connections.

H. Award Criteria Details

- Public infrastructure and facility projects must score a minimum of 45 points on administrative capacity and financial capacity and a total score of at least 65 points for all scoring criteria to be considered eligible for funding.

I. Disclaimer

- HTFC reserves the right to communicate with an applicant for the purpose of addressing clerical and arithmetical errors in applications.
- HTFC reserves the right not to issue an award or contract to any applicant if it has been determined that the applicant is not in compliance with existing contracts and has not taken satisfactory steps to remedy such non-compliance. Activities that commence prior to contract execution and environmental review will not be eligible for reimbursement.
- HTFC reserves the right to award all, more than identified, a portion of, or none of the available funds based upon funding availability, feasibility of the applications received, the competitiveness of the applications, an applicant's ability to meet HTFC criteria for funding, the applicant's ability to advance the State's housing goals, and HTFC's assessment of cost reasonableness. HTFC reserves the right to award all, a portion of, or none of the application's requested amount, and further reserves the right to review an application requesting funds as an application for funding under other programs for which the proposed activity is eligible, and to change or disallow aspects of the applications received.
- HTFC reserves the right to waive any requirement contained in this RFA or revise the terms of this RFA as needed.
- Award of funds does not confirm eligibility of all activities included in an application proposal, and HTFC reserves the right to change or disallow aspects of the applications received and may make such changes an expressed condition of its commitment to provide funding for proposed activities.

VII. APPLICATION REVIEW

A. APPLICATION THRESHOLD REVIEW REQUIREMENTS

CDBG applications must present projects that:

- Meet a CDBG National Objective
- Demonstrate compliance with NYS Citizen Participation
- Request funding within the limits outlined above
- Can be completed within 24 months of award (12 months for planning)
- Do not provide assistance to a for-profit business in the form of lobbying or other political activities
- Do not exceed 18% overall soft costs (administration, program delivery, engineering). Of the 18% no more than 5% of the total request for grant administration.
- Does not request reimbursement of non-exempt construction costs prior to award of NYS CDBG funds and OCR approval of release of funds. Grantees must document compliance with the environmental review requirements at 24 CFR Part 58 following the application to HCR and prior to reimbursement of any costs.

B. APPLICATION REVIEW CRITERIA

The review process for the NYS CDBG Program is designed to ensure that the limited NYS CDBG funds available are awarded to communities that meet all of the Federal CDBG requirements, demonstrate a significant need for the proposed activity, demonstrate that the project is financially feasible, and show a significant positive impact to the community. The HTFC and OCR reserve the right to reduce funds requested based on a review of applicant capacity.

PUBLIC INFRASTRUCTURE AND FACILITIES FACTOR RATING

Applications within the Public Infrastructure and Facilities funding categories are rated and scored against the factors below. Applications are evaluated and ranked against applications within the same category. Applications with the highest scores are considered the most competitive and have a greater chance of being awarded.

Need	15 Points
Impact	15 Points
Financial Capacity	35 Points
Administrative Capacity	35 Points
Total = 100 Points (maximum)	

Applications within the funding categories will be assessed based on the extent to which they meet the category-specific assessment criteria identified below. The most points may be awarded to projects that have demonstrated exceptional compliance with the assessment criteria identified for each category.

Public Infrastructure:

Need – 15 Points

The degree to which the Applicant has demonstrated:

- submission of a preliminary engineering report, full engineering report that demonstrates a serious public health, welfare or safety conditions
- third party documentation such as consent orders, notice of violations or SPDES compliance schedule, test results).

Impact – 15 Points

The degree to which the Applicant has demonstrated:

- that the proposed project is affordable, viable, and sustainable over the long-term, is of appropriate capacity for the demand, and addresses the identified need.
- that the proposed project supports a “Smart Growth” development strategy in accordance with the New York State Smart Growth Public Infrastructure Act (Chapter 433 of the Laws of 2010).

Financial Capacity – 35 Points

The degree to which the Applicant has demonstrated:

- that the project cost is financially feasible and includes the cost associated with regulatory compliance.
- the impact of NYS CDBG funds on the reduction of the debt burden, connection fees, and annual water/sewer fees on LMI households.
- that NYS CDBG funds are necessary to undertake the project and the community is unable to secure sufficient funding or assistance through other methods or resources, including other public funding.
- that leveraged funds are available and committed at the time the application is submitted, and that there is no gap in funding.
- that the costs of program delivery and administration are reasonable and based on the work to be performed, as detailed in the application.
- a financial and administrative plan for future maintenance and operations.

Administrative Capacity – 35 Points

The degree to which the Applicant has demonstrated:

- a clear understanding of the program requirements and measures to ensure compliance with program requirements, including applicable Federal and State regulations, such as environmental, lead-based paint, labor standards, historic preservation, and procurement.
- that no impediments exist, or the degree to which all potential impediments, such as regulatory compliance, community support, site control (i.e., easements, acquisition etc.), and permits and clearances, have been addressed.
- completion of the Environmental Review Record (ERR) including but not limited to National Environmental Policy Act (NEPA), State Environmental Quality Review (SEQR) and all required agency consultations and reviews. For projects requiring a Phase 1a or 1b archeological survey, the survey must be complete and submitted with the ERR.
- clear documentation for project readiness and the ability to implement the program upon award.
- clear ability to make substantial progress within six (6) months award, first disbursement request and costs incurred. This means:
 - projects awarded funding must submit Request for Release of Funds within 60 days of receiving the grant agreement.
 - project must further demonstrate the ability to be out to bid and award contracts within six months of receiving grant agreements.
- the ability to complete the proposed project/program within the 24-month term of the grant agreement.

Public Facilities:

Need – 15 Points

The degree to which the Applicant has demonstrated:

- submission of a preliminary engineering report, full engineering report, building needs assessment, physical needs assessment that supports the need to undertake the proposed project.
- documentation of required action to undertake the project
- a need and market for the project and the services to be provided.

Impact – 15 Points

The degree to which the Applicant has demonstrated that:

- the proposed project has long-term affordability, viability and sustainability, is appropriate in terms of capacity, and addresses the identified need.
- the project design includes components accommodating mobility, visual, and auditory handicaps where relevant.

Financial Capacity –35 Points

The degree to which the Applicant has demonstrated:

- that the project cost is financially feasible and includes the costs associated with regulatory compliance.
- that NYS CDBG funds are necessary to undertake the project and the community is unable to secure sufficient funding or assistance through other methods or resources, including other public resources.
- that leveraged funds are available and committed at the time the application is submitted, and that there is no gap in funding.
- that the costs of program delivery and administration are reasonable and based on the actual work to be performed as described in the application.
- a financial and administrative plan for future maintenance and operations.

Administrative Capacity – 35 Points

The degree to which the Applicant has demonstrated:

- a clear understanding of the program requirements and measures to ensure compliance with program requirements, including applicable Federal and State regulations, such as environmental, lead-based paint, labor standards, historic preservation, and procurement.
- that no impediments exist, or the degree to which all potential impediments, such as regulatory compliance, community support, site control (i.e., easements, acquisition etc.), and permits and clearances, have been addressed.
- completion of the Environmental Review Record (ERR) including but not limited to National Environmental Policy Act (NEPA), State Environmental Quality Review (SEQR) and all required agency consultations and reviews. For projects requiring a Phase 1a or 1b archeological survey, the survey must be complete and submitted with the ERR.
- clear documentation for project readiness and the ability to implement the program upon award.
- clear ability to make substantial progress within six (6) months award, first disbursement request and costs incurred. This means:
 - projects awarded funding must submit Request for Release of Funds within 60 days of receiving the grant agreement.
 - project must further demonstrate the ability to be out to bid and award contracts within six months of receiving grant agreements.
- the ability to complete the proposed project/program within the 24-month term of the grant agreement.

While applications will only receive agency scores for this round of funding, OCR may accept and/or consider Regional Economic Development Council feedback in the review of applications. Each Regional Strategic Plan is available from the [REDC website](#).

PLANNING FACTOR RATING

Applications within the Community Planning funding category are rated and scored against the factors below. Applications are evaluated and ranked against other Planning applications. Applications with the highest scores are considered the most competitive and have a greater chance of being awarded.

Demonstrated Need	25 Points
Public Benefit/Impact	45 Points
Financial Capacity	10 Points
Administrative Capacity	20 Points
Total = 100 Points (maximum)	

Demonstrated Need – 25 Points

- Demonstration of need for the Plan and for funding assistance.
- Evidence that key stakeholders share the opinion that the subject of the Plan is critical to addressing identified needs and challenges.
- Evidence that other sources of funding have been pursued

Public Benefit/Impact – 45 points

- The proposed process for identifying development challenges and needs.
- Description of how plan will address the identified need
- Consistency with other local, county, or other regional planning efforts
- Likelihood of leading to CDBG eligible activity

Financial Capacity – 10 points

- Cost is reasonable and based on a detailed budget
- Provide a detailed plan of use for all requested funds

Administrative Capacity – 20 Points

- Demonstrated project readiness
- Ability to complete within 12 months; or not barrier to completion exists
- NYS CDBG performance history, if any

While applications will only receive agency scores for this round of funding, OCR may accept and/or consider Regional Economic Development Council feedback in the review of applications. Each Regional Strategic Plan is available from the [REDC website](#).

VIII. PROGRAM ADMINISTRATION REQUIREMENTS

The following is a listing, not all inclusive, of regulations and other program requirements that apply to the NYS CDBG Program. Applicants receiving awards will be expected to be familiar with and understand these governing regulations and will be periodically monitored throughout the administration of an awarded program or project to ensure continued compliance with these and other rules and regulations. The Federal regulations set forth at 24 CFR Part 92 govern the NYS CDBG Program. For a full review of requirements see applicable [Administrative Plan](#).

For general program guidelines, applicants may reference the [NYS CDBG Grant Administration Manual](#).

A. Meeting National Objective

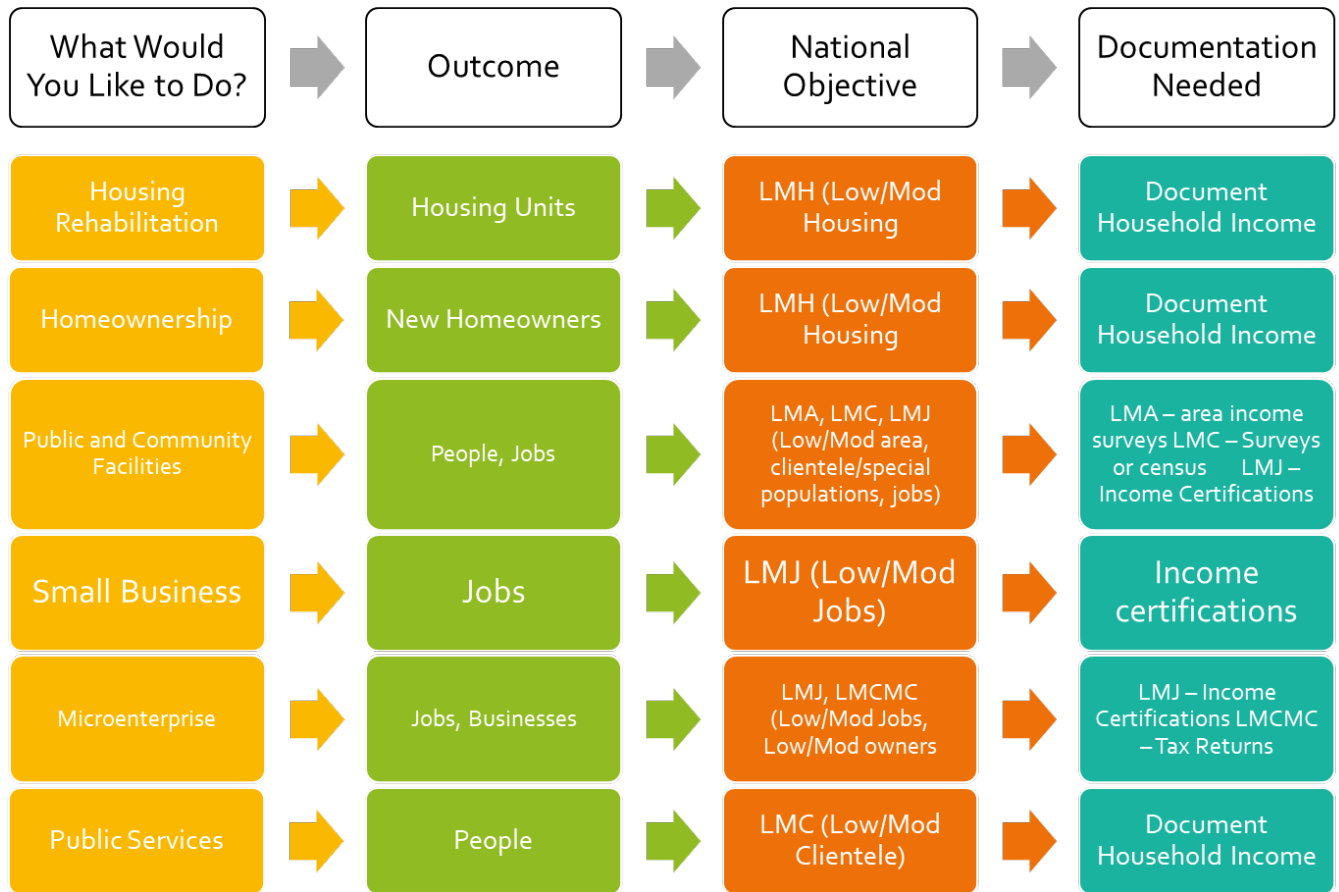
Each project proposed for CDBG assistance must meet a National Objective as defined by HUD. For a majority of projects, this objective can be met by ensuring that at least 51% of the beneficiaries assisted are low-to-moderate income households and/or individuals

As part of the application process, applicants will need to provide income data to demonstrate the need and/or market for each activity proposed and to provide evidence that each activity will meet a National Objective.

For activities meeting the National Objective of assisting LMI persons and/or households, two types of data can be used to demonstrate compliance, census data or income survey data. In addition to collecting income data, applicants must use other methods for documenting need.

The most current and up to date [HUD income limits](#) are available online. For projects claiming LMA National Objective for area wide for projects benefitting a population that is more than 51% low and moderate income, [community wide census data is available here](#).

1. Benefit to low-moderate Income (LMI) persons



2. National Objective Documentation for LMI Persons

Benefit to LMI persons

For the purposes of meeting this National Objective, CDBG activities are divided into three main categories: Area Benefit, Limited Clientele, Direct Benefit including housing and job creation or retention. Each activity proposed must fall under one of the above categories in order to be considered for funding. Activities in these categories qualify under the LMI benefit National Objective in one of three ways: Area Benefit, Limited Clientele or Direct Benefit. The Applicant must determine under which category their project meets the requirement to serve at least 51% LMI persons. HUD provides an [online income calculator](#). The following information will assist with that determination.

Area Benefit

Activities that meet the Area Benefit are designed to serve needs in a geographic area that has a mix of income levels (i.e., a project which will benefit all the residents of the project area, regardless of income). Area benefit includes activities that do not have income eligibility requirements, but instead serve an entire geographic area. An activity proposed for an area wide project must also be clearly designed to meet identified needs of families in the area. **Under HUD regulations, an activity that serves an area that is not primarily residential in character cannot qualify as an Area Benefit activity.**

Applicants that propose to use CDBG funds for Area Benefit activities must provide data to demonstrate that at least 51% of the persons who would benefit from CDBG assistance are LMI. Area benefit to LMI persons can be documented by the use of Census data or an income survey. For areas where Census data is not available, the Applicant must conduct a survey to prove LMI benefit. For activities in a target area where Census data is available, the Census Tract or Block Groups must match the area's boundaries in order to be valid. Otherwise, a survey must be conducted (e.g., using Census Tract data to substantiate compliance for water line replacement when everyone in the Census Tract would not be a beneficiary of the water line replacement). Reference Appendix B for guidance on survey methodology.

Direct Benefit

Activities that are a Direct Benefit are designed to exclusively serve LMI persons. This method is used to determine the LMI benefit for activities that assist a specific known person or household. Activities that qualify under this benefit include residential rehabilitation or job creation activities. For example, a Direct Benefit activity occurs when the community has income eligibility requirements that limit the benefits of the CDBG activity to only LMI families.

Documenting LMI benefit for Direct Benefit projects is relatively clear-cut since potential Recipients of CDBG assistance are screened for income eligibility with the use of the most current HUD income limits for the County in which the project is located. Reference Appendix C for the [HUD Income Limits](#).

Limited Clientele

Activities that meet the Limited Clientele benefit are activities that provide benefits to a specific group of persons rather than everyone in an area. The activity may benefit particular persons without regard to the area in which they reside, or it may be an activity that provides benefit on an area basis but only to a specific group of persons who reside in the area. In either case, at least 51% of the beneficiaries of the activity must be LMI persons. To qualify under this category, the activity must meet one of the following tests:

- Exclusively benefit a clientele who is generally presumed by HUD to be principally LMI persons. Abused children, elderly persons, battered spouses, homeless persons, adults meeting the Bureau of Census definition of "severely disabled adults", illiterate adults, persons living with AIDS, and migrant farm workers are presumed by HUD to be principally LMI. Activities that serve this group will be assumed to meet 51% LMI benefit unless the Applicant has surveyed the group to determine the actual benefit exceeds the assumed benefit of 51%; or
- Require information on family size and income so that it is evident that at least 51% of the clientele are persons whose family income does not exceed the LMI limit; or
- Be of such nature and location that it may be concluded that the activity's clientele will primarily be LMI persons; or
- Be an activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of severely disabled, provided it is restricted, to the extent practicable, to the removal of such barriers by assisting:
 - The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under the LMI area benefit criteria; or
 - The rehabilitation of a privately-owned nonresidential building or improvement that does not qualify under the L/M Income Area Benefit criteria or the LMI Jobs criteria; or
 - The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under the LMI housing criteria.
- Be an activity designed to provide job training and placement and/or other employment support services, including, but not limited to, peer support programs, counseling, childcare, transportation, and other similar services, in which the percentage of LMI persons assisted is less than 51% which qualifies under the Limited Clientele national objective in the following limited circumstance:

- In such cases where such training or provision of supportive services assist businesses, and the only use of CDBG assistance is to provide job training and/or supportive services, and the proportion of the total cost of the services borne by CDBG funds is no greater than the proportion of the total number of persons benefiting from the services who are LMI.

Applicants that propose to use CDBG funds for Limited Clientele benefit activities must provide documentation demonstrating that the activity proposed meets one of the tests qualifying the activity as meeting the Limited Clientele criteria. Depending on the activity being proposed, the Applicant should provide documentation showing that the activity is designed to be used exclusively by a segment of the population presumed by HUD to be LMI persons; describing how the nature and the location of the activity establishes that it will be used predominately by LMI persons; showing the size and annual income of the family of each person receiving the benefit; showing that barriers to mobility or accessibility have been removed and how the barrier removal was restricted to the extent feasible to one of the particular cases authorized under this subcategory; or showing that the activity qualifies under special conditions regarding job services where less than 51% of the persons benefiting are LMI persons.

To document that at least 51% of the persons who would benefit from CDBG assistance have low or moderate incomes, applicants must use current income data. Reference Appendix A for guidance on survey methodology.

3. PREVENTION AND ELIMINATION OF SLUM AND BLIGHT

Activities meeting the slum and blight National Objective may involve the rehabilitation or removal of slums and blight in the physical, economic and/or social environments. Activities may address any serious conditions identified in the areas of residential, infrastructure, commercial or industrial facilities. The overall program proposed should resolve all need indicated. CDBG activities directed toward the National Objective of preventing or eliminating slums or blight are divided into two main categories: area basis and spot basis.

Area Basis

Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

- The area delineated by the Applicant must meet the definition of a slum, blighted, deteriorated or deteriorating area under State or local law. Applicants must use the strictest definition to determine eligibility. The New York State General Municipal Law Article 18-C, S-970-c defines "Blighted area" as an area within a municipality in which one or more of the following conditions exist: (i) a predominance of buildings and structures which are deteriorated or unfit or unsafe for use or occupancy; or (ii) a predominance of economically unproductive lands, buildings or structures, the redevelopment of which is needed to prevent further deterioration which would jeopardize the economic well-being of the people.
- Throughout the area there are a substantial number of deteriorated or deteriorating buildings or the public improvements are in a general state of deterioration.
- The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is also undertaken.

Applicants claiming the prevention and elimination of the slum and blight National Objective on an area basis must be able to document that, at the time of application, a majority of the buildings in the area are deteriorated or dilapidated and the area itself is blighted.

Spot Basis

The elimination of specific conditions of blight or deterioration on a spot basis is designed to comply with the statutory objective for CDBG funds to be used for the prevention of blight, on the premise that such action(s) serves to prevent the spread to adjacent properties or areas. To comply with this National Objective, an activity must be designated to eliminate specific conditions of blight or physical decay not located in a designated slum or blighted area and the activity must be limited to one of the following: acquisition, clearance, relocation, historic

preservation, and/or rehabilitation of buildings, but only to the extent necessary to eliminate specific conditions detrimental to public health and safety. To be considered to be detrimental to public health and safety, a condition must pose a threat to the public in general.

**Applicants claiming the prevention and elimination of the slum and blight National Objective on a spot basis must be able to document the specific conditions of blight or physical decay for the eligible activity, demonstrate the public health or safety threat to the public and show that the area in which the property is located is outside a slum or blighted area.*

If satisfactory demonstration of compliance with a National Objective is not provided, the proposed activity will be considered ineligible and will not be considered for funding.

B. Contract Term

Due to HUD CDBG Program deadlines for commitment and expenditure, if awarded, the contract term shall not exceed two (2) years. All awarded projects will be required to demonstrate substantial progress within six (6) months of award. Substantial progress is defined as grant execution in forty-five (45) days of award, submission of request for funds within sixty (60) days of award, projects out to bid and costs incurred with submission of first request for funds within six (6) months of award. The OCR reserves the right to rescind the award if substantial progress cannot be demonstrated as described above. Requests for extensions to complete program activities may be limited or not approved. Community Planning projects have a twelve (12) month contract period

C. Procurement

An applicant may choose to use a third-party consultant and/or non-profit subrecipient to help administer the project. For professional service contracts, federal procurement rules will apply. For more information on both procurement and subrecipient relationships, please see Chapter 1 and 4 of the NYS CDBG Administration Manual [Getting Started](#) and [Procurement Standards](#), respectively.

D. Environmental Review

Beginning with the 2023 CFA application round, all CDBG projects will be required to submit an Environmental Review Record (ERR) for National Environmental Policy Act (NEPA) and State Environmental Quality Review Act (SEQRA) at the time of application. The length of time for the NEPA review varies based on the type of activities that are undertaken. Any non-exempt costs incurred prior to approval of NEPA Review would not be eligible for CDBG reimbursement. The cost to undertake and complete NEPA may be eligible for reimbursement, if procured in compliance with federal procurement requirements 2CFR200. Costs up to twelve (12) months prior to award may be eligible, consultation with OCR prior to submission of the CFA application is required. Please contact OCR to determine applicability. For more information, please see Chapter 2 of the NYS CDBG Grant Administration Manual, [Environmental and Historic Review](#).

E. Smart Growth

The Housing Trust Fund Corporation is subject to the New York State Smart Growth Public Infrastructure Act (Chapter 433 of the Laws of 2010) and must, to the extent applicable, make funding decisions consistent with the provisions of the Act.

F. Lead Based Paint Regulations

Applicants must comply with the lead-based paint requirements implemented at 24 CFR Part 35 if proposing activities involving residential properties purchased or rehabilitated in whole or part with CDBG funds.

The lead-based paint regulation defines work practices that must be followed when dealing with lead-based paint in older structures and expands requirements to protect occupants and workers from lead-based paint hazards until lead hazard reduction work is completed.

Lead hazard evaluation and reduction activities for rehabilitation projects are determined by the level of federal assistance received by the project and the per unit evaluation of hard costs. Interim controls are required for projects assisted with less than \$25,000 in Federal Funds. Projects assisted in excess of \$25,000 in Federal

funds are subject to the completion of Part 3 of 24 CFR Part 35. The Lead Based Paint Applicability Worksheet must be completed to document compliance.

Under no circumstances will the HTFC approve the release of funds for a project or activity where lead safe practices and lead safe clearance were not conducted in accordance with all [applicable lead based paint rules and regulations](#).

G. Davis Bacon Related Acts

Applicants preparing to undertake construction in excess of \$2,000 or eight (8) or more units of housing within the same construction contract must comply with the Federal Labor Standards requirements ([Davis Bacon Related Acts](#)) as outlined in 40 USC 276. This regulation requires that workers receive no less than the prevailing wages being paid for similar work in their locality.

H. Section 3

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain United States Housing and Urban Development (HUD) financial assistance shall, to the greatest extent feasible, and consistent with existing federal, State, and local laws and regulations, job training, employment, contracting and other economic opportunities be made available to low- and very low-income persons and locally owned enterprises within the proposed service area. All awards made under the CDBG Program are subject to the requirements of Section 3 of the Housing Act of 1968. Refer to Appendix D for compliance documentation.

I. Equal Employment and Minority and Women Owned Business Participation

Refer to the [Minority and/or Women Business Enterprises \(MWBE\) Policy](#).

Applicants are subject to the Equal Employment Opportunity requirements related to nondiscrimination and equal access. The applicant shall comply with the following, as applicable. Executive Orders 11246, 11625, 12432, and 12168 as amended require States receiving CDBG funds to establish procedures for compliance with EEO and MWBE outreach. To comply with these Executive Orders, NYS HCR and the HTFC have elected to follow the State requirements under Article 15A of New York State Executive Law ***if state funds are used in the proposed program as leverage for CDBG funds***. This requires that all contractors and awardees make affirmative efforts to ensure that New York State Certified MWBE's are afforded opportunities for meaningful participation in projects funded by the HTFC pursuant to Section 313 of the Article.

For federal reporting purposes, applicants are also asked to report on all non-State certified MWBE's (that meet the federal definition of business enterprises that are 51% minority or women owned) that have been hired to provide services for the NYS CDBG Program contract. Please see additional guidance on MWBE requirements as referred to in the Administrative Plans.

J. Non-Discrimination

No person in the United States shall, on the grounds of race, color, national origin, religion, or sex be excluded, denied benefits, or subjected to discrimination under any program funded in whole or in part by NYS CDBG Program funds. Applicants are subject to all federal and State fair housing and equal opportunity laws and orders, as referenced in 24 CFR Parts 92.350 and 92.351 to include: Title V of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), The Fair Housing Act (42 U.S.C. 3601-3620.), Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259), Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107). Refer to [FEHO](#) for more guidance on non-discrimination in the Administrative Plans.

K. Affirmatively Furthering Fair Housing Checklist

Recipients of federal funds have a duty to affirmatively further fair housing (AFFH) pursuant to the Fair Housing Act. New York State will monitor the efforts of local government grantees to satisfy and certify their own duty to AFFH. In general, activities that AFFH should promote non-discrimination and ensure fair and equal access to housing opportunities for all. The [CDBG Grant Administration Manual, Chapter 7](#), provides additional information regarding fair housing obligations. To ensure compliance with the AFFH requirements Recipients **are required to:**

- Display fair housing posters and distribute fair housing materials prepared by New York State, the municipality, US Department of Housing and Urban Development (HUD), or fair housing organizations to community residents, landlords, real estate professionals and lenders.
- Pass a fair housing resolution that demonstrates a “good faith effort” in complying with fair housing requirements. The fair housing resolution adopted by the Recipient must also be publicized and promoted within the community; and
- Designate a fair housing officer who is familiar with the fair housing regulation, have him or her trained on their duties and responsibilities as a fair housing officer, and, through means reasonably calculated to reach the community, publicize the existence of the fair housing officer as the primary point of contact for all fair housing related issues.

The Recipient must carry out the AFFH actions within one (1) year of the award of funds and provide to HCR’s Office of Community Renewal proof of the activities undertaken as a record of the municipality’s activities to satisfy its AFFH requirements. Recipients must be prepared to report on efforts to Affirmatively Further Fair Housing on an annual basis. Reporting will occur on an annual basis through the OCR Annual Performance Report that is due in January of every year.

In addition to the above-mentioned required activities, the Recipient’s AFFH Checklist should identify which of the below activities will also be undertaken. The below checklist does not include every fair housing activity that a municipality could or should undertake. It is however a good starting point of increasing community awareness, ensuring that clear procedures exist for addressing fair housing complaints, expanding the types of housing choice within the municipality, and generally providing all people with the opportunity to live in a community of their choice without discrimination.

If a Recipient intends to complete an action not included in the AFFH Checklist to satisfy one of the categories from the AFFH Checklist, it must apply to Fair and Equitable Housing Office (FEHO) for permission to do so. Questions related to fair housing obligations and/or the AFFH Checklist must be addressed to HCR’s Fair and Equitable Housing Office at (518) 473-3089 or feho@hcr.ny.gov.

Encourage community input on fair housing matters

- Hold an annual public meeting on fair housing. Provide to HCR an agenda, meeting notes, and reports concerning the steps that will be taken to address fair housing issues raised at these meetings. Include list of attendees/sign-in sheet, location and date.

Ensure public policy affirmatively furthers fair housing

- Sponsor, or work with a community development/planning organization, rural/neighborhood preservation, or fair housing organization to conduct a survey to assess the community’s housing needs, including barriers to fair housing choice.
- Survey special housing needs of minorities and women to determine possible effects of discrimination.

Promote fair housing education

- Elected officials, municipality staff in charge of planning, zoning, building, housing, community and economic development, and their third-party consultants attend a fair housing training program.

- Expert provides a fair housing education and training program for real estate professionals, including developers, sales and rental agents, lenders, and property managers.
- Conduct a meeting with financial institutions that serve the community to discuss the importance of providing financial assistance for housing in all geographic areas and to all residents in the community.

Recipients will have a continuing obligation through the contract period to disclose within thirty (30) days to HCR's Fair and Equitable Housing Office if the municipality becomes the subject of any fair housing proceeding before a federal, state and/or local adjudicatory body, or if it receives a final disposition in a proceeding involving fair housing law claims.

Please note that the actions listed above represent the commitment of the Office of Community Renewal (OCR) to Affirmatively Further Fair Housing (AFFH), and supplement, but do not replace the responsibility of each grantee to AFFH as described in the CDBG Grant Administration Manual.

L. Violence Against Women Act (VAWA)

Information specific to VAWA compliance can be found on the FEHO website at <https://hcr.ny.gov/marketing-plans-policies>

M. Build America Buy America (BABA)

Any infrastructure activity that is awarded NYS CDBG funds on or after November 14, 2022, is subject to compliance with BABA. The Build America, Buy America Act ("BABA" or "the Act") was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act ("IIJA") ([Pub. L. 117-58](#)). The Act establishes a domestic content procurement preference, the BAP, for Federal infrastructure programs. Section 70914(a) of the Act establishes that no later than 180 days after the date of enactment, HUD must ensure that none of the funds made available for infrastructure projects may be obligated by the Department unless it has taken steps to ensure that the iron, steel, manufactured products, and construction materials used in a project are produced in the United States. In section 70912, the Act further defines a project to include "the construction, alteration, maintenance, or repair of infrastructure in the United States" and includes within the definition of infrastructure those items traditionally included along with buildings and real property. Thus, beginning May 14, 2022, new awards of FFA by HUD through a program for infrastructure, and any of those newly obligated funds then obligated by the grantee, are covered under BABA provisions of the Act, [41 U.S.C. 8301 note](#), unless covered by a waiver.

APPENDICES

A. LMI NATIONAL OBJECTIVES COMPLIANCE DOCUMENTATION

1. DATA COLLECTION

As part of the application process, applicants will need to provide income data to demonstrate the need and/or market for each activity proposed and to provide evidence that each activity will meet a National Objective. For activities meeting the National Objective of assisting LMI persons and/or households, two types of data can be used to demonstrate compliance – Census data or income survey data. In addition to collecting income data, applicants must use other methods for documenting need.

2. CENSUS DATA

The most recent Census data can be used to determine and provide evidence of compliance with the LMI Area Benefit National Objective. If it is believed that the data does not accurately reflect the current economic condition of the area, the Applicant may conduct an income survey. 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.
 - 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.
 - 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.

3. INCOME SURVEYS

Applicants may need to conduct an income survey to document compliance with the LMI Area and Direct Benefit National Compliance requirements. Applicants using a third-party to conduct an income survey must obtain all of the survey documents (instrument, summary, surveys) and retain this information in their project files.

The HUD Exchange provides a [CDBG Income Survey Toolkit](#).

- **LMI Direct Benefit National Objective**
For projects meeting a Direct Benefit National Objective such as housing rehabilitation, homeownership, job creation and retention, and wastewater and drinking water laterals where eligibility is directly based on the individual household income, with the use of income survey data, applicants must demonstrate that there is a LMI market and a need for the direct benefit activity being proposed.
- **LMI Area Benefit National Objective**
For Area Benefit activities, income survey data may be used to demonstrate that 51% of the area is LMI and to aid in demonstrating the LMI need for the proposed activity.

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.

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 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.

4. 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 \$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.

Income limits can be found at [HUD Income Limits](#) (Limits) for use in determining eligible income. The Limits are arranged by Metropolitan Statistical Area and County. They show the area median income and the income limits at 30%, 50% and 80% by household size. Applicants use the income limits in the income survey instrument and/or in calculating the results of the income survey. Household size and income are needed to determine if a household meets the LMI requirements.

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 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.

5. INCOME SURVEY MATERIALS

Racial/Ethnic Composition		
Racial Categories (HUD Designated)	Racial Group	*Hispanic
	Total # Of	Total # Of
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.

6. 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 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:

- a. 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.
- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. HUD provides guidance for anticipated margins of error.

7. AGE OF INCOME SURVEYS

The OCR will accept income surveys that are up to 3 (three) years old at the time of submission of the application. If the application will include an income survey that will be more than three years old, the applicant must submit a waiver request to the OCR at least 10 (ten) days prior to the submission date. **Requests submitted within ten (10) days prior to submission deadline date will be denied.**

To request a waiver, the following must be submitted:

- Written request on municipal letterhead including an explanation why the applicant believes the income survey is still valid
- Project map of the service area
- Copy of survey instrument
- Copy of survey results
- Copy of survey methodology
- Summary of housing units that have changed hands since the income survey was completed

The OCR will not grant a waiver to any income survey that is more than five (5) years old at the time an application is submitted.

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

B. HUD INCOME LIMITS

The most current and up to date [HUD income limits](#) are available online.

For projects claiming LMA National Objective for area wide for projects benefitting a population that is more than 51% low and moderate income, [community wide census data is available here](#).

Please review this statement from [HUD on 2023 Income Limits](#).

C. DEFINITIONS OF ANNUAL HOUSEHOLD INCOME

For purposes of determining whether a household is low- and moderate, income, CDBG permits two definitions:

- Adjusted gross income as defined for purposes of reporting under internal revenue service (IRS) form 1040 for individual federal annual income tax purposes.
- Annual income as defined under the Section 8 housing assistance payments program at 24 CFR part 5.

General Category	24 CFR 5.609 paragraph (b) Income Inclusions
1. Income from wages, salaries, tips, etc.	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2. Business Income	The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest & Dividend Income	Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4. Retirement & Insurance Income	The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in number 14 of Income Exclusions).
5. Unemployment & Disability Income	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (except as provided in number 3 of Income Exclusions).
6. Welfare Assistance	<p>Welfare Assistance. Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income:</p> <ul style="list-style-type: none"> • Qualify as assistance under the TANF program definition at 45 CFR 260.31; and • Are otherwise excluded from the calculation of annual income per 24 CFR 5.609(c). <p>If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:</p> <ul style="list-style-type: none"> • the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus • the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is reduced from the standard of need by applying a percentage, the amount calculated under 24 CFR 5.609 shall be the amount resulting from one application of the percentage.
7. Alimony, Child Support, & Gift Income	Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. Armed Forces Income	All regular pay, special day and allowances of a member of the Armed Forces (except as provided in number 7 of Income Exclusions).

D. SECTION 3 COMPLIANCE

Housing construction and rehabilitation projects as well as public works projects that receive more than \$200,000 in HOME Investment Partnership Program (HOME), Community Development Block Grant (CDBG), federal Housing Trust Fund or other funding from the U.S. Department of Housing and Urban Development (HUD) must comply with Section 3 of the Housing and Urban Development Act of 1968 (“Section 3”) as implemented by regulations found at 24 CFR 75.

Section 3 requires that economic opportunities generated by HUD funds be prioritized for low-income individuals and the businesses that hire or are owned by them, particularly in the neighborhood surrounding the project. All entities involved in the Section 3 Project (the entity awarded the HUD funds through the Housing Trust Fund Corporation (HTFC) (the Awardee), the General Contractor, other contractors, and subcontractors (together, the “Subs”) must, to the greatest extent feasible, engage in efforts to achieve Section 3 goals and objectives.

The Benchmark Goals for each Section 3 Project are the following:

- 25% of Total Labor Hours worked by Section 3 Workers, of which
- 5% of Total Labor Hours worked by Targeted Section 3 Workers.

Projects will be required to report on these numbers mid-year and end-year as well as at project close-out. All reporting must include Total Labor Hours, Section 3 Worker hours and Targeted Section 3 Worker hours for Awardee and all the Subs on the Project.

Failure to meet the Benchmark Goals requires a narrative and supporting documentation indicating what the Awardee, General Contractor and Subs did to ensure that economic opportunities were made available to low-income individuals and Section 3 Businesses. A non-exhaustive list of these efforts can be found at this link: <https://hcr.ny.gov/S3SubReportingForm>. Section 3 compliance is not optional, but it is flexible depending on the type of Project, location and needs of the local workforce.

More information and guidance on Section 3 compliance can be found in NYSHCR’s Section 3 Policy Manual here: <https://hcr.ny.gov/section-3-compliance>. Links to required documents and useful resources can be found below.

KEY DEFINITIONS

Section 3 Worker: An individual employed by Awardee or its Subs who works on the Section 3 Project and who currently fits, or when hired within the past 5 years fit, at least one of the following criteria, as documented:

- 1) The worker’s income for the previous or annualized calendar year is categorized as low-income (80% AMI or less).
- 2) The worker is employed by a Section 3 Business (these are also Targeted Section 3 Workers); or
- 3) The worker is a YouthBuild participant (these are also Targeted Section 3 Workers).

The hiring of a Section 3 or Targeted Section 3 Worker shall not be negatively affected by a prior arrest or conviction. The Section 3 Hiring Form (link below) will guide an employer in determining which employees/candidates are Section 3 and Targeted Section 3 Workers.

Section 3 Business or Section 3 Business Concern: These terms are used interchangeably and mean a business that meets at least one of the following criteria, documented within the last 6-month period:

- 1) At least 51 percent owned and controlled by low-income persons.
- 2) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 Workers: or
- 3) At least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Targeted Section 3 Worker: A Section 3 Worker who:

- 1) is employed by a Section 3 Business: or

- 2) currently fits or when hired fits at least one of the following categories, as documented within the past five years:
- (i) Living within the Service Area or the Neighborhood of the project; or
 - (ii) A YouthBuild participant.

Total Labor Hours: The number of paid hours worked by persons on a Section 3 Project, including those worked by Awardees, subawardees, contractors and subcontractors.

Document	Summary	Required for Use by:
Contract Clause	Mandatory language for all S3 projects	Awardee, GC, all Subs
Participation Plan	Outlines mandatory minimum efforts and sets forth Project's plan to meet S3 objectives. Must be completed before funding contract execution.	Awardee & GC, Suggested for all Subs
Sub-Reporting Form & Greatest Extent Feasible Checklist	Form GC and Subs use to report S3 performance up to Awardee	GC and all Subs
Consolidated Awardee Reporting Form	Form Awardee uses to report consolidated S3 performance to NYSCHR	Awardee (consolidating Sub Reporting Forms)
Section 3 Business Self Certification	Forms businesses can use to self-certify that they meet the S3 definition for a S3 business	Awardee must have on file for all S3 Businesses on Project
Hiring Form	Form to be used to determine which employees/applicants are Section 3 Workers % Targeted Section 3 Workers	Awardee, GC, all Subs

E. APPLICABLE LAWS AND REGULATIONS

There are numerous Federal, state and local regulations that govern or impact the State CDBG Program. It is the responsibility of the Applicant to ensure compliance with all applicable Federal, state and local regulations and statutes. The following is a listing that is not all inclusive, of Federal regulations that apply to the State CDBG Program:

- Efforts to Affirmatively Further Fair Housing
- Davis-Bacon Fair Labor Standards Act (40 USC 276a)
- Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333)
- Copeland Anti-Kickback (18 USC 874)
- Title VI of the Civil Rights Act of 1964 (42 USC 200(d))
- Title VIII of the Civil Rights Act of 1968 (42 USC 3601)
- Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 792 and 3601)
- Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC 1701 (u))
- Section 109 of the Housing and Urban Development Act of 1974, as amended (42 USC 5309)
- Age Discrimination Act of 1975, as amended (42 USC 6101)
- Architectural Barriers Act of 1968, as amended (42 USC 4151)
- Americans with Disabilities Act of 1991
- Equal Employment Opportunity (Executive Order 11246, September 24, 1965)
- Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259)
- The Hatch Act (5 USC 1501 et seq.)
- The National Environmental Policy Act of 1969
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and amendments of 1987
- Title IV of the Lead-Based Poisoning Prevention Act (42 USC 4831)
- HUD Reform Act of 1989
- 24 CFR Parts 35, 58, 85, and 570
- Housing & Community Development Act of 1974, as amended
- 2CFR 200, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments; Section 104(d) of the Housing and Urban Development Act of 1974, as amended (Anti-Displacement)