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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. 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
- Relocation
- Privately-Owned Utilities
- Rehabilitation
- Construction of Housing (under limited circumstances)
- Code Enforcement
- Special Economic Development Activities
- Microenterprise Assistance
- Planning and Capacity Building
- Miscellaneous Other Activities

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 The Guide National Objectives and Eligible Activities is another good resource for understanding the eligibility of activities and is [available online here](#).

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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. APPLICATION REQUIREMENTS

A. General Guidelines

Funding applications must be submitted in accordance with the guidelines and requirements of the annual Notice of Funding Availability (NOFA's) and related Request for Application's (RFA's) published by the OCR. All required thresholds, attachments, deadlines, scoring, and cross-cutting federal requirements are contained within the relevant RFA and must be followed for eligibility. Applicants are not guaranteed funding, and all awards are made subject to availability of funds and at the discretion of the NYS Housing Trust Funds Corporation (HTFC). All application information can be found on the CDBG website.

B. Joint Applications

24 CFR 570.486(b) states that "any activity carried out by a recipient of State CDBG program funds must significantly benefit residents of the jurisdiction of the grant recipient, and the unit of general local government must determine that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act." For an activity to *significantly benefit residents of the recipient jurisdiction*, the CDBG funds expended by the recipient must chiefly benefit its residents.

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Therefore, *applicants must contact the OCR* if a significant portion of the proposed project beneficiaries or project activities are located outside the applicant's jurisdiction, e.g. shared utility such as a wastewater treatment plant. In those cases, a joint application will be required. A joint application will be funded as a multi-jurisdictional award and must include a cooperation agreement which:

- States that the parties have agreed to cooperate in undertaking the project.
- Delineates the responsibilities and authorities of each party with respect to the administration of the grant, and
- Authorizes one of the parties to be the recipient of the funds and have primary administrative responsibility.

Each participating jurisdiction is required to comply with all citizen participation requirements, i.e. hold a public hearing and provide all required supporting documentation.

Note that a County may undertake a project in a municipality without meeting the requirements of a joint application, since the County's jurisdiction includes the municipality.

III. 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
- 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.

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.

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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 any Request for Applications (RFA) or Notice of Funding Availability (NOFA).

Eligible direct costs may include acquisition, clearance, site improvements, conversion of existing structures to housing and rehabilitation of the units, including lead-based paint hazard reduction or other 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:

- 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);

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- 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.
- Homeowners insurance and/or flood insurance. Please note that for any property located in a Special Flood Hazard Area (SFHA), flood insurance will be required for a period not less than the Declaration of Interest. The full cost is the responsibility of the property owner

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 a written agreement with each property owner 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.

D. General Guidelines

Single Family Housing Rehabilitation

Procurement of Rehabilitation Contractors

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For all owner-occupied housing rehabilitation activities, the homeowner is considered the responsible entity for the purposes of procurement of contractor rehabilitation services and is therefore not subject to the requirements of 2 CFR Part 200.317-327.

The Local Program Administrator (LPA) or Unit of General Local Government (UGLG), on behalf of the homeowner, shall facilitate:

- Compiling bidder lists
- Developing a scope of work, technical specifications, and in-house cost estimate
- Soliciting, receiving, and comparing bids
- Resolving disputes between the contractor and homeowner
- Any other administrative tasks that may arise during the term of assistance to that household.

Open and fair competition shall be demonstrated by soliciting at least 3 bids for all contracts. The LPA/UGLG, contractor, and homeowner must enter into a tri-party agreement for the rehabilitation work to be performed. Homeowners wishing to contract with other than the lowest responsible bidder must pay the cost difference between the accepted bid and lowest bid received.

Repair or rehabilitation of single-family homes. All CDBG assisted units must meet NYS and/or Local Code upon completion of construction activities.

Examples:

Minor scattered site housing rehabilitation – Unit of local government requests CDBG funding to complete minor level repairs. This might include environmental remediation and health & safety improvements identified locally as priorities i.e., replacing polluting heat sources, supplementing weatherization resources, lead paint remediation/abatement, handicapped accessibility, and utility hookups.

Moderate/Substantial scattered site housing rehabilitation – Unit of local government requests CDBG funding to provide comprehensive rehabilitation for low-income homeowners. This may include rehabilitating all items that do not meet code or it may involve what is sometimes called “whole house rehabilitation,” meaning undertaking substantial repairs throughout the home in order to bring it up to code and to improve the overall livability and functionality of the unit.

Reconstruction of existing housing - Unit of local government requests CDBG funding to provide comprehensive reconstruction for low-income homeowners. This includes demolition of an existed owner-occupied residential unit when the cost of rehabilitation is prohibitive or is more than the cost to replace.

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Vacant housing – Unit of local government requests funds to rehabilitate dilapidated or severely substandard property owned by Land bank or other not-for-profit subrecipient for sale to eligible homebuyer.

Assisted units with NYS CDBG will be subject to a minimum period of affordability of not less than five (5) years.

Multi-Family Housing Rehabilitation

Repair or rehabilitation of multi-unit dwellings. Applicant must differentiate between properties containing 2–4-units and those containing 5 or more units.

Examples:

Scattered site housing rehabilitation – Unit of local government requests CDBG funding to provide comprehensive rehabilitation for multi-unit properties in which private owner has committed to renting to low- to moderate income tenants.

Public Housing Rehabilitation - Unit of local government requests funds to rehabilitate public housing units. Projects may be one or more buildings on a single site, or multiple sites that are under common ownership, management, and financing.

Repair or rehabilitation of multi-unit building with two to four (2-4) in a single site and projects five (5) or more units in a single site will be subject to period of affordability. For projects of five (5) or more units, a regulatory agreement for affordability will apply. The Regulated Units shall remain affordable housing for at least the below-listed periods of affordability (POA) from the date of project completion:

Rental Rehabilitation Per Unit

Less than \$15,000 Investment:	5 years
\$15,000-\$40,000 Investment:	10 years
Greater than \$40,000 Investment:	15 years

Please refer to Exhibit 5-1 Period of Affordability

Manufactured Housing Replacement

Demolish and dispose of a sub-standard owner-occupied manufactured or mobile home and replace with a new manufactured home, stick built or modular single-family home. The replacement unit must be constructed on the same lot.

Utility upgrades and replacement of and/or upgrades to existing on-site drinking water wells and septic systems should be included as part of the manufactured home replacement project.

Assisted manufactured housing replacement units with NYS CDBG will be subject to a period of affordability of not less than ten (10) years.

Infrastructure in Support of Existing Housing

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Replacement or new construction of infrastructure for residential water or wastewater for low- and moderate-income housing units. Including, but not limited to:

- Assistance to manufactured housing parks to address drinking water, sanitary sewer, stormwater management.
- On-site sanitary septic system and drinking water (private) well
- Lateral connections for income eligible housing units to connect to public drinking water and/or sanitary sewer systems.
- Related plumbing modifications
- Targeted replacement of lead water supply laterals and plumbing

Other eligible infrastructure may include installation of wi-fi.

Assisted units with NYS CDBG will be subject to a minimum period of affordability of not less than five (5) years.

Other Guidelines

- All participants in a NYS CDBG funded housing rehabilitation program must enter into an agreement between the Grantor and Grantee.
- All non-owner-occupied multi-unit housing of five (5) or more units must enter into a Declaration of Interest that secures the affordability of all units for a period of not less than five (5) years.
- All non-owner-occupied multi-unit housing of five (5) or more units must further demonstrate compliance with all applicable cross-cutting regulations pertaining to Equal Opportunity, Section 3, Minority and Women-Owned Business Enterprises (M/WBE), and Affirmatively Furthering Fair Housing (AFFH) practices (described above). Recipients may be subject to regular reporting by NYS HCR on practices to comply with the above. Recipients may also be subject to project monitoring, and compliance with civil rights requirements will be reviewed at the time of monitoring.
- For more information, please see Chapter 7 of the NYS CDBG Grant Administration Manual, “Other Federal Requirements”.
- Information specific to VAWA compliance can be found on the FEHO website at [Marketing Plans & Policies | Homes and Community Renewal \(ny.gov\)](https://www.ny.gov/marketing-plans-policies-homes-and-community-renewal).
- Manufactured Housing/Mobile Home Rehabilitation.
 - Effective April 30, 2024, the OCR will no longer allow general repairs to any manufactured housing units.
 - Effective May 1, 2024, the OCR will allow accessibility modifications to manufactured housing units built after July 2006.
 - Accessibility modifications can include:
 - Door widening
 - Ramps into the unit
 - Modifications to kitchens and baths to accommodate a wheelchair.

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- Units must be owner occupied and cannot be within a manufactured housing park.
- Accessibility modifications are limited to no more than \$20,000.
- For general repairs to units built after July 2006, please contact the [NYS HOME Program](#).
- 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 any rental housing units that may involve any temporary relocation or permanent displacement of tenants must adhere to federal relocation requirements. A relocation and tenant notification plan for any non-owner-occupied rental regardless of the number of units must be submitted to the OCR prior to commencement of any work. 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.

IV. PUBLIC INFRASTRUCTURE

A. Eligible Activities

Eligible activity types include:

- Public/private drinking water and distribution
- Public/private sanitary sewer collection and treatment
- Flood control and storm water management.

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

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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.
- 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.

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- 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

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.

For projects undertaking an income survey to document compliance with National Objective Compliance, survey methodology must be clearly documented and include documentation on how response rates were calculated, confidence intervals were determined, and margins of error were established. The HUD Income Survey Toolkit provides documentation on this.

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.

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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](#). Beginning January 1, 2024, all income surveys undertaken for the purpose of applying for NYS CDBG funds will be required to follow the HUD guidance.

- **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 for People With 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.

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,

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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.

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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.

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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.

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- 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.

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- 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. The HUD toolkit provides guidance for anticipated margins of error, confidence intervals and response rates.

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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**

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D. 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](#).

E. 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.

V. 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; childcare centers; removal of architectural barriers (ADA compliance) 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

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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
- Firetrucks
- Other (sidewalks, demolition)

“Buildings for the general conduct of government” are generally not eligible for NYS CDBG funding assistance. The exception is that CDBG funds may be used to remove from such buildings material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons, also known as ADA compliance. Reference: §570.207(a)(1) v

As defined in the statute, the term “buildings for the general conduct of government” means “city halls, town halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of government are conducted.” The term includes court houses but does not include jails or prisons. It does not include buildings which are used to deliver services to the public, such as police stations or fire stations. “Mini-city halls,” which are used by some large communities to make certain services available closer to the public, are also not included under this term. Generally speaking, buildings which house administrative functions of the government are considered to be “buildings for the general conduct of government.” Thus, CDBG assistance to a building in which the chief of police and the fire captain of a city have their offices would generally be ineligible. For small communities where one building provides both the administrative functions and services directly to the public, a determination should be sought from OCR as to whether the building may be assisted under this category.

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.

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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.

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

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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.
- 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).

VI. 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.

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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 20% of the CDBG award in program delivery, administration, and training costs combined. Of the 20%, neither administration or program delivery can exceed more than 10% of the total CDBG award.

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

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.

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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:

- 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

- Applications must be submitted within nine (9) months of the public hearing.
- 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

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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 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. Flexibility may be granted in extraordinary circumstances.
- Recipients administering high-performing microenterprise activities may be eligible for a limited “contract renewal”. For more information, please see the CDBG website. All renewal and contract amendment are subject to HTFC review and approval.

VII. 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.

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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.

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

- 12-month contracts. Community planning contracts are subject to 12-month 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.

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- 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.

VIII. 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:

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- 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.

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IX. EXHIBITS

Exhibit 6-1 Period of Affordability

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1. Period of Affordability (All Activities)

The Recipient shall comply with the regulatory requirements as set forth below, as applicable, and shall require that any CDBG assisted Project meet the affordability and regulatory requirements based on the CDBG funds invested.

If, during the term, the CDBG assisted project no longer meets the requirements of this Schedule, the Recipient must repay the CDBG funds to the Corporation. The Recipient must secure the investment of CDBG funds with the Corporation's applicable template Declaration of Interest, unless CDBG funds were used to purchase equipment, then the Recipient must follow regulations at 2CFR200.313 as stated below. Templated Declaration of Interests are available on the OCR website at <https://hcr.ny.gov/community-development-block-grant>.

A participant, who owns the eligible property receiving CDBG funding assistance, is subject to use restrictions of a Declaration of Interest commencing on the date of Project completion. The time period ("Period of Affordability" and "Regulatory Period") is based on the total amount of assistance (per unit if a multi-unit property) provided to the owner through the CDBG program. The date of project completion is the date of the final inspection and must be documented by a formal, final inspection report. Subrecipients are responsible for ensuring that the requirements of the Declaration of Interest are met.

TERM AND SECURITY INSTRUMENT BY ACTIVITY:

Owner Occupied Housing Rehabilitation (1-4 units)

Period of Affordability: 5 years (Any investment)

Security Instrument: Declaration of Interest in Property

Non-Owner Housing Rehabilitation (1-4 units)

Period of Affordability (Rehabilitation Per Unit):

Less than \$15,000 Investment: 5 years

\$15,000 - \$40,000 Investment: 10 years

Greater than \$40,000 Investment: 15 years

Security Instrument: Declaration of Interest in Property

Infrastructure in Support of Housing Activities

(Any owner occupied or non-owner-occupied housing)

Regulatory Period: 5 years (Any investment)

Security Instrument: Declaration of Interest in Property

Public Facility Activities

Regulatory Period: 5 years (Any investment)

Security Instrument: Declaration of Interest in Property

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Property Clearance Activities

Regulatory Period: 5 years (Any investment)

Security Instrument: Declaration of Interest in Property

Equipment Purchase Activities

Follow all equipment management and disposition requirements at 2CFR200.313.

2. Affordability Requirements

The affordability requirements apply during the POA to all assisted rental units and include:

Low- to Moderate Income Occupancy: At least 51% of the tenants must be at or below 80% of Area Median Income (AMI).

Rent Limits: Not to exceed 30% of income, less the approved Utility Allowance, if applicable. If after initial occupancy and income certification, if the tenant's income exceeds 80% of the AMI, the rent shall not exceed 30% of the tenant's income or fair market rent.

Utility Allowances: If utilities are not included in the rent, the rent limit must be adjusted to reflect a utility allowance. The owner must use the local Public Housing Authority's (PHA) schedule of utility allowances. The relevant Utility Allowance(s) must be deducted from the rent calculated for the tenant household. The calculation must be reflected on the annual CDBG Rental Project Compliance Report, and the Utility Allowance Schedule provided to support the report.

Annual Tenant Household Income Eligibility Certifications: Tenant incomes must be certified by the Owner at initial occupancy and annually thereafter during the POA. Income certifications must be signed and dated by the Tenant and Owner. For existing tenants, income certifications need to be completed and signed at the time of lease renewal.

Execution of Lease Addendums: The Owner and Tenant execute the following lease addendums that are to be attached to the Owner lease:

CDBG & CDBG-CV Lease Addendum: confirms Tenant and Owner agreement with NYS CDBG lease and occupancy requirements, available on the NYS Homes and Community Renewal's Statewide Asset Management Unit (SAMU) website at: <https://hcr.ny.gov/asset-management>

Violence Against Women Act (VAWA) Lease Addendum: Notifies Tenants of rights and protections under VAWA. For more information, please see the "NYS HOME and CDBG Program Violence Against Women Act Policy." Additional guidance, VAWA Tenant information notices and template addendums are available from the

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HCR Fair and Equitable Housing Office (FEHO) online at: <https://hcr.ny.gov/marketing-plans-policies>

Maintenance of the Rental Units: Throughout the POA, the units must be maintained in compliance with NYS and Local Code.

Onsite Inspections: To ensure the continued good condition of the project, SAMU will perform an on-site inspection in the first year (within 12 months of transfer by OCR to SAMU) and no less than every three years thereafter.

Changes in Rents: The Owner will submit proposed rents to SAMU but may not implement the rents until SAMU approves. Prior to implementation, changes in rent require a minimum of 30 days' notice to Tenants or longer as provided by their lease and the law. See rent increase and budget forms available on the SAMU website at: <https://hcr.ny.gov/asset-management>

3. Determining Income Eligibility

Existing Tenants are certified as income eligible prior to lease renewal execution.

New Tenants for vacant units must be certified as income eligible prior to lease execution and occupancy.

The Owner must use the HUD CPD Income Eligibility Calculator to determine income per the Part 5 method. The income determination summary from the calculator must be used to document income in the tenant file. The calculator is available online at: <https://www.hudexchange.info/incomecalculator/>

Owners must use the HTFC Credit and Justice-Involvement Assessment when selecting tenants:
<https://hcr.ny.gov/marketing-plans-policies>

At initial occupancy for a vacant unit, 2 months source documentation is required to document Tenant income.

After initial occupancy, Tenant self-certifications of income are permitted. Source documentation is not required for income re-certifications.

4. Changes in Rents

Prior to implementation, changes in rent require a minimum of 30 days' notice to Tenants or longer as provided by law.

See template Rent Increase and Budget Forms available on the SAMU website at: <https://hcr.ny.gov/asset-management>

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5. Annual Reporting and Recordkeeping

The Owner is responsible for ensuring full compliance for each assisted unit throughout the POA and for maintaining records to document such compliance. The Owner must annually certify to SAMU that the condition of the units complies with NYS and/or Local Code, have a valid certificate of occupancy and have been rented to income eligible Tenants.

To document these requirements, the Owner must submit to SAMU, within 120 days of the project's fiscal year end:

- A. CDBG Owner Annual Certification of Occupancy Report: The form is available on the SAMU website at: <https://hcr.ny.gov/asset-management>
- B. CDBG Rental Project Compliance Report: The form is available on the SAMU website at: <https://hcr.ny.gov/asset-management>.
- C. General rental housing records must be kept for five years after project completion as defined in 24 CFR 92.2. Tenant income, rents and inspection information must be kept for the most recent five- year period, until five years after the POA ends.

6. Ongoing Monitoring and Inspections During the POA

Within 12 months of the project's completion in HUD's IDIS system by OCR, SAMU will do an initial on-site inspection. Thereafter, SAMU will perform an initial on-site inspection at least one year of closeout with OCR and will endeavor to conduct onsite inspections least once every three years thereafter. To prepare for the initial site visit, SAMU will contact the Owner and send pre-monitoring information.

NYS CDBG allows for the inspection of a sufficient sample of CDBG assisted units in a multi-family development rather than inspecting all the CDBG assisted units in the development.

The site, building exterior, building systems and common areas for each building must be inspected. All health and safety issues identified must be corrected immediately. SAMU must re-inspect within 12 months of the corrective action.

Rather than an on-site re-inspection, as approved on a case-by-case basis by SAMU, correction of minor deficiencies may be verified by a third party such as through a paid invoice showing a repair was completed.

- A. After the initial monitoring, SAMU will issue a monitoring report that addresses any issues related to project viability and will work with the Owner to ensure compliance to the extent feasible.

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B. Throughout the POA, SAMU will continue to monitor:

- i. Verify on-going rent and occupancy requirements.
- ii. Verify leases, Tenant incomes and rents, and utility allowances.
- iii. Verify compliance with the NYS CDBG grant agreement, Regulatory Agreement and NYS CDBG note and mortgage.

7. Identification and Addressing Risk

Risk is determined for CDBG projects in compliance with the NYS CDBG Program Risk Based Monitoring System. During the POA, SAMU will categorize monitoring violations and risk based on three levels of non-compliance:

- A. Level 1: One-time instances of noncompliance.
- B. Level 2: Moderate to severe instances of noncompliance, multiple occurrences, and/or suggest that there are problems with management or operational issues in carrying out requirements.
- C. Level 3: Instances of gross negligence, fraud, discrimination, or physical conditions that pose an imminent threat to the health or safety of the Tenants.

Based on the risks identified, SAMU may provide assistance to the Owner for non-compliance based on three stages of intervention:

- A. Stage 1 - Low-level Intervention:
 - Identify problem areas with the Owner and mandate required corrective actions.
 - Plan a strategy to include training and technical assistance to help address identified issues.
 - Require more frequent or more thorough reporting by the Owner.
 - Conduct more frequent desk and/or on-site monitoring reviews.
- B. Stage 2 - Moderate-level Intervention:
 - For continued non-compliance, require full repayment of all CDBG funds invested in the project.
- C. Stage 3 - High-level Intervention:
 - Initiate legal action.

8. Corrective Actions

- A. SAMU will take appropriate actions during the POA when performance problems or situations of non-compliance arise.
- B. SAMU reserves the right to conduct additional monitoring, may provide technical assistance as indicated by the monitoring and will enforce all provisions of the NYS

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CDBG contract, Regulatory Agreement and NYS CDBG security instruments as applicable throughout the POA.

9. Supplemental Documents Identified & Referenced

- NYS CDBG Rental Owner Annual Certification of Occupancy Form
- NYS CDBG Rental Project Compliance Report
- NYS CDBG Lease Addendum Form
- NYS HOME & CDBG Violence Against Women Act Policy and Lease Addendum