

CHAPTER 3. NATIONAL OBJECTIVES, ELIGIBLE ACTIVITIES AND FEDERAL COMPLIANCE REQUIREMENTS

A. ELIGIBLE GRANT APPLICANTS

Consistent with federal law, **eligible applicants** for the state CDBG program are:

- ◆ **Incorporated cities and towns with populations of less than 50,000, excluding those in Davis, Salt Lake and Utah vounties;**
- ◆ **All of the State’s counties except Davis, Salt Lake and Utah counties;**
- ◆ **Units of local government recognized by the Secretary of HUD that include six of the seven Associations of Government, excluding the Wasatch Front Regional Council, which is sponsored by Tooele County.**



By federal law, the state may only fund the applicants listed above. For convenience and mutual benefit, combinations of the above may enter into a subcontractor’s agreement where one applicant is regarded as a primary beneficiary acting as the grantee entity for both applicants. Other users of CDBG funds such as non-profit and for-profit corporations, councils of government, housing authorities, and special service districts must apply through and enter into subcontractor agreements with an eligible applicant who also derives a primary benefit. These entities must comply with all applicable laws and regulations. The state encourages units of general local government to cooperate with each other as well as other entities to engage in eligible activities.

1. Sponsorship of a Non-eligible Recipient – Eligible grantees (cities or counties) who agree to sponsor a non-eligible subrecipient must realize that such an agreement carries serious legal implications and responsibilities. Careful consideration and a full understanding of sponsorship must be considered before entering into an agreement. The sponsoring entity and the state will execute the contract and the sponsoring entity (city or county) is legally bound to comply with all pertinent laws and regulations, as is their subrecipient. Sponsorship of a subrecipient must be appropriately based on the project area. (e.g., counties should only sponsor projects benefitting the entire county. Cities should only sponsor projects benefitting city residents). Sponsors must execute a subcontractor’s agreement with the subrecipient (see Appendix F).

The responsibility for who does what in such a contractual arrangement will depend on each entity, the project and the degree of comfort that the sponsor has with the subrecipient. The new OMB omni-circular took effect December 26, 2014 and streamlines the requirements for all federally funded grantees. The state is only responsible to ensure that the sponsor is in compliance. This means that the sponsoring entity should do a periodic review of the budget and expenditures of the subrecipient in the duration of the grant. The state maintains contact with subrecipients during the course

of the project through phone, written correspondence and in-person site visits. These technical assistance efforts are the state's way of assisting the sponsoring entity with some of its oversight needs. However, sponsors should realize that final compliance by the subrecipient ultimately lies with them.

Sponsorship responsibilities include holding the public hearings, signing the application and contracts, ensuring compliance with all civil rights requirements including Americans with Disabilities Act (ADA) laws and providing a certain amount of environmental oversight. Compliance with any labor related laws is usually reviewed at the subrecipient level, but the sponsor may request involvement to ensure that any local requirements related to procurement and construction activity are understood and will be followed by the subrecipient. If the project budget includes any administrative costs for the sponsoring entity, the sponsor's financial records will also be reviewed. Sponsorship also requires assisting with the completion of the final monitoring and the close out process when the project is complete. The sponsor will be monitored at the end of the project in addition to the subrecipient to ensure this compliance.

2. Public Service – Public service providers, traditionally non-profit organizations, are allowed to apply for CDBG funds for **capital improvements and major equipment purchases**. (e.g., vehicles, permanent equipment/fixtures, computer equipment, construction, and remodeling and facility expansion). State policy prohibits the use of CDBG funds for operating and maintenance expenses. This includes paying administrative costs, salaries, etc. State CDBG funds may not be used in entitlement areas (see Chapter 1, page 2). No more than 15 percent of the state's yearly allocation of funds may be expended for public service activities.

B. NATIONAL OBJECTIVE COMPLIANCE REQUIREMENTS

Each applicant must identify and meet only ONE of the three national objectives listed below even though the project might be able to qualify under other national objectives.

1. NATIONAL OBJECTIVE #1: LOW- AND MODERATE-INCOME BENEFIT

“The projected use of funds has been developed so as to give maximum feasible priority to activities which will benefit low/moderate income (LMI) families. . .”

LMI(low-to moderate-income) families are defined as those families whose income does not exceed 80 percent of the county median income. (see Appendix C for delineation of 80 percent of county median income by family size). In order to meet this national objective, the applicant must demonstrate a benefit to low- and moderate-income families in one of the following ways:

a. **Site Specific activities**: At least 51 percent of the direct beneficiaries of the proposed project must consist of families whose **TOTAL FAMILY INCOME** does not exceed 80 percent of the county median income for the current program year per the income figures provided in Appendix C.

When either of the methods below is used the project area must first be specifically determined and identified before the survey is performed.

◆ **A site-specific project directly benefits only a portion of the community.** An original survey of the defined project area must be done to determine LMI population in that specific area. A survey must be performed following the state approved methodology found in Appendix D under the heading “Site-Specific Surveys”. This method **must** be used if the survey is to be accepted.

The burden of proof is on the applicant to carry out the survey in a manner approved by the state CDBG staff. The survey will be valid if the project boundaries and beneficiaries are identical to those in the original survey. If the survey demonstrates that 60 percent or more of the beneficiaries are LMI then the survey is valid for five application cycles.

b. **City or countywide activities**: At least 51 percent of the direct beneficiaries of the proposed project must consist of families whose **TOTAL FAMILY INCOME** does not exceed 80 percent of the county median income for the current program year as demonstrated by the income figures provided in Appendix C.

◆ Applicants must perform a community survey to determine if their community is 51 percent LMI by following the instructions in Appendix D. The applicant will be required to demonstrate how the project benefits the entire community using the survey tools described in Appendix D under the heading “Community Wide Surveys”.

c. **Limited Clientele activities**: This activity is defined as one that provides benefits to a specific group of persons rather than everyone in an area. At least 51 percent of the persons served must be LMI. To qualify under this category, a Limited Clientele activity must meet one of the following tests.

◆ Benefit is specifically limited to a group generally presumed to be 51 percent or more LMI, unless there is evidence to the contrary. Examples of such controversial indicators may be the lifestyle of the community or the known income figures in the area in which the group resides, the construction of a facility that would not ordinarily be utilized by LMI or which use may be cost prohibitive for LMI, etc. The state requires adequate documentation to demonstrate there is no evidence to the contrary. (see list of groups below)
AMI= Area Median Income

- ◆ Abused Children (30% AMI)
- ◆ Battered Spouses (50% AMI)
- ◆ Migrant Farm Workers (50% AMI)
- ◆ Elderly Persons (Defined by HUD as age 62 or over)
Senior Center (80% AMI) Non Center related (50% AMI)
- ◆ Illiterate Adults (50% AMI)
- ◆ Homeless Persons (30% AMI)
- ◆ Persons living with AIDS (50% AMI)
- ◆ Severely Disabled Adults (50% AMI) Includes persons who use a wheelchair or special aid for at least six months; are unable to perform functional activities including seeing, hearing or walking; are prevented from working or have autism, cerebral palsy, Alzheimer's, senility, dementia or mental retardation.

OR

- ◆ Information must be provided on family size and income and must show that at least 51 percent of the clientele served are persons whose family income does not exceed the LMI limit (e.g., programs being operated where LMI income certification is routinely requested to allow participation in the program);

OR

- ◆ The activity serves to remove architectural barriers to the mobility of elderly and disabled. Sidewalk curb cuts (ADA ramps) do not qualify under this category.

d. Targeted activities – 100 percent of the beneficiaries served by this type of activity must be LMI. Housing activities must be targeted to 100 percent LMI. Lateral utility connections for those who are certified as LMI are considered eligible as housing rehabilitation. In no case may CDBG funds be used to pay for sewer laterals for non-LMI individuals.

The state will not approve applications for sewer lateral projects unless the applicant clearly demonstrates the sewer system is substantially completed and/or fully funded.

[Note: In order to pay connection fees for LMI individuals under this activity, the following must be clarified: HUD views the payment of assessed connection fees as part of the overall project. Whether or not CDBG monies are used for the construction, HUD rules and regulations apply to the construction of the improvements even though connection fees will be paid only for LMI persons in the community. If grantees wish to construct the facility and pay connection fees, the entire project must first be shown to meet a National Objective and to have met and addressed all other CDBG requirements. If grantees wish to pay only connection fees for a utility that is being constructed with other funds, the same requirements apply. If grantees wish to pay connection fees for a utility that has already been constructed, they may do so only if they can show that the installation of the utility was originally carried out in compliance with requirements

applicable to CDBG activities, including citizen participation, compliance with environmental and labor requirements, and that it meets a national objective.]

2. NATIONAL OBJECTIVE #2 - AIDING IN THE PREVENTION OR ELIMINATION OF SLUMS OR BLIGHT

The state staff must determine compliance with this objective prior to rating and ranking by the RRC.

Perform Activities on a Spot Basis: Acquisition, clearance, relocation, historic preservation and building rehabilitation activities that eliminate specific conditions of blight or physical decay on a spot basis will meet this objective. Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety. To be considered to be detrimental to public health and safety, a condition must pose a threat to the *public in general*.

Documentation required to meet "SPOT" Slum/Blight:

1. The scope of work detailed in the application must provide a description of the specific condition of blight or physical decay treated; and
2. Under this standard, any *rehabilitation performed to non-LMI households is limited to that necessary to eliminate specific conditions detrimental to public health and safety* and must be acknowledged in the scope of work as detailed in the application.

3. NATIONAL OBJECTIVE #3 - URGENT NEEDS

To comply with the national objective of meeting community development needs having a particular urgency, an activity must be designed to alleviate existing conditions that the local government certifies and state determines:

- ◆ Pose a serious and immediate threat to the health or welfare of the community,
- ◆ Are of recent origin or recently became urgent,
- ◆ Cannot be financed by the state grant recipient on its own, and
- ◆ Does not have other available sources of funding to carry it out.

The determination of a jurisdiction's ability to meet these criteria will be based on the submission, **at time of the application** of documentation from the appropriate federal or state agency certifying an immediate threat to health and welfare. Resources from other federal, local or state programs may be used to match or participate in order to relieve the threat. CDBG funds may only be used to complete the funding needed for projects that have maximized all other available funding sources (**GAP** funding).

Documentation Required to Meet Urgent Health and Welfare Needs:

A proposed project will **ONLY** be considered under this national objective if **ALL FOUR** of the following requirements are met **at the time of application submission to the RRC:**

- a. A description of the nature and degree of seriousness of the conditions requiring assistance. The determination of “immediate threat” has been made in consultation with an appropriate state or federal agency. The documentation from such agency **must** be included with the application and **must** demonstrate that there is an immediate threat to health and welfare.
- b. Evidence confirming that other financial resources to alleviate the need were not available. The documentation must include refusals or maximization of assistance from other agencies, not just an indication that they have been contacted.
- c. Information on the timing of the development of the serious condition. 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. Documentation certifying this fact must be included with the application.
- d. Evidence that the state grant recipient certified that the CDBG activity was designed to address the urgent need.

C. CONSISTENCY WITH THE CONSOLIDATED PLAN

Every applicant is required to document that the project for which they are applying is consistent with that community’s and the region’s ***current*** version of the **Consolidated Plan**. Applicants must describe how that consistency is accomplished. Compliance with the requirement will be determined regionally, **prior to rating and ranking process**. The regional determination will be subject to validation by the state.

The applicant must include evidence that the community was and continues to be a willing partner in the development of the regional consolidated planning process. The project or project type must be a high priority in the investment component of the plan and must help fulfill the long term or strategic goals of both the regional and local plans. The allocation of resources must be projected at least five years into the future, and applications should be consistent with the long-term direction of the plan.

Each Association of Government staff is required to review the regional consolidated plan submitted by their office on behalf of their communities to ensure that each plan includes a brief narrative identifying the process used to determine the priorities contained in the plan, in addition to any capital improvement lists submitted.

D. INCLUSIVE FEDERAL COMPLIANCE REQUIREMENTS

1. LOW/MODERATE INCOME COMPLIANCE: Assurance must be made to HUD that during each grant period, at least 70 percent of the entire state CDBG allocation will support activities that benefit LMI persons. This requirement does not affect the activities selected by applicants. The state will continue to fund any one of the three National Objectives (low-to moderate-income benefit, slum and blight elimination or urgent need).

2. OTHER APPLICABLE FEDERAL REQUIREMENTS: Applicants must be in compliance with all applicable federal and state regulations and overlay statutes. The federal statutes that apply to the program include:

- ✓ Davis-Bacon Fair Labor Standards Act
- ✓ Contract Work Hours and Safety Standards Act
- ✓ Title VII of the Civil Rights Act of 1964
- ✓ Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988
- ✓ Cranston-Gonzalez National Affordable Housing Act of 1990
- ✓ Americans with Disabilities Act (ADA) of 1990
- ✓ Fair Housing Act Executive Order 11063, as amended by Executive Order 12259
- ✓ Equal Employment Opportunities under HUD Assisted Contracts Executive Order 11246
- ✓ Section 504 of the Rehabilitation Act of 1973
- ✓ Section 3 of the Housing and Urban Development Act of 1968
- ✓ Section 109 of the Housing and Community Development Act of 1974
- ✓ Age Discrimination Act of 1975
- ✓ Architectural Barriers Act of 1968
- ✓ Title II of the Americans with Disabilities Act of 1990
Executive Order 12892, 12898, 13166
- ✓ The Hatch Act (5 USC 1501 et seq; 5 CFR Part 151)
- ✓ The National Environmental Policy Act of 1969
- ✓ HUD Environmental Review Procedures – 24 CFR Part 58
- ✓ Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- ✓ Title IV of the Lead-Based Paint Poisoning Prevention Act
- ✓ HUD Reform Act
- ✓ Office of Management and Budget Circulars
OMB Circular A-87--Cost Principles for State and Local Governments and 24
CFR Part 85, Administrative Requirements for Grants and Cooperative
Agreements to State, Local and Federally Recognized Indian Tribal Governments
OMB Circular A-133 -Single Audit Act
- ✓ Section 104(d) of the Housing and Urban Development Act of 1974
- ✓ Residential Lead Based Paint Hazard Reduction Act of 1992 and Final Rule,
September 1999

**PLEASE NOTE THAT ADDITIONAL FEDERAL OVERLAY STATUTES
AND REGULATIONS MAY APPLY TO THE STATE PROGRAM IF
DIRECTED BY HUD AND CONGRESS**

E. ELIGIBLE ACTIVITIES

Each applicant must select an ELIGIBLE activity from the following HUD Matrix Codes. Please choose the code that best describes the activity to be accomplished by your project. It is recommended that you consult with the AOG staff to help in the matrix code selection process. For details of each activity, please see the statute at 42 U.S.C. Chapter 69, Sec. 5305 (Section 105) of the Housing and Community Development Act of 1974 as amended.

(<http://www.hud.gov/offices/cpd/communitydevelopment/rulesandregs/laws/sec5305.cfm>)

The eligible activity selected must be identified in the online CDBG application in WebGrants.

Eligible CDBG Activities

HUD Matrix Code	Activity Description
01	Acquisition of Real Property
02	Disposition (of Property)
	Construction Activities
03	Construction - Public Facilities and Improvements
03	Americans With Disabilities Act (ADA Improvements)
03A	Construction - Senior Centers
03B	Construction - Handicapped Centers
03C	Construction - Homeless Facilities
03D	Construction - Youth Centers
03E	Construction - Neighborhood Facilities (community centers)
03F	Construction - Parks, Recreational Facilities
03G	Construction - Parking Facilities
03H	Construction - Solid Waste Disposal Improvements
03I	Construction - Flood Drain Improvements
03J	Construction - Water/Sewer Improvements
03K	Construction - Street Improvements
03L	Construction - Sidewalks
03M	Construction - Child Care Centers
03N	Construction - Tree Planting
03O	Construction - Fire Stations/Equipment
03P	Construction - Health Facilities
03Q	Abused/Neglected Children Facilities
03R	Asbestos Removal
03S	Construction - Facilities for AIDS Patients
04	Clearance and Demolition
04A	Cleanup of Contaminated Sites
	Public Service Activities (Non Construction)
05	Public Service – General

05A	Public Service – Seniors Services
05B	Public Service – Handicapped Services
05D	Public Service – Youth Services
05E	Public Service – Transportation Services
05G	Public Service – Battered and Abused Spouses
05H	Public Service – Employment Training
05J	Public Service – Fair Housing Activities (Subject to 15 % Cap)
05M	Public Service – Health Services
05N	Public Service – Services for Abused and Neglected Children
05P	Public Service – Screening for Lead Based Paint Poisoning
05Q	Public Service – Subsistence Payments (Prevent Homelessness)
	Housing Activities
13	Direct Homeownership Assistance
14A	Rehab – Single Family Housing
14B	Rehab – Multi-Family Housing
14C	Public Housing Modernization
14D	Rehab- Other Publicly Owned Residential Buildings
14E	Rehab – Public/Private Owned Commercial or Industrial Bldgs
14F	Rehab - Energy Efficiency Improvements – (Housing Rehab)
14G	Rehab - Acquisition for the purpose of Rehab (Housing)
14H	Rehab Administration Costs
14I	Lead-Based Paint Hazard Testing and Abatement
16A	Historic Preservation- Residential
16B	Historic Preservation- Non-Residential
	Economic Development Activities – <i>Please note that the 7 Associations of Government (AOG) are the only eligible entities to carry out these activities.</i>
17A	Commercial/Industrial – Land Acquisition/Disposition
17B	Commercial/Industrial – Infrastructure Development
17C	Commercial/Industrial – Building Acquisition, Construction, Rehab
17D	Commercial/Industrial – Other Improvements
18A	ED – Direct Financial Assistance to For-Profits
18B	ED – Technical Assistance
18C	ED – Micro-Enterprise Assistance
19C	CDBG – Non-Profit Organization Capacity Building
19D	CDBG Assistance to Institutes of Higher Education
19E	CDBG Operation & Repair of Foreclosed Property
	Administration and Planning Activities
20	Planning
21A	Administration
21C	Public Information
21D	Fair Housing Activities (Subject to 20% Admin Cap)

F. INELIGIBLE GRANT ACTIVITIES

The general rule is that any activity not authorized under the CDBG regulations is ineligible to be assisted with CDBG funds.

The following activities may not be assisted with CDBG funds (refer to 24 CFR Part 500 for additional specifics):

1. Buildings or portions thereof used for the general conduct of government. This does not include, however, the removal of architectural barriers involving any such building (ADA improvements).
2. General government expenses (expenses required to carry out the regular responsibilities of the unit of general local government).
3. Political Activities. CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities.

Special Provisions:

1. Purchase of equipment.

- a. The **purchase of construction equipment is not permitted**. However, compensation for the use of such equipment through leasing, depreciation or use allowances pursuant to specific OMB omni-circulars as applicable for an otherwise eligible activity is an eligible use of CDBG funds.
 - b. **The purchase of fire protection equipment is eligible as it is considered to be an integral part of a public facility and is, therefore, eligible.**
 - c. **The purchase of equipment, fixtures, personal property is generally ineligible** unless it's an integral structural fixture or part of an administration or public service activity.
- 2. Operating and Maintenance expenses are ineligible** – the general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with office space for program staff carrying out the CDBG program. Examples of ineligible expenses are:
- a. Maintenance and repair of publicly owned streets (e.g., chip seal), parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with disabilities, parking and other public facilities and improvements.
 - b. Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.
- 3. New housing construction is not allowed except**
- a. As provided under last resort housing provisions; or

- b. When carried out by a community based development organization (CBDO) pursuant to a neighborhood revitalization project, an economic development project, or energy conservation project.
- 4. Income payments, meaning a series of subsistence type grant payments made to an individual or family for items such as food, clothing, housing (e.g., rent or mortgage) or utilities are not permitted. Emergency grant payments made over a period of up to three consecutive months are permitted.
- 5. Per the faith-based initiative, religious organizations are eligible to apply for CDBG funds on the same basis as other eligible organizations, such as non-profits and require sponsorship from an eligible jurisdiction. Organizations may not use CDBG funding for inherently religious activities, such as worship, religious instruction or proselytizing. Funds may not be used on a structure used inherently for religious activities or for organizations that discriminate based on religion.