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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.

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.

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.

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);
- 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. Income documentation must be no more than 12 months old at the time of assistance. Note that if more than 12 months elapse between the time of income qualification and execution of local agreement for assistance, income must be reverified.
- 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

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 an 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.

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

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 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. 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).
- 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.
    - 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.

- 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).
- Special notes:
    - Tree removal - Any rehabilitation activity that includes tree removal must be documented (photos and justification) and submitted for pre-approval by OCR.
    - Whole house generators: Minimum life 10 years; Whole house generators are generally beyond a typical scope of work except in cases of documented medical need where vulnerable populations require electricity to power critical and lifesaving medical devices, oxygen, refrigeration of medication, and the like and/or for homes in remote locations where loss of power is frequent and long lasting. Any generator must be Energy-Star rated and hard wired as a permanent fixture of the home
    - Air Conditioning: Repair Standard and Minimum Life: 3 Years - Air conditioning is beyond the scope of this program except in cases of documented medical need for cooling and/or preventative filtration. Any air conditioning unit provided must be Energy-Star rated and must not exceed the recommended capacity for the room in which it will be installed.

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 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.
- 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.

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 on an area basis, two types of data can be used to demonstrate compliance – Census data or income survey data.

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. For projects meeting national objective through the use of census data, please note that applicants must

- Provide screen shot of results, must include date stamp
- This data must be perfectly coterminous with service area. Projects that are proposing beneficiaries within a district may not be able to use this data source and may be required to undertake an income survey.

HUD provides an interactive mapping tool that calculates LMI percentages by community here: Low-and Moderate-Income Area Data. 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

Income surveys may be used for projects seeking to qualify for NYS CDBG funding under the National Objective of LMI Area Benefit. Surveys are generally conducted for public infrastructure and public facilities projects in cases where:

- The activity serves a defined subset of a larger jurisdiction that does not exactly overlap with census data (for example, a water district, neighborhood, or street);
- Census data have a high margin of error
- There is documented evidence that Census data do not reflect current conditions.

Income surveys cannot be used:

- Solely because census data indicate that the service area does not meet the 51% LMI threshold
- To redefine or manipulate a service area for the purpose of qualifying under LMI
- In combination with LMISD or ACS data to create a blended LMI percentage

New Applicants for NYS CDBG funds are encouraged to use HUD income survey methodology over NYS income survey methodology

NYS developed this income survey methodology for grant applicants and recipients several years before HUD released its own income survey toolkit. NYS income survey methodology does not conflict with HUD's methodology, however it is more restrictive.

In 2025, NYS CDBG allowed Applicants and Recipients to use either NYS or HUD income survey methodology. As of January 1, 2027, NYS CDBG will start to phase out its income survey methodology in preference for HUD materials so that income surveys can be more consistently administered and monitored.

Starting January 1, 2027, all NYS CDBG Applicants administering income surveys must use HUD income survey methodology in applications for funding. HUD's income survey guide can be found here and additional HUD survey tools are available here.

Because survey data remains valid for 5 years after the completion of the survey, the NYS income survey toolkit remains available here for reference for previous grant Recipients or Applicants that have already started or completed an income survey using this methodology. **Income surveys conducted using the NYS methodology will not be accepted starting January 1, 2032.**

D. General Guidelines & OCR Policies

- 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 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.

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 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

The NYS CDBG program provides grant funds to eligible communities for economic development projects that result in the creation or retention of permanent jobs, principally for persons from low- and moderate-income families. The two primary categories of funding are:

A. Stand-alone Business Assistance

Funding is provided to eligible communities to provide financial assistance to a for-profit business for an identified CDBG eligible activity which will result in the creation or retention of permanent, private sector job opportunities, principally for persons from low-moderate income families. This category may also include the improvement of publicly owned infrastructure necessary to stimulate business expansion and job creation.

Eligible Costs:

- acquisition of real property
- machinery, furniture, fixtures and equipment
- working capital, including payroll
- inventory
- employee training expenses
- Program Delivery and Administration
- building construction and renovation. Note that the use of CDBG funds toward construction and renovation costs may trigger Davis Bacon Wage Rate requirements. This includes the cost of equipment that requires installation as well as the purchase of materials used for construction activities.

Funding Structure:

- Maximum award amount of $750,000 (minimum $25,000)
- Business with more than 25 employees at the time of application may be eligible for up to $15,000 for each Full Time Equivalent (FTE) job created or retained
- Businesses with 25 employees or less at the time of application may be eligible for up to $25,000 for each (FTE) job created or retained, up to a maximum of $100,000
- NYS CDBG funds can only fund up to 40% of a total project cost, not to exceed the maximum award amount. Applicants may request up to 50% for projects where cash equity meets or exceeds 20% of the total project costs
- NYS CDBG funds must be used as gap funding to induce project completion
- NYS CDBG funds for program delivery and grant administration costs combined **cannot exceed** $16,000

Types of Business

CHAPTER 5
ELIGIBLE ACTIVITIES & REQUIREMENTS

Eligible activities include providing assistance to businesses that are involved in sectors of manufacturing, warehousing and distribution, agri-business, high technology, research and development and traditional and innovative small business endeavors. Market driven businesses (i.e. restaurant, retail) will be considered when that business is an integral part of a community's revitalization efforts.

HUD Underwriting

Underwriting is a process by which applicants to the CDBG BEST program assess both the need and viability of a prospective business. The applicant must, at a minimum, use the underwriting guidelines that meet the requirements set forth in 24 CFR 570.482(e) and Appendix A to Part 570 when evaluating potential assistance to a for-profit. The underwriting criteria is designed to provide rationale to assist a project that could not proceed without CDBG investment. The basic underwriting guidelines are to ensure:

- That project costs are reasonable - Review the project budget including detailed sources and uses of funds. If the budget is overinflated, there may be a waste of scarce public resources and a surplus can end up as an additional fee to a developer or entrepreneur; conversely, if the budget is understated, the success of the project may be affected, which could reduce the income available for debt service. To determine whether the costs are reasonable the Applicant should compare the business's proposal with costs of comparable projects and industry standards

- Sources are committed – OCR wants to avoid the risk of approving and disbursing funds to fund a portion of the project without sufficient funds from other sources to complete the development. Therefore, the Applicant must prove that all other sources of funds need to be in place prior to application.

- CDBG funds are not substituted for non federal funds - The Applicant needs to establish the need for public investment by demonstrating the owner's limited personal equity, and/or demonstrating that a bank or private financing institution has reached their lending limit to the project or will not lend to the project

- Project feasibility - The project or venture should be viable with the CDBG investment. The project should be able to achieve a level of operation that is successful in the near and long term. The project should provide sufficient cash flow to repay any debt and provide a reasonable return on equity invested.

- Owner's equity return is reasonable - A business owner strives to receive a reasonable Rate of Return (ROR) based on market and type of business. The ROR should be reasonable given the equity invested and risk taken. Projects must be compared to similar ventures in similar regions.

- CDBG funds disbursed pro rata with other sources – Where applicable, CDBG funds should be disbursed in proportion to the percentage of the project they fund.

These guidelines provide a framework for financially underwriting and selecting projects which are financially viable and will make the most effective use of CDBG grant funds. CDBG funds cannot be used to substitute other committed funding and the application must show that without NYS CDBG funding the proposed project could not be completed. Evidence of underwriting must be provided as part of the application and retained in the project files. In addition, there must be clear evidence that job creation will occur.

Marketing and Selection

Applicants are asked to provide a description and any supporting evidence of the process by which the business was selected for assistance. The response should describe how consideration was given to disadvantaged populations, including M/WBE's and veteran-owned businesses. Applicants must consider this selection methodology during the citizen participation (public hearing) phase of project development.

Miscellaneous

While the Davis –Bacon and Related Acts generally only applies when CDBG funds are used for construction, if the cost of labor to install a piece of equipment exceeds 13% of the cost of the equipment itself, Davis-Bacon labor standards may apply. Please contact OCR program staff if you suspect this may occur.

B. Microenterprise Assistance

Funding is provided to eligible communities to provide a program of financial assistance to for-profit businesses with five (5) or fewer employees, including the owner(s), for an identified CDBG eligible activity which will result in the creation or retention of permanent, private sector job opportunities, principally for persons from low-moderate income families. Businesses under this category may also meet HUD requirements if owned by a documented low to moderate income person. OCR provides a toolkit and form/template index for the Microenterprise Program. This toolkit provides all the resources needed to implement a successful local program of microenterprise assistance. This toolkit and all referenced materials can be found on the CDBG economic development website here. **OCR encourages early consultation with the assigned project manager to discuss business and expense eligibility. Failure to comply with program requirements could lead to disallowing incurred expenses, or disqualification of the business altogether.**

CHAPTER 5
ELIGIBLE ACTIVITIES & REQUIREMENTS

Eligible Costs:

- Inventory
- Procurement of machinery, furniture, fixtures and equipment
- Working capital
- Training
- Technical Assistance
- Program Delivery and Administration

Funding Structure

- Maximum award amount of $300,000 (minimum $100,000) to support several microenterprises
- NYS CDBG Microenterprise funds must be allocated as a grant to each microenterprise
- Grant assistance to an individual microenterprise must be between $5,000 and $35,000
- Grants may not exceed 90% of the total project cost
- A minimum amount of 10% owner equity contribution
- Applicants may request up to 20% of the CDBG award in program delivery and administration combined. Of the 20%, neither administration nor program delivery can exceed 10% of the CDBG award amount.

General Requirements

- Maximum award amount of $300,000 (minimum $100,000) to support several microenterprises
- A minimum of 50% of a total allocation (less grant administration costs) must be awarded to start-up businesses. A start up business is one which has been in operation less than six (6) months from the time of application.
- NYS CDBG Microenterprise funds must be allocated as a grant to each microenterprise. Funds can't be loaned with regular repayment terms.
- Grant assistance to an individual microenterprise must be between $5,000 and $35,000.
- Grants may not exceed 90% of the total project cost to assist in the start-up or expansion of a microenterprise.
- A minimum amount of 10% owner equity contribution to the project is required.
- Each microenterprise owner must complete an OCR approved entrepreneurial assistance or small business training program prior to receiving CDBG Microenterprise grant funds. The cost for the owner to attend the training may be an eligible CDBG expense.
- Applicants may request up to 20% of the CDBG award in program delivery and administration combined. Of the 20%, neither administration nor program delivery can exceed 10% of the CDBG award amount.

- National Objective cannot be met through job retention for the Microenterprise Program
- Business must be selected based on a consistent and rational methodology described in the program design plan approved by OCR. Applicants may choose to reference HUD Underwriting Standards as described above and set forth in 24 CFR 570.482(e) and Appendix A to Part 570.
- Recipients of past CDBG Microenterprise assistance must have committed at least 85% of any current awards prior to applying for additional funding.
- Businesses which have previously been awarded may be eligible to re-apply for funding with the following considerations:
  - The business must meet all eligibility criteria (e.g. 5 or fewer employees including principal owner, additional required equity contribution, etc.)
  - The municipal grant recipient must demonstrate and retain in the program files evidence of a strong program outreach, prioritization and selection process that is consistent with the approved program design plan
  - The individual project file for the business must reflect that the above process was followed
  - Businesses must describe a new scope of work unrelated to previous rounds of assistance, consistent with the expansion of that business
  - Previously awarded businesses that qualified as low- and moderate-income business owners will be required to create jobs if awarded again.
  - If the municipal recipient wishes to award additional rounds of funding (more than 2), contact your OCR project manager.

Microenterprise Program Design Plan

The development of sound policies and procedures and the implementation of a well-designed program are critical to a successful microenterprise program. Applicants proposing microenterprise activities must submit a Program Design Plan as part of their application that describes how the proposed activities will be implemented. The Program Design Plan should provide a clear and detailed description of the following program elements:

- **Eligibility —** Explain who is eligible to participate, the process that will be followed to verify participant eligibility, and what activities are eligible under the program.
- **Selection –** Describe the process by which businesses will be selected to participate. Indicate the selection criteria, including any measures taken to prioritize M/WBE's.
- **Funding —** Describe the terms and conditions for providing assistance, and the means of securing compliance during the regulatory term.
- **Marketing and Supporting Activities —** Describe program marketing and outreach efforts. Summarize any unique program design features or additional administrative support for the program (such as business counseling, job training, etc.) that will increase the likelihood of successful

completion. Provide a methodology for marketing to and encouraging participation of M/WBE's.

- **Entrepreneurial Training Requirement —** Describe the entrepreneurial assistance or small business training program each microenterprise must complete prior to receiving NYS CDBG Microenterprise funds. See Training Requirement below for additional guidance.
- **Program Objectives and Impact —** Provide a detailed description of all appropriate quantifiable information and any unique aspects. Examples of quantifiable information are the number of grants to be made, and the number of jobs to be created. Describe how the benefits of the program will be sustained, resulting in long-term benefits
- **Program Oversight and Grant Approvals —** Provide a clear demonstration of the expertise to manage the grant fund program and identify other resources that will be made available to the participating microenterprises. In addition, describe the grant approval process and a list of individuals who will be involved in the selection and approval process. The Recipient's Microenterprise Grant Committee should be diverse and include qualified individuals from related professions, such as bankers, business owners, attorneys, etc.

A template program design plan is available here.

Training Requirements

The microenterprise owner that is awarded a grant must complete an entrepreneurial training class prior to incurring project costs and requesting CDBG grant funds. Attendance by the employees does not satisfy this requirement. If the microenterprise is owned and operated by more than one individual, at least one owner must complete the training program.

The training requirement must be met through either an in-person classroom style course or through an online web-based course that teaches the fundamentals of owning and operating a business. The online course must be instructor or mentor led. Regardless of which style of course is taken, a certificate of completion must be obtained upon successful completion. The training program should help entrepreneurs develop business skills and design a business plan. At minimum, the training program should consist of the following elements:

- Developing a business plan
- Legal issues
- Taxes, recordkeeping, accounting
- Financing
- Marketing, advertising
- Employee issues

NYS CDBG funds may be used to reimburse the microenterprise business owner(s) for participating in an entrepreneurial training course. Reimbursement will not occur until the owner has successfully completed the course and has been awarded a NYS CDBG Microenterprise grant.

Individuals who have completed a relevant training course within 24 months of CDBG grant award, and addressed the topics listed above, meet the training requirement. However, the recipient must retain the following:

- Program syllabus
- The resume of the entrepreneur
- Proof of the training program(s) completed

For any individual who previously completed a training course beyond the 24 months, it is required that they complete another relevant training course.

A draft training syllabus can be found here.

Owner Equity

Investments of NYS CDBG microenterprise funds must be matched by a minimum of 10% owner equity. The equity contribution must be provided as cash; not to be associated with debt of any kind. Equity must be committed and available to the project at the time of the business application. Documentation of the equity commitment must be kept in the Recipient's files.

Disbursement of Funds

NYS CDBG funds are disbursed electronically upon the approval of a request for funds (form 1-6, 1-6A) submitted by the Recipient. Funds should be available for withdrawal from the Recipient's CDBG bank account within 1-2 weeks from receipt of the request. Factors such as incomplete or incorrect request for funds will delay the disbursement process.

In order to substantiate all expenditures, Recipients must obtain copies of invoices for inventory or materials purchased, and cancelled checks from the business owners. Quotes and in-cart documentation from an online vendor are **NOT** accepted. Recipients should refer to the OCR Grant Administration Manual for guidance on Financial Management. The manual is located here. Administrative and program delivery expenses must detail work completed, identify staff involved, and breakout rate and time. A template for administrative expenses can be found here.

For microenterprises, the direct business costs related to the project cannot be incurred or grant funds committed, including equity, prior to:

- **The local approval of grant award by the Recipient; and**

- **The Recipient has received OCR's approval of the Request for Release of Funds; and**
- **Successfully completing the required entrepreneurial training requirement.**

Repeat CDBG Microenterprise Awardees

Businesses that have previously received CDBG Microenterprise assistance may receive an additional award; however, municipalities must contact the assigned OCR Project Manager and carefully consider the guidance below prior to considering additional assistance:

Need and use of funds: Because the business has already received CDBG assistance, the municipality should consider whether providing an additional award to the same business represents the highest and best use of available CDBG funds.

Program design: Municipal recipients must be able to demonstrate that assistance to the business meets all local program selection, prioritization, and underwriting requirements

National objective: The municipality must confirm that the new award independently meets an eligible CDBG national objective.

LMCMC national objective (low- and moderate-income microenterprise owner) may only be used once for a business. If a business previously qualified under LMCMC, a subsequent award must qualify under LMJ, job creation.

For businesses qualifying through LMJ (low- and moderate-income job creation):

- If the first award qualified under LMCMC, the subsequent award must result in the creation of at least one full-time equivalent (FTE) position.
- If the first award qualified through LMJ, the subsequent award must result in net new job creation beyond the jobs previously required or created. For example, if the first award required the creation of one FTE position, a second award must result in at least one additional FTE position.

Please consult with your OCR Project Manager before proceeding with a repeat award if there are questions regarding the appropriate national objective.

Miscellaneous

Some useful hints and tips include:

- Although it is not required that specific microenterprises are identified as part of the application for Microenterprise Program funding, an application that identifies microenterprises and entrepreneurs that have gone through a prescreening stage is recommended. The prescreening stage should verify

eligibility, evaluate the proposed project and determine funding need. The applicant must provide a program design plan that addresses the methodology for marketing to and encouraging participation of M/WBE's.

- Computers, laptops, phones, and other electronic equipment are eligible CDBG expenses if business owners provide a written statement verifying that they will ONLY be used for business purposes. A template can be found here
- Eligible fixtures and equipment consist of moveable items that have no permanent connection to the structure of a bui or its utilities – i.e., it can be sold or moved if business were to be liquidated.
- Consult with OCR should you have a question regarding this or other possible construction-related items
- Operating/working capital may include a range of expenses including utilities, insurance, payroll or lease costs
- Single owners operating multiple businesses should be carefully evaluated against local underwriting criteria established in the program design plan. Contact OCR program staff to determine eligibility
- Microenterprise FAQ's can be found here

C. Ineligible Activities

CDBG funds cannot be used to support projects that include specific ineligible activities. Ineligible activities include:

- The replacement of existing debt with CDBG funds
- Construction (Under the Microenterprise Program)
- Assistance to a nonprofit
- Reimbursement of costs incurred prior to grant award and release of funds
- Political or religious activities
- Lobbying activities
- Advancement (or escrow) of CDBG funds prior to local approval
- Purchase and/or lease of a motor vehicle without prior consent from OCR
- Activities that include or are related to the sale or handling of cannabis, hemp, or THC-containing products
- Purchase, replacement, or installation of sheds, storage buildings, greenhouses, or related structures
- Advance payment of mortgage or rent expenses.

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

D. 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.)

E. 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 requires installation and the purchase of materials used for construction activities.
- 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.
- In counting the jobs, the following policies apply: Part-time jobs must be converted to full-time equivalents (FTE). An FTE is any combination of two or more part-time jobs that, when combined together, constitute the equivalent of a job of at least 40 hours per week.
- Only permanent jobs count; temporary jobs may not be included;
- All permanent jobs created by the activity must be counted even if the activity has multiple sources of funds;
- Jobs indirectly created by an assisted activity may not be counted; and
- Seasonal positions may only be considered full-time if it is the employee's principal occupation.
- For microenterprise activities, OCR generally 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.

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 of 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.
- 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
- Demolition and property clearance

B. Eligible Costs

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

- Environmental Site Assessments – As appropriate to deliver the activity
- Site Work – If related to the demolition or clearance activity
- Soft Costs – Architectural/engineering fees, legal fees
- Environmental Mitigation – Lead-based paint compliance, asbestos, air quality monitoring, etc.

Assistance limits will be based on available funds and may be determined based on need established through Office of Emergency Management (OEM) assessments (in the case of declared disasters) or by other third party documentation.

C. National Objective

IT projects may qualify under any of the three national objectives.

Urgent Need

To qualify under the Urgent Need national objective, the qualified activities must meet the following criteria:

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

Slum/Blight

This includes activities qualifying under the Slum/Blight Area (SBA) or Slum/Blight Spot (SBS) National objective. The focus of activities under this national objective is to address specific instances of blight and deterioration or to affect positive change in the physical environment of a deteriorating area. This contrasts with the LMI benefit national objective where the goal is to ensure that funded activities benefit LMI persons.

In developing the criteria for qualifying under this national objective, HUD has taken considerable care to ensure that activities that qualify under the objective are either: 1) clearly eliminating objectively determinable signs of slums or blight in a defined slum or blighted area (SBA) or 2) are strictly limited to eliminating specific instances of blight outside such an area ("spot blight" - SBS). The regulatory citation for this national objective can be found at 24 CFR 570.483(c).

Slum/Blight Area (SBA)

To qualify under the national objective of slums/blight on an area basis, an activity must meet the following criteria:

1. The area must be delineated by the unit of local government applicant and must meet a definition of a slum, blighted, deteriorated, or deteriorating area under State or local law. (Article 15 of the NYS General Municipal Law provides a general definition of a "substandard or insanitary area". The OCR will consider the definition to have been met based on the criteria are listed below.) The area must be defined by the applicant and shown to have contiguous boundaries and interrelated problems causing the entire area to be blighted.

2. The area must exhibit signs of economic disinvestment as indicated by at least one of the following physical signs of blight or decay:

a) There must be a substantial number of deteriorated or deteriorating buildings throughout the area. As a "safe harbor," HUD will consider this test to have been met if at least one quarter (25%) of all the buildings in the area are:

(1) Deteriorated or deteriorating
(2) Abandoned
(3) Experiencing chronic high occupancy turnover rates or chronic vacancy rates in commercial or industrial buildings
(4) Experiencing significant declines in property values or abnormally low property values relative to other areas in the community; or
(5) Known or suspected of environmental contamination

b) The public improvements throughout the area must be in a general state of deterioration. (For this purpose, it would be insufficient for only one type of public improvement, such as a sewer system, to be in a state of deterioration; rather, the public improvements taken as a whole must clearly exhibit signs of deterioration.)

Slum/Blight Spot (SBS)

The elimination of specific conditions of blight or deterioration on a spot basis is designed 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 the national objective of Elimination or Prevention of Slums or Blight on a Spot Basis, i.e., outside a slum or blighted area, an activity must meet both of the following criteria:

1. The activity must be designed to eliminate specific conditions of blight, physical decay or environmental contamination not located in a designated slum or blighted area and
2. The activity must be limited to clearance.

As a general rule, national objective compliance for the acquisition of real property must be based on the use of the property after the acquisition takes place. The initial determination is based on the planned use of the property, but the final determination is to be based on the actual end use. However, when property is acquired for the purpose of clearance to remove specific conditions of blight or physical decay, the clearance is considered to be the actual use of the property. Any subsequent use made of the property following clearance must be considered to be a "change of use" under 24 CFR 570.505 and 24 CFR 570.489(j). See "Change of use" below.

Record Maintenance and Documentation

1. Slum/Blight Area
   Documentation submitted at the time of application must include:

   - Boundaries of the area clearly identified on a map or plan showing 25%+ of the property in the area is blighted and/or the location of degraded/substandard public infrastructure.
   - Documentation of the specific conditions that qualified the area at the time of its designation. The recipient must establish definitions of the conditions and maintain records to substantiate how the area met the slums or blighted criteria. This documentation can include, but is not limited to, structural analysis of buildings, engineering studies, documentation of local code enforcement actions, planning board actions, public health and safety violations, and actions taken by other state or local authorities.
   - A description of the activity showing how it addresses, arrests or reverses the condition or conditions that led to the decline of the area.
   - A municipal resolution passed by a quorum of the legislative body during public session declaring a Slum/Blight area, confirming the criteria outlined under “National Objective”. Note that the Slum/Blight declaration is an action of the local government based on documented conditions of need and not merely a requirement of this program. While evidence of the Slum/Blight declaration is required as part of the application process, officially recognizing a blighted area/property is not contingent on, or necessarily related to, receiving CDBG funds.
   - Evidence that the required public hearing was held following any official declaration of Slum/Blight area adoption.

2. Slum/Blight Spot
   Documentation submitted at the time of application must include:

   - A description of the specific condition of blight or physical decay of a site(s) outside a designated Slum/Blight area
   - Documentation that conditions at the blighted property(ies) are detrimental to or pose a threat to the general public health and safety. This documentation can include, but is not limited to, structural analysis of buildings, engineering studies, documentation of local code enforcement actions, planning board actions, public health and safety violations, and actions taken by other state or local authorities.
   - Describe how the activity will arrest or reverse the blighted conditions at that location(s).

- A municipal resolution passed by a quorum of the legislative body during public session declaring a specific site a Slum/Blight property, confirming the criteria outlined under “National Objective”. Note that the Slum/Blight declaration is an action of the local government based on documented conditions of need and not merely a requirement of this program. While evidence of the Slum/Blight declaration is required as part of the application process, officially recognizing a blighted area/property is not contingent on, or necessarily related to, receiving CDBG funds.
- Evidence that the required public hearing was held following any official declaration of spot Slum/Blight.

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.

E. Change in Use Requirements

Pursuant to 24 CFR 570.505 and 24 CFR 570.489(j), property that has been acquired or improved (including clearance) in whole or in part using CDBG funds may not change the use of such property for a period of five (5) years after closeout unless the unit of local government goes through a “change of use” process. Any change of use (even from a “vacant” state) must:

1. Be communicated through a public hearing that provides affected citizens reasonable notice of an opportunity to comment on any proposed change, and;
2. 2. Meet a national objective under CDBG and is not a building for the general conduct of local government. If the new use cannot meet a national objective, repayment of funds will be required.

If the recipient plans to change the use of a property within five (5) years from grant closeout, they must submit a request to the OCR in writing prior to making any change and comply with 24 CFR 570.505 and 24 CFR 570.489(j). Grant closeout will occur once the recipient has no further obligations under the executed grant agreement.

Examples of CDBG-eligible activities that will not trigger repayment under the change of use requirements include but are not limited to:

- Affordable housing occupied by low/moderate income families
- A day care serving a majority low/moderate income neighborhood

A new business creating entry-level jobs primarily available to low/moderate income persons.

IX. CHANGE ORDERS

Change orders must be limited to circumstances directly related to the original approved project scope and may not be used to fundamentally alter the nature, location, or intended beneficiaries of the activity. All change orders must be supported by adequate documentation and demonstrate that the proposed work is necessary to complete the approved project.

Recipients must maintain documentation demonstrating that one or more of the following conditions apply to each change order:

- The change is directly related to and necessary for completion of the original approved scope of work.
- The change is required to address a documented health and safety issue identified during construction or implementation.
- The change results from an unforeseen circumstance that could not reasonably have been identified during project design, environmental review, bidding, or pre-construction activities.

Change orders are not appropriate for the addition of new project activities, expansion of the service area, or substantial revisions to the approved project scope. Where proposed modifications materially alter the original project, OCR may require re-procurement, amendment of environmental review records pursuant to 24 CFR 58.47, or other corrective actions prior to approval.

Recipients must maintain complete documentation supporting the necessity, cost reasonableness, and approval of all change orders in the project file.

X. 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

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.

1. 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 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

2. Determining Income Eligibility

Existing Tenants are certified as income eligible prior to 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.

3. 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

4. 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.

5. 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.

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.

6. 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.

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

8. 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

XI. 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.