

## **TITLE 1 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

This Act is the congressionally adopted statute from which most of the CDBG Program regulations are developed. Section 105(a) identifies eligible activities and is reproduced, in its entirety, below:

### **ELIGIBLE ACTIVITIES - Section 105 (a) Activities assisted under this title may include only:**

- (1) the acquisition of real property (including air rights, water rights, and other interests therein) which is (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; (B) appropriate for rehabilitation or conservation activities; (C) appropriate for the preservation or restoration of historical sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or (E) to be used for other public purposes.
- (2) the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements.
- (3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public or private improvements or services to be provided, may be expected to arrest the decline of the area.
- (4) clearance, demolition, removal, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for rehabilitation, and rehabilitation of privately owned properties and including the renovation of closed school buildings).
- (5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons.
- (6) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this title.
- (7) disposition (through sale, lease, donation or otherwise) of any real property acquired pursuant to this title or its retention for public purposes.
- (8) provisions of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by the said unit, or received by such unit from the state in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this title, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 percent of the amount of any assistance to a unit of general local government under this title may be used for activities under this paragraph unless such unit of general local government used more than 15 percent of the assistance received under this title for fiscal year 1982 or fiscal year 1983 for such activities

(excluding any assistance received pursuant to Public Law 98-8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount.

(9) payment of the non-federal share required in connection with a federal grant-in-aid program undertaken as part of activities assisted under this title.

(10) payment of the cost of completing a project funded under Title I of the Housing Act of 1949.

(11) relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate.

(12) activities necessary (A) to develop a comprehensive community development plan, and (B) to develop a policy-planning-management capacity so that the recipient of assistance under this title may more rationally and effectively (i) determine its needs, (ii) set long-term goals and short-term objectives, (iii) devise programs and activities to meet these goals and objectives, (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation.

(13) payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones and payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981.

(14) provision of assistance including loans (both interim and long term) and grants for activities which are carried out by public or private nonprofit entities, including (A) acquisition of real property. (B) acquisition, construction, reconstruction, rehabilitation, or installation of (i) public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and (iii) planning.

(15) assistance to neighborhood-based nonprofit organizations, local development corporation, nonprofit organizations serving the development needs of the communities or non-entitlement areas, or entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of Section 101(c), and assistance to neighborhood-based nonprofit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities (other than by construction of new facilities) in which elderly families (as defined in Section 3(b)(3) of the United States Housing Act of 1937) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing.

(16) activities necessary to the development of energy use strategies related to recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items such as:

(A) an analysis of the manner in, and the extent to which energy conservation objectives will be integrated into local government operation, purchasing and service delivery, capital

improvements budgeting, waste management, district heating and cooling, land use planning and zoning, and traffic control, parking, and public transportation functions.

(B) a statement of the action the recipient will take to foster energy conservation and the use of renewable energy resources in private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low- and moderate-income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities.

(17) provisions of assistance to private, for-profit entities, when the assistance is necessary or appropriate to carry out an economic development project.

(18) the rehabilitation or development of housing assisted under Section 17 of the United States Housing Act of 1937.

(19) provision of assistance to facilitate substantial reconstruction of housing owned and occupied by low-income persons (A) where the need for reconstruction was not determinable until after rehabilitation under this section had already commenced, or (B) where the reconstruction is part of a neighborhood rehabilitation effort and the grantee (i) determines the housing is not suitable for rehabilitation, and (ii) demonstrates to the satisfaction of the Secretary that the cost of substantial reconstruction is significantly less than the cost of new construction and less than the fair market value of the property after substantial reconstruction.

(20) provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities, which assistance shall not be considered a planning cost as defined paragraph (12) or administrative cost as defined in paragraph (13).

(21) housing services, such as housing counseling, energy auditing, preparation of work specification, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in housing activities authorized under this section, or under Title II of the Cranston-Gonzalez National Affordable Housing Act, except that activities under this paragraph shall be subject to any limitation on administrative expenses imposed by any law.

(22) provision of assistance by recipients under this title to institutions of higher education having a demonstrated capacity to carry out eligible activities under this subsection for carrying out such activities.

(23) provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by:

(A) providing credit (including providing direct loans and loan guarantees, establishing peer lending programs) for the establishment, stabilization, and expansion of microenterprises.

(B) providing technical assistance, advice, and business support services (including assistance, advice, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises.

(C) providing general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises.

(24) activities necessary to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low-income neighborhoods.

(25) provision of direct assistance to facilitate and expand home ownership among persons of low-income (except that such assistance shall not be considered a public service for purpose of paragraph (8) by using such assistance to:

(A) subsidize interest rates and mortgage principal amounts for low-income home buyers.

(B) finance the acquisition by low-income home buyers of housing that is occupied by the home buyers.

(C) acquire guarantees for mortgage financing obtained by low-income home buyers from private lenders (except that amounts received under this title may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this title may not directly provide such guarantees).

(D) provide up to 50 percent of any down payment required from low-income home buyer.

(E) pay reasonable closing costs (normally associated with the purchase of a home) incurred by low-income home buyer.

(b) Upon the request of the recipient of assistance under this title, the Secretary may agree to perform administrative services on a reimbursable basis on behalf of such recipient in connection with loans or grants for the rehabilitation of properties as authorized under subsection (a)(4).

(c)(1) In any case in which an assisted activity described in paragraph (14) or (17) of subsection (a) is identified as principally benefiting persons of low-income, such activity shall:

(A) be carried out in a neighborhood consisting predominately of person of low-income and provide services for such person.

(B) involve facilities designed for use predominately by person of low-income.

(C) involve employment of persons, a majority of whom are persons of low-income.

(2)(A) In any case in which an assisted activity described in subsection (a) is designed to serve an area generally and is clearly designed to meet identified needs of persons of low-income in such area, such activity shall be considered to principally benefit persons of low income if (i) not less than 51 percent of the residents of such area are persons of low-income; (ii) in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low-income; or (iii) the assistance for such activity is limited to paying assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low-income to recover the capital cost for a public improvement.

(B) The requirements of subparagraph (A) do not prevent the use of assistance under this title for the development, establishment, and operation for not to exceed 2 years after its establishment of a uniform emergency telephone number system if the Secretary determines that.

(i) such system will contribute substantially to the safety of the residents of the area served by such system.

(ii) not less than 51 percent of the use of the system will be by persons of low-income.

(iii) other federal funds received by the grantee are not available for the development, establishment, and operation of such system due to the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the grantee. The percentage of the cost of the development, establishment, and operation of such a system that may be paid from assistance under this title and that is considered to benefit low-income persons is the percentage of the population to be served that is made up of persons of low-income.

(3) Any assisted activity under this title that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low-income only to the extent such housing will, upon completion, be occupied by such persons.

### **INELIGIBLE ACTIVITIES**

Although ineligible activities are not specifically identified in Title I, the Code of Federal regulations (CFR's), developed from the statute, provide guidance. According to 24 CFR 570.207, the general rule is that any activity that is not authorized under the provisions of 570.201 - 570.206 of this Subpart is ineligible to be carried out with CDBG funds. This section identifies three specific activities that are ineligible and provides guidance thought to be necessary in determining the eligibility of several other activities frequently associated with housing and community development.

(A) the following activities may not be carried out using CDBG funds:

(1) Buildings or portions thereof used predominantly for the general conduct of government cannot be assisted with CDBG funds. Such buildings include, but are not limited to: city halls and other headquarters of government where governing body of the recipient meets regularly, courthouses, and other state or local government office buildings. This does not exclude, however, the removal of architectural barriers under Subpart 570.201 (k) and historic preservation under 570.202(d) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be utilized in the provision of a building or facility for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible provided such acquisition meets a national objective, (570.208).

(2) General government expenses. Except as otherwise specifically authorized in this Subpart or under OMB Circular A-87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this Part.

(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, such as candidate forums, voter transportation, or voter registration. However, a facility originally financed in whole or in part with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(B) The following activities may not be carried out with CDBG funds unless authorized under provisions of 570.203 or as otherwise specifically noted herein, or when carried out by a subrecipient under the provisions of 570.204.

(1) Purchase of equipment. The purchase of equipment with CDBG funds is generally ineligible.

(i) Construction equipment. The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A-87 or A-122 as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under Subpart 570.201(c).

(ii) Fire protection equipment. Fire protection equipment is considered for this purpose to be an integral part of a fire protection facility and thus, purchase of such equipment would be eligible under 570.201(c).

(iii) Furnishings and personal property. The purchase of equipment, fixtures, motor vehicles, furnishings, or other property which is not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase, or to pay depreciation or use allowances (in accordance with OMB Circulars A-87 or A-122, as applicable), for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or as a public service pursuant to Subpart 570.201(e).

(2) Operating and maintenance expenses. The general rule is that any expense associated with repairing, operating or maintaining public facilities and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance and office space for program staff employed in carrying out the CDBG program. For example, where a public service is being assisted with CDBG funds, the cost of operating and maintaining that portion of the facility in which the service is located is eligible as part of the public service. Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs.

(ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

(3) New housing construction. Assistance may not be used for the construction of new permanent residential structures or for any program to subsidize or finance such new construction, except:

(i) As provided under the last resort housing provisions set forth in 49 CFR Part 24.

(ii) As authorized under 570.201(m).

(iii) When carried out by a subrecipient pursuant to 570.204(a).