

CHAPTER 6: PUBLIC FACILITIES, SPECIAL ASSESSMENTS AND PRIVATELY- OWNED UTILITIES

CHAPTER PURPOSE & CONTENTS

This chapter provides grantees with information on CDBG-eligible public facilities and improvement activities, special assessments, and privately owned utilities. This chapter also discusses how to determine the appropriate national objective category for these types of activities.

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6.1 Public Facilities and Improvements

Under the CDBG Program, grantees may use funds to undertake a variety of public facilities and public improvement projects. In general, public facilities and public improvements are interpreted to include all facilities and improvements that are publicly owned, or that are owned by a nonprofit and open to the general public. The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section: Eligible public facilities activities, Ineligible activities, National objective for public facilities

Regulatory/Statutory Citations: Section 101(c), Section 104(b), Section 105(a)(2), Section 105(c), 570.201(c), 570.207, 570.208

Other Reference Materials on This Topic: CDBG Guide to National Objectives and Eligible Activities, Chapter 2, Chapter 3, CPD Notice 04-07

6.1.1 Eligible and Ineligible Activities

Eligible Activities

The acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements are eligible activities under CDBG and can be carried out by a grantee, subrecipient, or other nonprofit. Public facilities may only be owned by these types of entities.

Eligible types of facilities and improvements include:

Infrastructure improvements (construction or installation) including, but not limited to streets, curbs, and water and sewer lines;

Neighborhood facilities including, but not limited to public schools, libraries, recreational facilities, parks, playgrounds; and

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Facilities for persons with special needs such as facilities for the homeless or domestic violence shelters, nursing homes, or group homes for the disabled.

Eligible costs associated with eligible activities may include:

Energy efficiency improvements;

Handicapped accessibility improvements (including improvements to buildings used for general conduct of government); and

Architectural design features and other treatments aimed at improving aesthetic quality (e.g., sculptures, fountains).

If the assisted facility is owned by a nonprofit, the CDBG regulations stipulate that the facility must be open to the public during normal working hours.

Ineligible Activities

The maintenance and repair of public facilities and improvements is generally ineligible (e.g., filling potholes, repairing cracks in sidewalks, mowing grass at public recreational areas or replacing street light bulbs).

Operating costs associated with public facilities or improvements are ineligible unless part of a CDBG-assisted public service activity or eligible as an interim assistance activity.

A public facility otherwise eligible for assistance under the CDBG program may be assisted with CDBG funds even if it is part of a multiple use building containing ineligible uses, if:

The public portion of the facility that is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

The grantee can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility. Allowable costs are limited to those attributable to the eligible portion of the building or facility.

6.1.2 National Objective

LMI Benefit National Objective

CDBG-funded public facilities and improvements will typically be categorized under the LMI Benefit national objective as an Area Benefit activity.

Under the area benefit criteria, the public facility/improvement must benefit **all** residents of an area where at least 51 percent of the residents are LMI. The service area need not have coterminous boundaries with Census tract borders or other officially recognized boundaries, but must be primarily residential in nature.

If qualifying an activity under the Area Benefit criteria, records to keep include:

Boundaries of the service area;

Documentation that the area is primarily residential (e.g., zoning map); and

Income characteristics of households in the services area (Census data).

Public facilities funded by CDBG may sometimes qualify under the Limited Clientele criteria of the LMI national objective. The regulation stipulates that the facility benefit a specific targeted

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group of persons, of which at least 51 percent must be low- and moderate-income. This can be achieved by meeting one of the following criteria:

Serving at least 51 percent LMI, as evidenced by documentation and data concerning beneficiary family size and income;

Having income-eligibility requirements that limit the service to persons meeting the LMI income requirement, as evidenced by the administering agency's procedures, intake/application forms and other sources of documentation;

Serving a group primarily presumed to be LMI such as abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers; or

Being of such a nature and in a location that it may be concluded that the activity's clientele are LMI.

Public facilities such as homeless shelters or group homes for persons with special needs are just two of the examples of public facilities that may qualify under the Limited Clientele criteria. The populations served by these facilities are populations that are presumed to be LMI persons or families.

Public facilities or improvements can also qualify under the LMI housing national objective if the facility exclusively assists in the provision of housing to be occupied by LMI income individuals.

If the grantee is undertaking public facilities or improvements under the LMI job creation and retention national objective category and more than one business will be served, the 51 percent LMI job requirement may be met by aggregating the jobs created or retained by affected businesses under the following criteria (§570.208(a)(4)(vi)(F):

If the CDBG cost per job created or retained is less than \$10,000 per FTE, the grantee must ensure that 51 percent of the jobs created or retained by the businesses for which the facility/improvement is principally undertaken are available to or held by LMI persons.

If the CDBG cost per job created or retained is \$10,000 or more per FTE, the grantee must ensure that 51 percent of the jobs created or retained by all businesses in the service area of the facility/improvement are available to or held by LMI persons. This includes all businesses, which as a result of the public facility/improvement, locate or expand in the service area between the date the activity is identified in the action plan and one year after completion of the facility/improvement. In addition, the assisted activity must comply with the public benefit standards found at 24 CFR 570.209(b).

The nature of job creation public facility activities means that grantees must carefully plan these projects and track the businesses and jobs that result. Specifically:

It is important to determine the amount of CDBG funds that will be spent per job created/retained. Some communities limit the amount to less than \$10,000 to keep things simple and minimize tracking to only the business(es) for which the improvement is undertaken (vs. any others that benefit within one year after completion).

AND

The grantee should ensure that it has appropriate and enforceable legal documents in place running with the land and/or with each business that benefits from the improvement. This is particularly important if the cost per job will be more than \$10,000 because national

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objective documentation must be obtained and maintained even if the businesses moved in after the facility/improvement was completed (up to one year).

Slum/Blight National Objective

Public facilities and improvements and historic preservation activities that aid in the prevention or elimination of slums or blight in a designated area may qualify under the Slum/Blight national objective Area Basis. The activity must meet the following criteria in order to qualify:

The area in which the activity occurs must be designated as slum or blighted. The following tests apply:

The delineated area in which the activity occurs must meet a definition of a slum, blighted, deteriorated or deteriorating area under state or local law;

Additionally, the area must also meet either one of the two conditions specified below:

At least 25 percent of the properties throughout the area exhibit the following:

- (a) Physical deterioration of buildings/improvements;
- (b) Abandonment of properties;
- (c) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;
- (d) Significant declines in property values or abnormally low property values relative to other areas in the community; or
- (e) Known or suspected environmental contamination.

Public improvements throughout the area are in a general state of deterioration.

Documentation must be maintained by the grantee on the boundaries of the area and the conditions that qualified the area at the time of its designation. The designation of an area as slum or blighted must be re-determined every 10 years for continued qualifications

Public facilities or improvements may qualify under the Urban Renewal Completion criteria if the activities are located within an urban renewal project area or a Neighborhood Development Program area designated under Title 1 of the Housing Act of 1949 and the acquisition is necessary to complete the current plan.

Urgent Needs National Objective

Public facilities or improvement activities may also qualify under the Urgent Needs national objective if the following qualifications are met:

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 (generally, within the past 18 months);

The grantee is unable to finance the activity on its own; and

Other sources of funding are **not** available.

6.2 Special Assessments

Special assessments are used to recover the capital costs of a public improvement through a fee levied or a lien filed against a parcel of real estate, either as:

- A direct result of the benefit derived from the installation of a public improvement; or
- A one-time charge made as a condition of access to an improvement.

The following is a summary of the topics in this section, applicable statutory and regulatory citations, and other reference materials available from HUD.

Key Topics in This Section: Eligible Special Assessment Activities, Ineligible Activities

Regulatory/Statutory Citations: Section 101(c), Section 104(b), Section 105(c), 570.200(c), 570.208

Other Reference Materials on This Topic CDBG Guide to National Objectives and Eligible Activities, Chapter 2, Chapter 3

6.2.1 Eligible and Ineligible Activities

Eligible Activities

Special assessment activities under CDBG can be used to:

- Recover capital costs of a public improvement; and/or
- Pay for special assessments for public improvements not initially assisted with CDBG funds.

In order to recover CDBG funds used to pay for all or part of the cost of a public improvement, special assessments may be imposed:

- To recover CDBG funds only against properties owned and occupied by non LMI persons (and such assessments are program income); or
- To recover non-CDBG monies, provided that CDBG funds are used to pay the special assessment on behalf of all properties owned and occupied by LMI persons. (CDBG funds do not have to be used to pay special assessments on behalf of properties owned/occupied by moderate- income residents if the grantee does not have sufficient CDBG funds to pay the assessments on behalf of all the LMI owner/occupants).

CDBG funds may be used to pay for special assessments for public improvements not initially assisted with CDBG funds, provided:

- The installation of the public improvements was carried out in compliance with all applicable requirements (e.g., environmental, citizen participation and Davis-Bacon); and
- The CDBG funds are used to pay the special assessment on behalf of all LMI owner occupants (or for low-income owner/occupants only if there are not sufficient funds to pay for all low- and moderate-income owner occupants).

Ineligible Activities

Special assessments are not taxes and the establishment of the value of real estate for the purpose of any type of taxes is ineligible.

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Periodic charges based on the use of a public improvement, such as water or sewer user charges, even if the charges include the recovery of all or some portion of the capital costs of the public improvement, are ineligible.

6.2.2 National Objective

LMI Benefit National Objective

Special assessments will typically be categorized under the LMI Benefit national objective. The same criteria required for public facilities under the area benefit national objective category apply in the case of special assessments; therefore, refer to the section above for detailed guidance.

Slum/Blight National Objective

Special assessments may also qualify under the Slum/Blight national objective. The same criteria required for public facilities under the slum/blight national objective apply in the case of special assessments; therefore, refer to the section above for detailed guidance.

Urgent Needs National Objective

Special assessments may also qualify under the Urgent Needs national objective. The same criteria required for public facilities to be documented as an urgent need apply in the case of special assessments; therefore, refer to the section above for detailed guidance.

6.3 Privately-Owned Utilities

Privately owned utilities are those owned by a private company rather than a public agency. The rehabilitation or construction of these utilities may be undertaken with CDBG funds under certain conditions. The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section: Eligible Activities

Regulatory/Statutory Citations: Section 101(c), Section 104(b), Section 105(c), 570.201(l), 570.207, 570.208

Other Reference Materials on This Topic CDBG Guide to National Objectives and Eligible Activities, Chapter 2, Chapter 3

6.3.1 Eligible Activities

Eligible Activities

CDBG funds may be used by a grantee, subrecipient, and other for-profit and public entities to acquire; construct; reconstruct; rehabilitate; and install the distribution lines and related facilities for privately-owned utilities.

A privately-owned utility refers to service that is publicly regulated and is provided through the use of physical distribution lines to private properties.

Utilities include, but are not limited to, electricity, telephone, water, sewer, natural gas, and cable television.

6.3.2 National Objectives

LMI Benefit National Objective

Privately-owned utility activities may qualify under the LMI benefit national objective. The same requirements for documentation as for public facilities apply; therefore, refer to the national objective section on public facilities for detailed guidance.

Slum/Blight National Objective

Additionally, privately-owned utilities activities that aid in the prevention or elimination of slums or blight in a designated area may qualify under the slum/blight national objective. The same criteria for a public facility to meet this national objective apply; therefore, refer to the section above for detailed guidance.

Urgent Needs National Objective

Privately-owned utilities may also qualify under the Urgent Needs national objective. The same criteria required for public facilities to be documented as an urgent need apply in the case of privately-owned utilities; therefore, refer to the section above for detailed guidance.

6.4 Summary of National Objective Options for Public Facilities, Special Assessments and Privately Owned Utilities

The following chart summarizes the national objective options related to public facility activities. The text in each section above provides additional details for each specific type of activity. For a complete copy of the matrix codes and national objectives chart, please see the IDIS chapter of this manual.

| National Objective Codes (N = Not Allowed) | | | | | | | | | |
|--|--|------------|------------|------------|------------|------------|------------|------------|------------|
| <u>HUD Matrix Code</u> | <u>Activity</u> | <u>LMA</u> | <u>LMC</u> | <u>LMH</u> | <u>LMJ</u> | <u>SBA</u> | <u>SBS</u> | <u>SBR</u> | <u>URG</u> |
| 3 | Public Facilities and Improvements (General) | | | | | | | | |
| 03A | Senior Centers | N | | N | | | | | |
| 03B | Handicapped Centers | N | | N | | | | | |
| 03C | Homeless Facilities (not operating costs) | N | | N | | | | | |
| 03D | Youth Centers | N | | N | | | | | |
| 03E | Neighborhood Facilities | | | N | | | | | |
| 03F | Parks, Recreational Facilities | | | N | N | | | | |
| 03G | Parking Facilities | | | N | | | | | |
| 03H | Solid Waste Disposal Improvements | | | | | | | | |
| 03I | Flood Drainage Improvements | | | | | | | | |
| 03J | Water/Sewer | | | | | | | | |

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|-----|--|---|---|---|---|--|--|--|--|
| | Improvements | | | | | | | | |
| 03K | Street Improvements | | | | | | | | |
| 03L | Sidewalks | | | | | | | | |
| 03M | Child Care Centers | N | | N | | | | | |
| 03N | Tree Planting | N | | | | | | | |
| 03O | Fire Station/Equipment | | N | N | N | | | | |
| 03P | Health Facilities | | | N | | | | | |
| 03Q | Abused and Neglected Children Facilities | N | | N | | | | | |
| 03R | Asbestos Removal | | | N | | | | | |
| 03S | Facilities for AIDS Patients (not operating costs) | N | | N | | | | | |
| 11 | Privately Owned Utilities | | | | | | | | |